

The View from Level VII™

EXECUTIVE COMPENSATION & BENEFITS

Pending Deferred Compensation Legislation - What Does it Mean?

Well, we will have to wait a little longer to see if and what Congress is going to do with the Nonqualified Deferred Compensation plan (NQDC) legislation each body proffered earlier this Summer. Pundits had anticipated that, prior to Summer recess, a House and Senate conference committee would offer a joint resolution to the separate changes found in the May 11th Senate, Jumpstart Our Business Strength Act of 2004 ("JOBS"), and the June 17th House, American Jobs Creation Act ("AJC"). While it was likely delayed due to its attachment to rather complicated legislation regarding the World Trade Organization and international trade agreements, some form of revised NQDC bill is expected to be signed into law this year.

Last issue of *The View*, I outlined the major changes expected to current NQDC plans. In short, the pending legislation places restrictions or eliminates certain withdrawal, investment, payout, exchange capabilities now allowed in such plans. It may also require additional W-2 reporting, similar to that for qualified plans. *So what does this mean if these changes are enacted into law?*

What this means from the 10,000 foot view is that NQDC plans will now have greater definition, and while that definition may be more restrictive, the legislation will have little or no effect on the viability or need for such important retirement planning vehicles for Highly Compensated Employees (HCEs). Qualified plans were not created, nor do they provide ample compensation deferral opportunity on a proportional basis for HCEs. National compensation and retirement surveys* continue to reveal increasing employer awareness, at all company sizes, of the reverse discrimination HCEs face when trying to save for retirement. And certainly, there will always be a great need for planning vehicles that provide a company an ability to attract, retain, reward and retire their key people; it is a crucial factor in any company's competitive ability.

Furthermore, NQDC plan financing, whether mutual funds or Corporate Owned Life Insurance (COLI), commonly held in Rabbi Trust, has not been affected by the pending legislation at all. In fact, in response to certain abuses, Congress took a separate look at a COLI bill earlier this year and issued a report in May in which COLI provisions were approved by the committee on a broad bipartisan basis. This bill effectively codifies the best practices of the industry with respect to COLI and would permit COLI to continue to be used as a means of offsetting the cost of employee benefit obligations.

So, from the employer's perspective, while perhaps not as attractive, NQDC plans under this new legislation will still be an important executive compensation tool. One thing to note, is that employers may have to maintain 2 sets of plans, as under the pending legislation, old money in existing plans would be "grandfathered" or exempt from the changes. From the employee's perspective, some of the bells and whistles are gone, yet such plans remain an important supplement to their ability to adequately and appropriately save for retirement.

WFR will keep you apprised of the developments as soon as they occur. And should this legislation become law, we look to be your resource for any questions, review or assistance with plan modification. Please do not hesitate to contact us on this or any other executive benefits matter.

Weir Financial Resources, LLC is a financial advisory firm offering information, ideas and solutions in Executive Benefits, Business Succession and Private Wealth Planning.

Jonathan D. Weir, JD
Weir Financial Resources, LLC
www.WeirResources.com

* *The latest compensation survey information as well as commentary regarding the conclusion Congress came to on the utilization of COLI as a financing vehicle for executive compensation and benefits may be seen in the "What's New" page of Weirresources.com.*

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



The View from Level VII™

EMPLOYEE BENEFITS

New Health Benefits Plan?

Due to increasing health benefits costs, some of our clients are exploring the concept of linking Health Reimbursement Arrangements (HRA's) with "High Deductible" medical benefits plans. Here are some things to consider if you are interested in exploring this too:

- HRA's are financed 100% by employer contributions. They reimburse the same medical, dental, and vision care expenses that are allowable under Section 125 Flexible Spending Accounts (FSA's).
- Employer contribution requirements are discretionary, and are normally evaluated and reset on an annual basis.
- Unlike FSA's, HRA's allow unused dollars to be "carried over" to subsequent plan years with no "use it or lose it" restrictions.
- Premium costs for the High Deductible plans are about 25% less than the typical Western NY HMO premiums. Employers save on their share of the total premium costs with part of the savings used for the HRA accounts.
- Employees save on their share of the total premium costs, and gain the use of flexible HRA dollars for a wide variety of medical, dental, and vision expenses. Employees also assume part of the financial risk for higher deductibles and co-pays.
- For larger employers, these HRA / High Deductible combination plans can be offered as an option in addition to more conventional HMO benefits.

We welcome your questions on health benefits programs. **Benefits Advantage, Inc.** provides consulting and insurance brokerage services for all types of employee benefits programs. Emphasizing *personal service, creative ideas, and positive results*; Benefits Advantage Inc. has 30 years of experience working with employers.

Arthur Georger CLU, CEBS
Benefits Advantage, Inc.
www.BenefitsAdvantageInc.com

HUMAN RESOURCES

You'll Need A Doctor's Note!!!

We had a question recently that we thought we'd share with our readers: *If an employee is absent from work due to a doctor's appointment, is it legal to require them to produce a note from the doctor's office to verify the appointment?*

Answer: An employer is generally entitled to have some verification of the reason for an employee's absence.

Most legal issues arise over how much information about an employee's illness the employer is entitled to request. Due to patient privacy concerns many doctors will only provide verification that the employee was examined by the physician. Federal law does not specifically prohibit employers from requiring an absent employee to produce a doctor's note to verify the fact of a medical appointment, assuming that such a requirement is consistently applied to all employees.

However, federal law may prohibit employers from asking detailed questions about an employee's medical condition or treatment if such inquiry relates to a disability and is not job-related and consistent with business necessity. Under the Americans with Disabilities Act (ADA), you cannot make inquiries "as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such . . . inquiry is shown to be job-related and consistent with business necessity."

The Equal Employment Opportunity Commission describes a "disability-related inquiry" as "a question that is likely to elicit information about a disability.". However, the EEOC's Enforcement Guidance states that an employer may ask an employee to provide a doctor's note when the employee has used sick leave, as long as the employer has a policy or practice of requiring all employees to do so, because the "employer is entitled to know why an employee is requesting sick leave."

Therefore, employers may request information about an employee's medical treatment, such as a doctor's note, when the request is not likely to elicit information about a disability or when the inquiry is job related and consistent with business necessity. In addition, if the employee's absence qualifies for leave under the federal Family and Medical Leave Act, or if the employee is seeking to utilize the protections of the FMLA, employers may require a physician's certification of the need for leave. Thus, if an employee uses his or her FMLA leave allowance for regular doctor visits associated with their own serious health condition, you may require documentation verifying that need.

Please feel free to contact us with questions related to employee absence, 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.

Jim Chwojdak
HR Professional Consultants, Inc.
www.HRProfessionalConsultants.com

Visit our website:
www.LevelVIICompanies.com

