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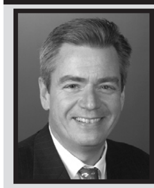
Reverse Discrimination in Retirement Planning

Dwight Moldenhauer

Moldenhauer Advisory Services



Business owners and their key employees are often the companies most highly compensated individuals. This makes sense because they assume the greatest risk and responsibility for the company's success. Lifestyle often matches their success, but this inevitably creates a future dilemma. That is planning for a retirement that will sustain their affluent lifestyle. This becomes difficult and sometimes out of reach with typical retirement planning. For example, the traditional 401(k) plan, while an important part of retirement planning, cannot alone support the post retirement needs of a highly compensated employee or business owner.

The company 401(k) is a great opportunity for all employees to save for their retirement with pre-tax earnings and employers often match the contribution by a certain percentage. As good as a 401(k) plan is it has limitations. The effectiveness of a 401(k) alone begins to diminish after an employee exceeds $100,000 in income. The most glaring limitation for a highly compensated employee is the $16,500 yearly cap on contributions as defined by the IRS. This, some believe, is reverse discrimination for many highly compensated employees and forces funding for retirement using personal taxable income or not properly preparing for retirement altogether.

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To work around the limitations of a 401(k) for highly compensated employees, some employer's offer a non qualified deferred compensation plan. This plan gives the company a possibility to allow an executive to defer the amount they need and desire, beyond the traditional 401(k).

Properly designed these plans will serve the company and the executive in the best manner possible. Today these kinds of solutions are more accessible than ever for small, medium and large size companies.

Selective Executive Benefits Options

Every company has different needs and the solutions vary to meet these needs. A company's corporate structure differs and will play an important role in the direction of the solution.

The first type of Selective Benefit solution is a program called a Supplemental Executive Retirement Plan or a SERP. In simple terms, a SERP is a selective Defined Pension Plan that can be limited to a small group of key employee or even just one person. These plans represent an agreement between employer and employee that the company will pay a certain benefit at a later date. The benefit, such as an amount of cash, most often at retirement is paid to the employee over a number of years as a supplement to their retirement savings. The company can also agree to provide the family a survivor benefit in the event of the premature death of the employee.

In order to create the most value for both the corporation and the executive we must be very intentional with the design of these solutions. Both the corporation and the executive have needs, expectations and goals. These concepts can open the door to a level of communication between both parties that may be lacking and can have a very powerful effect.

> **In these tight economic times the strong and resourceful companies will not only survive but come out stronger and more effective than before this economic recession landed in our laps.**

Another type of Selective Benefit solution is referred to as a Sec. 162 Bonus Plan, so named after the IRS code that governs these plans. These plans are becoming increasingly popular. A Sec. 162 Bonus Plan is a "mirror image" of a SERP in that the employee is the immediate owner of the plan with the company paying the cost and "bonusing up" the tax the executive will incur as the cost of the benefit will be included in their compensation for tax purposes. These Bonus Plans are excellent for retention and recruitment and can be designed with a unique restriction applied which removes the employee's initiative to change companies, simply by limiting the access to the plan accumulations. A Sec. 162 Bonus Plan is often favored when the employer's "risk of forfeiture" is not of preliminary concern.

Whether a SERP or a Sec. 162 Bonus Plan, the concept of Non-qualified deferred benefits provide the employer with a tool that they can use to communicate to their key executives, who provide the talent and are a valuable asset to the company success, that they are recognized and that the company appreciates their hard work. Basic compensation, salary and cash bonuses quickly become viewed by the executive as their entitlement and may not in the long run prevent these key people from seeking out better opportunities.

In these tight economic times the strong and resourceful companies will not only survive but come out stronger and more effective than before this economic recession landed in our laps.

The most valuable assets and resources a strong company has are its key leadership members. These key employees are likely at an age when their maturity benefits the company, but also has made them more concerned about their future. They have seen their retirement savings reduced significantly. Consider the impact the company can have by stepping in and acknowledging not only their contribution to the success of the company, but their fears and concerns for their financial security by establishing a selective benefit solution. The returns can be huge.

Dwight Moldenhauer, CLU, ChFC, is the owner of Moldenhauer Advisory Services, Buffalo, N.Y.