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Employee Benefit Pitfalls for Closely-Held Businesses

By Carrie E. Byrnes, Esq.[*]

The old saying goes ''no good deed goes unpunished.'' This could not be truer in the case of many closely-held and family-owned businesses when it comes to their setting up and administering employee benefits and compensation packages. Setting up benefit plans is voluntary (even post-federal health care reform), but often essential to attracting and retaining good talent. This article explores common missteps and ''pitfalls'' often experienced by closely-held and family-owned business in connection with their benefits and compensation platforms.

This article will explore common compliance failures within a few specific arenas, including:

1. Health insurance
2. 401(k) plans
3. General plan administration and reporting
4. Perquisites (perks)
5. Executive and deferred compensation

Please be advised that this article is not intended to be a cumulative list of benefit compliance issues that closely-held and family-owned businesses may face with respect to employee benefits and compensation. Furthermore, the issues discussed in this article are not exclusively applicable to closely-held and family-owned businesses; rather, these issues commonly occur in those types of businesses despite the fact that many businesses (small and large) may face these same issues.

1. HEALTH INSURANCE

To the extent a closely-held or family-owned business is going to offer any single employee benefit, it will almost certainly be health insurance. In fact, oftentimes even small or emerging organizations (i.e., those not subject to the federal health care law mandate[1] to offer coverage) decide to offer health insurance to all or a portion of their workforces. This is commonly true in situations where offering a comprehensive benefit scheme (with a retirement plan and other welfare benefits, for example) would either be too costly or too complicated to roll out and administer.

Common Compliance Challenges When Setting Up and Running a Health Insurance Program

Offering Coverage to Ineligible Employees/Individuals

It is not uncommon to hear that someone — often someone related to the family (either a family member or employee of the family in an unrelated capacity (e.g., the owner's children's nanny)) is enrolled in coverage through the employer's plan despite the fact that he/she does not perform much **or any** services for the company.

EXAMPLE: Uncle Bruce was a co-founder and worked 50 hours a week setting up the company,

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[1] H.R. 3590, the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (PPACA); H.R. 4872, the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152 (HCERA).

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but has not performed any real services for the company in a decade. His office is still in the company warehouse, and he still collects a paycheck (which, by the way, is a compliance issue for consideration in a different article). Bottom line, he likely is not eligible for coverage under the company benefit plan, which requires active employment at an average level of at least 30 hours per week.

It is of paramount importance to carefully consider who is offered coverage, and when. As a start, read the **contract/policy/certificate of coverage**. Oftentimes, coverage described in the governing contract will be limited to ''Employees'' — most often full-time employees. If someone is not truly an employee (e.g., the individual serves as a contractor or an employee of a **non-covered** business) or is not working/performing services for the requisite amount of time (e.g. is not a full-time employee), then they cannot be offered coverage.

Continuing to keep someone on coverage may seem ''nice'' and may go undetected for a period of time or possibly the entire duration of coverage; however, that approach is not recommended.[2] In the event of an insurance audit (either random or following a catastrophic event triggering high coverage utilization), the carrier will likely identify when an ineligible employee/individual has been covered and may rescind coverage (even retroactively). This may leave the employer to potentially be obligated to essentially ''self-insure'' (from the first dollar of exposure) the coverage provided to that ineligible individual from the date of ineligibility.

Providing Better "Family Office" Benefits as Compared to "Rank and File" Benefits

Under the current legal landscape, employers are generally not allowed to ''distinguish'' between levels of benefits — e.g., provide ''better'' benefits to family office or management employees than provided to the rank and file workforce. Note that the law in this area is complicated — and somewhat in flux[3] — so guidance from counsel well-versed in group health plans should be sought on this matter if different benefits are desired for different classes of employees.

(In) Appropriately Continuing Coverage

The federal health insurance continuation law (COBRA) generally applies when an organization has 20 or more employees.[4] State laws (referred to as ''mini-COBRA laws'') often kick in at an even lower employee threshold.[5]

As noted above, once someone fails to qualify as an eligible employee, their active coverage should be terminated (pursuant to the terms of the governing insurance contract). Where necessary, continuing coverage under COBRA or mini-COBRA laws should be offered to qualified beneficiaries (i.e., those eligible for coverage continuation). There are risks for continuing coverage post-employment without appropriate grounds under contract/COBRA.

Careful consideration should also be given to providing COBRA elections at the right time to avoid penalties.

