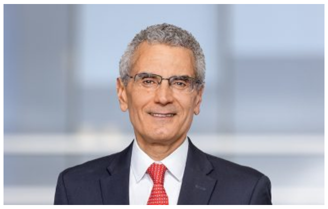
miricklaw.com

Tony DaSilva Quoted in HR Brew, Why Corporate Jet Perks are Coming Under Federal Scrutiny

May 6, 2024 | In The News



HR Brew
By Courtney Vinopal
May 6, 2024

When employers fail to disclose perquisites granted to executives, like trips on a company jet, they can land in hot water with the SEC and IRS.

When we think of company perks, the standard offerings often come to mind: A gym membership, subway card, or office snacks are all items employers might foot the bill for in order to keep their employees happy. If you’re lucky, maybe you get a branded company mug at the holiday party.

But what about country club dues, or tickets to a sporting event? How about a ride on the corporate jet? These more lavish rewards—known as perquisites or perks—are typically non-cash benefits reserved for executives at larger firms. They’re also regulated by the Securities and Exchange Commission (SEC), which requires public companies to disclose these benefits when they amount to more than $10,000 annually, unless the perk is “integrally and directly related to the performance of the executive’s duties.” Such personal benefits are considered a form of income, and thus subject to taxation.

Boeing recently revealed in an SEC filing that it neglected to properly disclose more than $500,000 worth of travel that executives took on the company’s aircraft in 2021 and 2022. While these trips were initially recorded as business travel, they should have been disclosed as perquisites.

How employers should approach perquisites. Perks like the one Boeing grants its executives are coming under closer federal scrutiny. The SEC has brought 20 cases against public companies for failing to properly disclose perquisites in the last decade, Bloomberg Law reported, including two last year. In one case that was settled in June 2023, the SEC found Stanley Black & Decker failed to disclose $1.3 billion worth of perquisites and personal benefits paid to four of its executive officers, predominantly associated with corporate aircraft use, between 2017 and 2020.

The Internal Revenue Service (IRS) said in February it “plans to begin dozens of audits on business aircraft involving personal use.

Given the sensitive nature of perquisites, someone in the finance or tax department will likely be tasked with recordkeeping, though HR may play a role as well, said Anthony DaSilva, a partner at Mirick O’Connell, a Massachusetts-based law firm, who leads the compensation, benefits and ERISA practice. To avoid getting in hot water with regulators and the federal government, it’s best to err on the side of caution and “treat something that has elements of something that is non-business related as a perquisite,” DaSilva added.

This judgment call isn’t always easy to make, DaSilva said. In the case of corporate jet use, there are clear-cut cases when this can be categorized as business travel, i.e., a CEO is flown from the company headquarters to visit a facility or division, or to meet with investors. But what if that executive decides to bring along their spouse or children? In this case, the expense starts to veer from business toward the perquisite category. For situations that aren’t clear-cut, “it’s a best practice to just go ahead and disclose, and put it in income. Because the consequences of it being brought to light…is going to hurt the brand, the image of the company.”

Reconsidering executive perks. When developing policies on perquisite use, employers may want to take a step back and consider whether such perks are really critical and essential for their business, DaSilva said. In lieu of perquisites, companies might consider compensating individuals “in a way that allows them to make their own decisions in terms of how they spend their income.”

Perquisite offerings have declined in recent years, he noted. Organizations that continue to offer them, he posited, are “likely standing out, and maybe not in a good way.”