Retirement Benefits for International Online Faculty: A Delicate Balance

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As our economy becomes increasingly globalized, so must our educational system to keep pace with the demand for highly-qualified faculty and students. Currently, there is a significant demand for online degree programs. Private and public non-profit universities alike have started to respond to this demand by offering their own online degree programs.

Because the concept of online faculty is so new, many U.S. universities do not yet have a clear vision of how the online faculty members will integrate with preexisting on-campus faculty. In order to find candidates who are most willing to devote their time and energies to a new online degree program, U.S. universities may find that the easiest approach is to create a separate category of "online lecturers," which enables the universities to market open online faculty positions worldwide. However, in recruiting international faculty members, the university will soon discover-either before or after the online faculty member signs the employment agreement-that compensation packages originally designed for U.S.-based faculty must be carefully reviewed and revised to account for the complexities of international tax law.

Among the issues to consider is whether the university can, or must, provide retirement benefits to the international faculty member through its 403(b) plan. A review of the university's plan documents may show that it has elected to exclude "Nonresident Aliens" from participation in the plan. If so, the university may need to devise a way to make contributions toward a retirement plan in the foreign lecturer's home country or otherwise increase the foreign lecturer's compensation to make up for the retirement benefit that they are not eligible for. If the university has not elected to exclude Nonresident Aliens, it will need to consider the international income tax consequences for the foreign lecturer when contributions are made, the account value increases, and the lecturer eventually takes distributions from the U.S.-based plan. The answers to these issues likely lie in the "Pensions and Annuities" article of the applicable treaty between the United States and the lecturer's country of residence (if such a treaty exists).

Client Tip: *The question of how to structure compensation packages for international online faculty becomes a delicate*

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balancing act. University counsel should not only navigate clients through the technical details of the 403(b) plan, but should also be sensitive to how that plan's treatment of nonresident aliens might affect the university's objectives for global growth and recognition of their online degree programs.

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