



April 2008 Newsletter

The "Must Haves" For Recruiting

Competitive base pay, medical insurance and a 401(k) plan are the "must haves" for benefits to attract and keep talent in your company. According to a study by Watson Wyatt Worldwide, related in *The Human Capital Edge: 21 People Management Practices Your Company Must Implement (or Avoid) to Maximize Shareholder Value*, companies that emphasize better benefits and use them to attract and retain high caliber staff add 7.3 percent in additional profit to their bottom line.

This makes your 401(k) and other retirement benefits cornerstones for your Human Resources recruitment and retention strategy. Do you know everything you need to know to serve as the "go-to" source for this information? For more information about your 401(k), please contact your BCG Representative at 1-800-524-4015.

The Technical Corner

NONQUALIFIED DEFERRED COMPENSATION PLANS

Why Consider a Deferred Compensation Plan?

Deferred compensation plans involve an agreement by an employer to make payments to an employee at a future date as compensation for his or her services. Deferred compensation plans can be an important method for compensating key personnel in both publicly held and private companies. These plans generally do not have to meet the funding, employee coverage, and other requirements which "qualified" plans must satisfy under 401(a) of the Internal Revenue Code of 1986.

In addition, the Employee Retirement Income Security Act of 1974 (ERISA) exempts

unfunded plans maintained "primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees" from virtually all of its requirements. Accordingly, such so-called nonqualified deferred compensation plans are quite flexible and can be tailored to permit selective recognition of the special services which may be rendered by key personnel.

The employee's tax objective in participating in such a plan is to ensure that he will be taxed (generally, at ordinary income tax rates) only when payments are received under the plan or agreement; the employer's tax objective is to receive a full deduction no later than the time the compensation is paid to the employee.

Because of flexibility, deferred compensation is quite useful in solving a number of corporate problems. Different formulations of deferred compensation include:

1. Elective Deferred Compensation. Elective deferred compensation remains a strong force as this type of plan allows an executive to increase his salary deferrals beyond that permitted in a 401(k) plan.
2. Benefit Replacement. When changing employers, an executive loses nonqualified or qualified benefits and he or she will usually negotiate for nonqualified supplements designed to replace lost benefits.
3. Golden Handcuffs. Nonqualified deferred compensation can be structured with forfeiture provisions if the executive leaves his or her position. Such provisions may be a powerful retention tool -- there are many types of monetary handcuffs which bind an executive.
4. Performance Incentives. Phantom stock and other forms of nonqualified deferred compensation plans can be structured so that they will only pay if certain performance objectives are satisfied.

Key Points Concerning Nonqualified Plans

1. Discrimination Permitted. The employer may choose who will be eligible to participate in the plan from among their highly compensated, management employees. The employer may discriminate. The law requires that the plan only benefit a "select group" of highly compensated or management employees. The maximum number or percentage of an employer's workforce who may participate is unclear, but, to be consistent with prior Department of Labor opinion letters, we recommend that no more than 5% of a company's employees.
2. No Limit on Deferrals. Eligible employees may defer whatever they want. There are no limits other than the amount of their compensation. A salary reduction agreement must be executed before the start of the plan year. A special rule applies for new plans and newly eligible employees. Once an election is made, it may not be changed during the year unless the participant is irrevocably ceasing participation in the plan for the plan year.
3. Employer Contributions. The employer may make a discretionary contribution to the plan. It's generally allocated in proportion to compensation (but may be allocated in any other manner the employer decides) and may be subject to a vesting schedule.
4. Taxation of Earnings. Income or realized gain earned on assets is currently taxable to the employer, but taxes may be charged against participant accounts. Some employers use variable life insurance to avoid current taxation and provide a death benefit. Tax efficient assets, such as growth funds with limited turnover, can also be used.
5. Distributable Events. Distributions are not permitted from the plan earlier than separation

from service, death, disability, a specified time (or pursuant to a fixed schedule), a change in control of a corporation (to the extent allowed by the IRS), or an occurrence of unforeseeable emergency. Additionally, key employees at public corporations generally may not receive their distributions earlier than six months after separation.

6. Timing of Distributions. The plan may specify the manner and time of distributions without any options for the employee. It is more common to give the employee some choice in the time and manner of distribution. In that event, the employee must choose a method and time of distribution at the time contributions are made. Any subsequent change to this election generally must be made at least 12 months after the election and must defer receipt for at least five years in the future. Acceleration of benefits are not permitted.

7. Employer Owns Assets. The employer owns all assets purchased for the plan even if the employee is given "investment direction" in the plan. In the plan, the employer merely promises to pay the employee the amount owed under the plan's contribution and allocation formula. Thus, the employee is an unsecured creditor of the employer. If the employer goes bankrupt or becomes insolvent, the assets in the plan can be lost.

8. Rabbi Trust. Some employers may choose to use a "Rabbi Trust." This is a trust that uses an independent directed trustee and provides a degree of security for employees, especially in the event of a change of management. The trust holds the assets, but the trustee must turn the assets over to the employer if the employer becomes insolvent or goes bankrupt. The employer still pays taxes on all income from assets in the trust.

9. Taxation. Contributions, including employee deferrals, are income tax deferred, but are subject to FICA and FUTA tax when vested.

The rules governing nonqualified deferred compensation are complex, but the benefits of this type of plan are many. If you are interested in learning more about deferred compensation plans, contact our Sales Support and Plan Implementation Department at 1-800-524-4015, Option 3.

BCG University - Recent Seminars

BCG University offers a multitude of courses in our state-of-the-art facility and are presented by recognized leaders in various industries. Recently, BCG University proudly presented the following seminars:

Building High Performance Management Teams

Del Poling, the founder and principal of Del R. Poling International, is a consultation and management organization that assists organizations in dealing with change. Del has more than thirty years of business and consulting experience and has made presentations to management groups for companies including IBM, AT&T, 3M, Marriott, Westinghouse and World Bank.

During his presentation, he spoke about the importance of:

- understanding the characteristics of high performance teams

- ensuring a better fit of team members
- identifying and raising the expected performance of team members
- understanding the teambuilding process and their place in the sequence
- examining their own leadership styles and decision-making processes
- learning how to take a group of different individuals and building them into a high performance team

The SAGA Leadership Institute

Don Schmincke, founded The SAGA Leadership Institute to help CEO's and HR departments accelerate business performance. The SAGA Institute is the only center in the world helping companies with leadership, sales, and cultural alignment. These programs are based on scientific research from Harvard, MIT, Johns Hopkins and other leading universities.

Don discussed "Discovering the Leader's Code: Ancient Wisdom for Extraordinary Leadership." He has been featured by CNN, The Wall Street Journal, USA Today and MSNBC.com.

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800-524-401K
www.bcgbenefits.com
