

# The View from Level VII™

## EXECUTIVE BENEFITS

### *How Governance Change Is Affecting Executive Compensation*

With recent legislation such as Sarbanes-Oxley and NYSE & Nasdaq rulings along with increased shareholder scrutiny and enhanced corporate responsibility it is anticipated there will be significant changes to many companies executive and Board member compensation and benefits practices. Many changes are focusing on executive talent, base pay, short and long-term incentives, as well as, Board compensation and option expensing. Currently less than 20 percent of companies have taken proactive measures to align their compensation practices with the new rules and regulations while most companies have taken a "wait and see" attitude to see what others are doing.

Other groups such as: The Conference Board, The National Association of Corporate Directors, and The Business Roundtable have all weighed in on the issues of stronger governance, including executive compensation, benefits and stock options. Principal recommendations include:

- Committees should be comprised entirely of independent directors
- Designing appropriate equity compensation programs
- Approval of directors stock holding requirements
- Executive sessions for Compensation Committees
- Approval of all stock option and restricted stock plans, in which both executive officers and directors participate
- Retention of independent, third-party counsel by Compensation Committees

The increase in governance has already seen that executive compensation increases in 2003 were among the lowest in recent years and increases have been brought into the same range as the general employee population. Bonuses have also been affected and have been significantly reduced. Still the dominant compensation long term incentive planning vehicles are nonqualified retirement and stock option plans. This may continue to change as new more restrictive deferred compensation and most notably stock option expensing rules are being implemented.

**Weir Financial Resources**, a financial advisory firm uniquely dedicated to providing solutions for Executive Benefits, stands ready to assist your company with such important planning matter.

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## EXECUTIVE COMPENSATION

### *Changes in Executive Compensation Before Stock Option Deadline*

The Financial Accounting Standards Board has issued a rule, FASB Statement No. 123R, that requires public companies to recognize the compensation cost relating to stock options in their financial statements. The Securities and Exchange Commission has adopted the new rule and will be requiring stock option and other share plan expensing. Most public companies will have until their first fiscal year beginning after June 15, 2005, while the compliance date for small business issuers is their first fiscal year beginning after December 15, 2005.

Accordingly, these changes in stock option expensing has led to over 70% of public companies to revise or plan to revise their stock based long-term incentive program design. Trends are showing that many large U.S. companies are shifting a portion of these equity participation incentive mix from stock options to restricted stock and performance-based shares/units. As recently as 2 years ago stock options made up nearly 50 percent of total compensation for senior executives, today that has been reduced to 31 percent. To fill this gap, nearly half of companies, are using time-based restricted stock/restricted stock units. This is up from 29 percent in 2002. Many of these companies are also limiting the number of employees eligible for such plans.

Further trends show a shift toward more elements of executive compensation based on performance as companies are coming under increased scrutiny by shareholders and regulators. This change is will have a major impact on executive earnings potential as an increased share of compensation will be determined on their success in achieving long-term business goals and meeting shareholders expectations.

**Harman & Associates** with its fortune 500 background and extensive national and international experience in executive compensation planning stands ready to assist in developing a plan that deals with the complex tax rules and establishes mutual benefit for all parties involved.

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*In this and/or future issues you will find short, yet meaningful articles on:*

- Human Resources
- Risk Management
- Executive Compensation
- Executive Benefits
- Employee Benefits
- Private Wealth Planning



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## EMPLOYEE BENEFITS

### ***Affordable (Almost) Medical Insurance – PART 2:***

Last year we outlined a Univera HMO Plan designed for employees who cannot afford increasingly higher contributions for Medical Insurance. The Plan included a limited benefit prescription drug card, and excluded some services normally covered by Western NY HMO Plans. While some employers considered this plan, the majority decided that the excluded services presented too much of a financial risk.

In order to diminish the financial risk involved with this plan, Univera developed a new low cost "Value Plus" Plan for 2005. This new plan retains the limited benefit prescription drug card, but does not have the coverage exclusions found on the previous "Value" Plan. The new Value Plus Plan also includes lower co-pay levels for services provided in Univera's Lifetime Health Centers.

This new Value Plus Plan has been useful for some of our clients as a "menu option", and it is not meant to replace more conventional medical benefits plans. The rates listed below are effective through the end of the second calendar quarter of 2005.

Single Coverage Monthly Rate = \$187  
Family Coverage Monthly Rate = \$505

We would be happy to share more details on the Univera Value Plus Plan, or any other medical benefits information that you may have an interest in.

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## HUMAN RESOURCES

### ***What is a Salary Non-Exempt Employee?***

**Question:** We are an engineering firm in Pennsylvania. Some employees are hourly, some are salaried exempt. What is a salaried non-exempt employee? We see no category or definition of this type of position in the FLSA.

**Answer:** The Fair Labor Standards Act (FLSA) is the federal law that covers most wage and hour issues. Generally, FLSA exempts a person employed in an "executive, administrative, or professional capacity" from overtime requirements if they are paid on a "salary basis."

The FLSA adopts a two-part standard for determining whether employees are exempt from the wage and hour laws. One component considers what employees do – whether their responsibilities are such that they can be considered to be acting in an executive, administrative or professional capacity. The second component considers how the employees are paid – whether the employees receive a predetermined amount of compensation on a "weekly or less frequent" basis that is paid without regard to the number of hours they work in a particular week or on a certain day. They are paid for the value of the services they perform and have the discretion to manage their time and work product. This salary cannot be reduced based on the quality or quantity of the work performed.

The FLSA does not recognize the classifications of a "salaried non-exempt" employee. If an employee's job functions do not fall within the first component of the FLSA standard for exempt status, then the employee must be paid overtime for their hours worked in excess of 40 hours any work week, regardless of whether the employer describes the employee as "salaried." You should also note that state law may have different standards for exempt status, although these standards generally follow the federal two-part test. Where an employee would be considered non-exempt under federal law, federal law is controlling.

Please feel free to contact us with questions related to this, or any other related Human Resource matter. **HR Professional Consultants** provides outsourcing and project based Human Resources consulting services for companies of all types and sizes.

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