



Employee Benefits for Small Non-Profits

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September 20, 2017

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 - ✓ Be located in or serve the greater Atlanta area.
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 - ✓ Be unable to afford legal services.
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Employee Benefits in General

- Retirement Plans
- Executive Compensation
- Health and Welfare Benefits

- Internal Revenue Service (Internal Revenue Code)
- Department of Labor (ERISA)
- Health and Human Services (CMS/CIIO)

Retirement Plans

IRA-Based Plans

403(b) Plans

401(k) Plans

Recommendation

- IRA-based plans are less complex and have less start-up and administrative costs and less employer involvement and administration
 - ✓ Model IRS forms
 - ✓ No annual reporting (Form 5500 series)
 - ✓ No nondiscrimination testing

Traditional/Roth IRA

- Payroll deduction IRA
- Employee contributions limited to \$5,500 (\$6,500 if age 50 or older) for 2017
- Roth contributions may be limited based upon income and filing status

Simplified Employee Pension (SEP)

- Establish by completing Form 5305-SEP (if eligible) or adopting prototype or individualized plan; no filing required
- Must establish SEP by the due date (including extensions) of the company's income tax return for the year the plan is established
- Only Employer contributions permitted and are limited to the lesser of:
 - ✓ 25% of the employee's compensation, or
 - ✓ \$54,000 (for 2017)
- Contributions are 100% vested
- Limitations on age and service exclusions for eligibility

SIMPLE IRA

- Adopt by completing IRS Form 5304-SIMPLE or Form 5305-SIMPLE; must adopt prior to effective date; no filing required
- New SIMPLE IRA plans may be effective any date from January 1 through October 1 of a plan year
 - ✓ Effective only on January 1 of a plan year if previously maintained SIMPLE IRA plan
 - ✓ Exception for new employers
- No more than 100 employees and no other retirement plans
- Employees may contribute up to \$12,500 annually (\$3,000 catch-up)
- Employer contributions required
 - ✓ matching contributions dollar-for-dollar up to 3% of compensation (can be reduced to not less than 1% in any 2 out of 5 years); or
 - ✓ 2% nonelective contribution
- All contributions 100% vested

403(b)

- Can be designed as a non-ERISA 403(b) plan
 - ✓ No employer contributions permitted
 - ✓ Limited employer involvement
 - ✓ No annual reporting required
 - ✓ No non-discrimination testing required
- Employee contributions limited to \$18,000 (additional \$6,000 catch up) for 2017 (combined limit with other tax-qualified plans)
- Pre-tax and designated Roth (after tax contributions permitted)

401(k)

- Discrimination testing generally required
 - ✓ Safe harbor designs can be used to avoid discrimination testing but require employer contributions, annual participant notices and other requirements
- Annual reporting required (Form 5500/5500-SF)

Executive Compensation

- Approval of Executive Compensation
- 457(b)
- 457(f)

Executive Compensation

- Excessive compensation could jeopardize tax-exempt status
- Adopt a prudent process to set reasonable and not excessive compensation
 - ✓ Conduct annual review by Board; individuals with conflict of interest must not participate
 - ✓ Conduct a comparability review and analyze data available for similar nonprofits
 - ✓ Document the review, reviewers, process deliberations and decision (e.g., in board minutes); Board should take comparable data into account when approving compensation

457(b) Plan

- Select group of management or highly compensated employees and/or independent contractors
- Employer contributions permitted but not required
- Employee contributions limited to \$18,000 for 2017 (special catch up contributions in three years prior to normal retirement age) (contributions to other plans not aggregated)
- No model forms
- No rollovers or plan loans
- Amounts must be unfunded/subject to claims of creditors

457(f)

- Complex requirements
- Only available to select group of management or highly compensated employees
- Permits employee to defer taxation of unlimited amounts of income until amounts become vested
- Must be unfunded – amounts not segregated
- Must also consider 409A

Health and Welfare Benefits

- Affordable Care Act
- Cafeteria Plans
- COBRA

Affordable Care Act (ACA): Employer Shares Responsibility Requirement

- Applies to employers with 50 full-time employees/FTEs
 - ✓ Provide affordable health care coverage that provides minimum value to substantially all full time employees; or
 - ✓ Pay shared responsibility payment
- Full-time = 30 hours per week
 - ✓ Part-time employees added together to count as full-time equivalents

Affordable Care Act: Individual Shared Responsibility Requirement

- Individuals required to either
 - ✓ Obtain health insurance (minimum essential coverage) or
 - ✓ Pay individual shared responsibility payment
- Penalty varies based upon income/family size
- Premium tax credit (subsidy) if household income is 100-400% of the FPL and no employer coverage offered

No Reimbursement of Employee Individual Policies

- Employer may not reimburse employees for health insurance policies purchased individually
- Employer reimbursement arrangement is considered a group health plan subject to the ACA
 - ✓ Will not meet ACA rules for group health plans
 - ✓ Potential \$100 per day excise tax per applicable employee

Small Business Health Options Program (SHOP) Marketplace

- Employers with 50 or fewer FTEs can purchase health and dental coverage through the SHOP
- Must offer to all full-time employees
- 70% of employees must enroll in SHOP coverage (employees enrolled in other minimum essential coverage count toward minimum participation requirement)

Small Business Health Care Tax Credit

- Tax credit up to 35% of employer contribution toward premium costs for tax-exempt employers (Form 8941)
- Requirements
 - ✓ Less than 25 FTEs
 - ✓ Average salary is about \$50,000 or less
 - ✓ Employer pays at least 50% of premium costs
 - ✓ Insurance purchase through SHOP

Cafeteria Plan or Premium Only Plan (POP)

- Permits employees to pay a portion of their premiums on a pre-tax basis
- Written plan document required
- Optional benefits include health flexible spending account and dependent care account
 - ✓ Be wary of nondiscrimination
 - ✓ Employers with 100 or fewer employees during two prior years can design plan as a SIMPLE cafeteria plan which is deemed to satisfy nondiscrimination
 - ✓ Seek guidance from counsel

Other Welfare Benefits

- Life insurance – up to \$50,000 of employer provided group-term life insurance coverage is excluded from employee's income
- Short/long term disability insurance – flexibility to design as:
 - ✓ employer and/or employee paid and
 - ✓ funded on a pre-tax basis (benefits are taxable) or post-tax basis (benefits nontaxable)

COBRA

- Requires continued health coverage for a period of time post-termination
 - ✓ No employer contribution towards premiums required
- Federal rules apply if 20 employees or more
- Georgia rules apply if less than 20 employees

Online Resources

- <https://www.irs.gov/retirement-plans/plan-sponsor/small-business-retirement-plan-resources>
- <https://www.irs.gov/charities-non-profits/affordable-care-act-information-for-exempt-organizations>
- <https://www.healthcare.gov/small-businesses/provide-shop-coverage/new-for-2017/>



For More Information:

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