



NYLEX News

Customized Executive Benefit Plans

Are you positioned to keep your best executives?

The economy is gradually rebounding and many of the best employees are exploring the job market.

Companies focused on the long-term success of their business know the importance of executive benefit plans in retaining the most valuable employees. These plans provide benefits that go beyond traditional raises or bonuses.

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RETAINING KEY EXECUTIVES IN A REBOUNING ECONOMY

According to a new Deloitte study, nearly two out of three (65%) employees surveyed are actively testing the job market¹. When asked to list their top three retention incentives, respondents ranked promotion / job advancement first, followed by increased compensation, and the third as additional bonuses or other financial incentives.

Well-designed, executive benefit programs have become essential to any company's ability to attract and retain top talent. Executives find nonqualified executive benefit plans attractive for many reasons. These plans provide benefits that go beyond traditional raises or bonuses.

- These plans can help executives save taxes today and build wealth for the future through tax-deferred growth of potential earnings.
- In most cases, executive benefit plans are not subject to contribution limits.
- These plans offer executives tremendous flexibility in securing their financial future.

THE RETIREMENT GAP

One reason for the current popularity of executive benefit plans is that they don't discriminate against highly compensated executives. In fact, these plans allow a company to provide valuable benefits designed specifically for the highly compensated team.

Executive benefit plans help executives deal with lost saving opportunities created by limitations of qualified plans, including 401(k) plans, pension plans and profit-sharing plans.

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PROTECTING VALUABLE BENEFITS FOR EMPLOYEES

Nonqualified benefit plans involve unfunded promises with the executive-participant having the status of an unsecured creditor of the company. The employee's benefit depends on the financial solvency and, to some extent, the willingness or ability of the sponsoring employer to meet its obligations.

Unlike a qualified plan where assets to fund the executive's benefits are protected by a special trust designed to insulate him or her from the employer's creditors, a nonqualified plan must be "unfunded". This unfunded status is required in order to meet ERISA requirements and to avoid current taxation of the employee, even though benefits may not be payable until some future date.

It is no surprise that savvy executives seek to enhance the security of their retirement benefits. The "Rabbi Trust" is one approach that has been developed to help ease the concerns of participants in nonqualified executive benefit plans. The rabbi trust got its name from the beneficiary in the initial IRS ruling approving this type of arrangement. The rabbi trust is a grantor trust established to hold the assets intended to pay the nonqualified benefits.

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Affiliated Company

RETAINING KEY EXECUTIVES IN A REBOUNDED ECONOMY (cont.)

Contribution and benefit limits make it difficult, if not impossible, for highly compensated employees to meet the same percent of salary retirement benefit payout as their non-highly compensated counterparts.

According to the 2009 Employee Benefit Research Institute Data Book, it is not unusual for a typical executive to have a 30% to 60% retirement income gap that will require a solution other than a qualified plan. This retirement benefit payout gap between the highly compensated and the non-highly compensated has not been addressed by legislators. Limits on qualified plans have increased only minimally in recent years. These limits, plus the income caps on Social Security, leave highly compensated executives facing the reality of having to provide a much larger percentage of their retirement income from other sources.

Individual tax-advantaged savings alternatives also discriminate against the highly compensated. Both traditional IRAs and Roth IRAs have compensation and contribution limits. Nonqualified executive benefit plans are one of the few efficient ways executives can adequately accumulate tax-advantaged savings for retirement.



ADVANTAGES FOR THE COMPANY

Employers have maximum flexibility in designing nonqualified executive benefit plans so the benefits provided will complement the company's other retirement programs. By integrating these plans with other employee benefits, companies position themselves to recruit and retain the best talent to assure the long-term success of their business. These plans also help companies:

- Reward select employees for outstanding performance
- Improve employee morale
- Give executives additional incentive to grow the business
- Concentrate on developing business-building strategies

SUMMARY

The economy is gradually rebounding and employees are beginning to explore the job market. Are you positioned to keep your best executives? NYLEX Benefits can provide you additional information on different types of executive benefit plans and assist you in determining which plan(s) best meet your needs.

¹"Talent Edge 2012: Building the Recovery Together – What Talent Expects and How Leaders are Responding", a survey by Deloitte Consulting LLP, 2011.

AN ALTERNATIVE WHEN SECURITY AND PORTABILITY ARE HIGHEST PRIORITY

An *iSERP*[™] funded with permanent life insurance may be the right choice when security and portability are the highest priorities for your executives. The concept and execution of the *iSERP* is simple.

The employer provides periodic cash bonuses to the employee that are dedicated to pay premiums for permanent life insurance coverage. The insurance is owned by the employee, making it a highly attractive, portable benefit. The employee is the insured and names the beneficiary of the policy.

