Retirement PLAN news

FALL 2017

Which **Retirement Plan Fits Best?**

You want to make sure that your company's retirement plan accomplishes the goals you have for it. But selecting the right plan isn't always easy. There are a number of options to choose from, including 401(k), SEP (Simplified Employee Pension), SIMPLE (Savings Incentive Match Plan for Employees), and profit sharing plans, among others. The following is some general information about how these plans operate that may be useful to employers who are considering changing plans or adding a plan.

401(k)

With a 401(k) plan, employees may elect to defer a portion of their salary on a pretax basis into the plan. For 2017, employees may contribute up to $18,000 (or up to $24,000 with catch-up contributions). Employers may also choose to make additional contributions, including matching contributions, to employee accounts. For 2017, combined employer and employee contributions may not exceed the lesser of 100% of compensation or $54,000.

Employee contributions are immediately 100% vested, while employer contributions may vest over time according to the terms of the plan document. Contributions, as well as any earnings thereon, are generally not subject to federal income taxes until distributed. A 401(k) plan may also offer employees the option of making after-tax Roth contributions. Qualified distributions from a designated Roth account are excluded from income.

Plans may allow participants to take loans and/or hardship withdrawals from their accounts. However, such options may add to the sponsor's administrative burdens. Other obligations include annual reporting and, generally, annual testing to verify that the plan does not discriminate in favor of highly compensated employees. As a result, administrative costs may be higher than for other types of plans.

SEP

To set up a SEP plan, an employer establishes individual retirement accounts (IRAs) for its employees. Contributions are made by the employer only. The employer has discretion in determining whether or not to make an annual contribution. Qualifying

contributions are tax deductible (within limits) and are not included in the employees' current income. Taxes are deferred until money is withdrawn from the plan.

Contributions per employee cannot exceed the lesser of 25% of each employee's compensation or $54,000, and no more than $270,000 of compensation may be considered (for 2017). Although contribution percentages generally must be equal for all eligible employees, they can vary on an annual basis. Contributions are deductible by the employer up to 25% of compensation paid to participating employees (subject to the $270,000 compensation limit).

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New Proposal for **Employee Benefit Plan Audits**

The Auditing Standards Board of the American Institute of Certified Public Accountants recently issued a proposed Statement on Auditing Standards (SAS) that, if adopted, would affect audits of employee benefit plans subject to the pension law (ERISA). Particularly affected would be limited-scope audits, for which DOL regulations allow auditors to rely on certain statements and information prepared by regulated banks or similar institutions or insurance carriers, provided that those entities certify the statements to be "complete and accurate."

Key elements of the proposal include additional testing with respect to certain aspects of the plan document, changes in the auditor's report for limited scope audits, expanded written representations by management, and considerations relating to the Form 5500 filing.

Plan sponsors should be aware of possible effects of the exposure draft, including the potential for increased auditing costs. In addition, sponsors should ensure that their own procedures and controls are well documented and followed and that any service agreements clearly delineate the respective responsibilities of each party.

The proposed SAS would be effective for audits of financial statements for periods ending on or after December 15, 2018.

Which **Retirement Plan Fits Best?**

(continued)

SEP plans are easy to set up and administer. They generally have neither the start-up or operating costs of a conventional retirement plan nor the annual filing requirements. Because an employer can choose not to contribute at all, a SEP plan may be suitable if your cash flow varies from year to year.

SIMPLE

SIMPLE plans are available to businesses with 100 or fewer employees who received at least $5,000 of compensation from the employer for the preceding year and that don't have another employer-sponsored retirement plan (except, under certain circumstances, a collectively bargained plan). SIMPLE plans can be structured as a SIMPLE 401(k) plan or a SIMPLE IRA plan. Although there are generally no annual filing requirements for a SIMPLE IRA plan, employers must annually file a Form 5500 if using a SIMPLE 401(k) plan.

SIMPLE plans generally offer the benefits of less administrative complexity with the opportunity for employees to make elective deferrals. For 2017, employees may make elective deferrals of up to $12,500, plus another $3,000 for those 50 and older.

For both SIMPLE 401(k) and SIMPLE IRA plans, the employer must make either a matching contribution of up to 3% of each eligible employee's compensation or a nonelective contribution of 2% of each eligible employee's compensation. The employer's nonelective contributions must be made even if the employee does not make any contributions during the calendar year.

Profit Sharing

Profit sharing plans are a good way to encourage employees to have a sense of ownership in the company and to let them share in its success. With a standalone profit sharing plan, only the employer makes contributions, which are limited to the lesser of 25% of allowable compensation (subject to a $270,000 limit for 2017) or $54,000. There are no size restrictions on companies offering this type of plan. A profit sharing plan may include a 401(k) arrangement.