The bonus is currently taxable to the employee and deductible by the employer. For select participants, the employer can “gross up” the bonus to cover both the cost of the *iSERP* and the employee’s income tax on the bonus.

Assets are personally owned by the covered employee, therefore not subject to creditor claims in the event of employer bankruptcy, nor in many states by personal creditors of the employee. If the employee terminates employment, the life insurance policy goes with them without triggering a taxable event.

If you are interested in more information about the *iSERP*, please contact NYLEX Benefits.

²Cash value is accessible as withdrawals or policy loans. Loans and withdrawals reduce the death benefit and cash value. Loans accrue an interest charge which offsets interest credited to the participant’s account.

With an *iSERP*:

Money goes In



After Tax

Potential Growth



Tax Deferred

Money Comes Out



Tax Free²

PROTECTING VALUABLE BENEFITS FOR EMPLOYEES (cont.)

In order to avoid current taxation of the plan participant, assets in a rabbi trust must remain subject to the claims of the employer’s general creditors in the event of the employer’s insolvency or bankruptcy. However, it offers the participant the protection, short of the company’s bankruptcy or insolvency, that the assets will only be used for the payment of the intended benefits.

HOW IT WORKS

Instead of benefits merely being a book entry, assets being used by the company to hedge future benefit liabilities are transferred to a trustee who has a duty to pay benefits to the employee at the time designated for distribution. For tax and accounting purposes, the rabbi trust’s activities are considered as those of the sponsoring company’s and the trust’s activities are included in the employer’s income tax return. The IRS has developed a model rabbi trust document, which companies generally follow in order to make sure they are complying with the safe harbor requirements established by the IRS.

SUMMARY

Rabbi trusts permit highly compensated executives to participate in a nonqualified plan that provides significant protection, but avoids the limitations associated with qualified plans.

If your executive benefit plan assets are not currently held in a rabbi trust, NYLEX Benefits can help you determine whether a rabbi trust is appropriate for your situation.



IRS NOTICE REQUESTING COMMENTS ON FORM 8925; AND FORM 8925 AND INSTRUCTIONS

The Internal Revenue Service has requested comments from the public with respect to Form 8925, the annual information return that is required to be filed by employers that have employer-owned life insurance contracts, more commonly referred to as corporate-owned life insurance or COLI.



IRS Form 8925 requires that every applicable policyholder owning one or more employer-owned life insurance contracts issued after August 17, 2006 (or issued before then, but materially changed thereafter), provide the following information for each year the contracts are owned:

- i. the number of employees of the applicable policyholder at the end of the year;
- ii. the number of such employees insured under such contracts;
- iii. the total amount of insurance in force at the end of the year;
- iv. the name, address, and identifying number of the applicable policyholder and the type of business in which the policyholder is engaged; and
- v. a statement that the applicable policyholder has a valid consent for each insured employee, or the number of employees for whom such consent was not obtained.

The Form 8925 is filed by attaching it to the policyholder's income tax return for each tax year during which the policyholder has employer-owned life insurance contracts in force.

REQUEST FOR COMMENTS

The IRS has requested comments in the following areas:

- a. whether the collection of information is necessary for the proper performance of the IRS' functions, including whether the information has practical utility;
- b. the accuracy of the IRS' estimate of the burden of collection of information (current IRS estimate of time to complete the form is 4 hours and 28 minutes);
- c. ways to enhance the quality, utility, and clarity of the information to be collected;
- d. ways to minimize the burden of collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and
- e. estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

If you have any comments in these areas, please pass your comments on to NYLEX Benefits and we will see that they are forwarded to the IRS.



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About NYLEX Benefits

NYL Executive Benefits LLC (“NYLEX Benefits”) provides supplemental executive benefit programs to a wide range of clients. We focus on developing cost effective executive benefit solutions that are designed to attract, reward and retain key employees.

Our services are designed to assist clients at all stages in the adoption and operation of executive benefit programs and include:

- Initial assessment
- Plan design
- Funding
- Plan implementation
- Ongoing administration

NYLEX Benefits’ professional staff includes the following professional disciplines, all dedicated to supporting our clients’ programs, processes, systems and services:

- Accountants
- Actuaries
- Attorneys
- Benefit specialists
- Insurance specialists

We take great care to assure that client programs are practical and that they are designed to achieve our clients’ strategic and operational goals.

Nothing contained herein is, or should be construed as, legal, tax or accounting advice, nor is it intended or can it be used for the purpose of avoiding penalties under the Internal Revenue Code or applicable state or local tax provisions. This communication was written to support the promotion or marketing of the matters or transactions addressed herein, and clients should always consult with their independent professional advisors to seek advice on the applicability of this information to their particular circumstances.

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