Since contributions generally are discretionary, profit sharing plans may meet the needs of companies that have irregular cash flows. Your company does not need to have a profit to make contributions, and you are not required to make a contribution in any given year. However, contributions to a profit sharing plan must be "recurring and substantial" for the plan to be considered ongoing.

Retaining **Plan Records**

As a plan sponsor, you know that you have significant reporting and disclosure responsibilities under the pension law (ERISA). Additionally, ERISA requires plan sponsors to retain broad categories of records related to meeting those responsibilities. To do so, a plan sponsor should understand the applicable rules and put in place a record retention policy governing how it periodically reviews, updates, preserves, and discards documents related to plan administration.

Six-year Requirement

ERISA Section 107 requires that any person required by ERISA to file any report (such as Form 5500) must maintain, generally, for a period of "not less than six years" after the document is filed, a copy of such report. Also required is retention of all records supporting information detailed in a plan's Form 5500 and other reports and disclosures.

Supporting documents on this list include any records a government auditor might need to confirm the accuracy and completeness of any information in the original report or disclosure. These include, but are not limited to, service provider information, corporate income tax returns (for reconciling deductions), and the plan's nondiscrimination and coverage test results.

Indefinite Period

Records that need to be kept for an indefinite period include those necessary to determine benefits and eligibility for plan participation. By necessity, such records would include any related to dates of service, eligibility, vesting, contributions, and more. These records must be maintained for as long as the possibility exists — whether through request or litigation — that they might be relevant to determine any benefits due (or which may become due) to employees and beneficiaries. In some cases, former employees may wait many years — possibly until retirement — to inquire about benefits.

Specific Information To Keep

Records that should be retained include:

- The original signed and dated plan document
- Plan documents and communications given to plan participants
- The determination, advisory, or opinion letter for the plan
- Any financial records
- Copies of Form 5500
- Payroll records used to determine eligibility and contributions
- Proof of the plan's fidelity bond
- Documents relating to plan loans, withdrawals, and distributions
- Nondiscrimination and coverage test results
- Personal information of employees, including name, Social Security number, date of birth, and marital/family status
- Employment history information
- Officer and ownership history and familial relationships
- Election forms for deferral amount, investment direction, beneficiary designation, and distribution requests
- Listing of contribution and distribution transactions
- Notarized spousal consents and waivers

Electronic Documentation

As long as the retention system meets ERISA requirements, records for the most part can be kept electronically. Generally, the retention process must:

- Allow easy conversion to legible and readable paper copies to satisfy ERISA's reporting and disclosure requirements
- Have reasonable controls to ensure the accuracy, reliability, and authenticity of the records
- Maintain records in reasonable order and in a safe and accessible place to allow indexing, retaining, preserving, retrieving, and reproducing
- Not be subject to any agreements or restrictions that would compromise or limit compliance with ERISA's reporting and disclosure requirements
- Establish and implement adequate records management practices including, but not limited to, following procedures for labeling of electronic records and saving backup electronic copies

Generally, paper records can be disposed of any time after being transferred to a compliant electronic record system. However, the retention of an original paper record is required if the electronic record would not constitute a duplicate or substitute record under the terms of the plan and applicable federal or state law.

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Recent **Developments**

Social Security Update

In its annual report on the financial well-being of the Social Security Trust Funds, the Social Security Board of Trustees stated that during 2016, an estimated 171 million people had earnings covered by Social Security and paid payroll taxes. Benefit payments were paid to 44 million retired workers and their dependents and 6 million survivors of deceased workers. Also in 2016, the asset reserves of the Old-Age and Survivors Insurance (OASI) Trust Fund grew by $21.1 billion to a total of $2.8 trillion. The asset reserves of the OASI Trust Funds are projected to be exhausted in 2035, the same year as projected in 2015, with sufficient income to pay 75% of scheduled benefits.

Putting Off Retirement

According to a recent Bureau of Labor Statistics (BLS) report, almost 19% of Americans age 65 or older were working at least part-time during the second quarter of 2017. More specifically, the percentages of those working within the overall group broke out as follows: 65 to 69: 31.4%; 70 to 74: 18.9%; 75 and older: 7.6%. The BLS has estimated that 36.2% of Americans between the ages of 65 and 69 will be working in 2024 (an increase from 21.9% in 1994), as will 22.8% of individuals between ages 70 and 74, compared to 11.8% 30 years prior.

Views on Retirement Plans

A study by the Investment Company Institute shows that, in the fall of 2016, 70% of U.S. households had very or somewhat favorable impressions of 401(k) and similar types of retirement accounts. Of households owning a defined contribution account, 90% stated that having an employer-sponsored retirement account helped them think about their long-term needs, and 44% stated they believed they probably would not save for retirement if they did not have a retirement plan at work.

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