Accessing or Accepting Health Insurance Information or Information Regarding Employee Coverage

Employers should remember that the Health Insurance Portability and Accountability Act (HIPAA)[6] comes into play with group health plan coverage and should be at the forefront of the minds of those who do or may interface with group health plan information. A few tips:

- Employee enrollment information maintained by/for the plan sponsor is generally not covered by HIPAA, but other information (and privacy and security of same) may be covered and highly regulated;[7]
- Training individuals who will/may access protected health information (PHI) is imperative;
- Security assessment and safeguards also mandated; and
- Additional state privacy laws exist, which may be more stringent than the HIPAA, and may apply in addition to HIPAA.

Offering health insurance in a closely-held and/or family-owned business may seem like — and may be — the ''right thing'' to do. However, this offer of coverage should not be undertaken lightly. Careful consideration should be given to structuring eligibility, administering active coverage (and continuation coverage), and managing processes for keeping information secure.

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[2] This intentional act may also rise to the level of culpable activity to constitute insurance fraud; however, this article does not explore that issue in any detail.

[3] *See* Notice 2011-1.

[4] Pub. L. No. 99-272.

[5] See, e.g., 215 ILCS 5/367(e) for insurance companies and 215 ILCS 125/4-9.2 for HMOs.

[6] Pub. L. No. 104-191.

[7] 45 C.F.R. §160.103 excludes from the definition of PHI individually identifiable information held in employment records held by a covered entity in its role as employer.

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While it's true that an insurance broker/consultant and/or professional employer organization (also called a ''PEO'') might be engaged to handle some of this work, employers ultimately need to remain actively engaged to ensure the appropriate result for the employee population and the company.

2. 401(k) PLANS

Without a doubt, most employers — particularly those who genuinely care about and feel some obligation to help aid in their employees' retirement income security — understand the need for their employees to save for retirement. Responding to that understanding, employers often look to set up a 401(k) plan to foster employee savings. Even where the organization cannot afford to or otherwise chooses not to provide an employer contribution (such as a match or profit sharing contribution), allowing employees to save on a tax-advantaged basis is a ''win-win.''

That said, particularly smaller or emerging organizations often struggle with the obligations that come along with adopting a 401(k) plan.

Common Pitfalls in Adopting a 401(k) Plan

Assuming the Plan Is on "Auto-Pilot"

Most times a financial institution comes in and describes how it can handle virtually ''A to Z'' when it comes to establishing and maintaining the retirement plan. That may be mostly true; **however**, there are fiduciary obligations (with respect to investments, claims, or other important elements of the plan) that require careful attention.[8] A major mistake is not paying enough attention to the plan — there is no option to ''set it and forget it.''

Maintaining a 401(k) plan comes along with some of the highest duties known under the law.[9] It's important to understand if, when, and how company employees and/or the company board will be obligated to remain involved in the plan. It's important to understand who makes fiduciary decisions, whether they have delegated that responsibility, whether they have been appropriately trained, etc.

Formalizing plan governance (e.g., by establishing a committee and adopting a charter governing a retirement plan committee) is key to avoiding some of these common mistakes.

Not Closely Monitoring Payroll Set Up

It is crucial to match the payroll system to the precise definition of ''compensation'' as set forth in the 401(k) plan document. For example, if bonuses are considered ''compensation'' under the plan, but the transmission file doesn't capture those amounts when sending over information from the company to the 401(k) provider, the plan will have an ''operational failure'' (which, technically speaking, can disqualify the plan and cause adverse tax consequences).

Offering company stock without appropriate governance.

Offering company stock may seem like a great idea for many reasons (such as increasing the market for the same or incentivizing employees to work to increase share value), however, it comes with special rules and increased risks. Carefully navigating how to set up a company stock fund and the added considerations that come along with doing so (for example, whether engagement of an independent fiduciary make sense) is critical to ensuring that the organization does not run afoul of any rules or regulations.

Confusing How "Covered" the Fiduciaries Are

For those families or executives running closely-held businesses, they may not be (nor have any interest in becoming) an ERISA guru. But even those who don't speak ERISA will need to understand the fiduciary rules if they decide to set up a 401(k) plan.

The difference between fiduciary liability insurance and a fidelity bond is a common area of confusion.

Fidelity Bond. A fidelity bond is specifically required by ERISA for any ''plan official.'' For this purpose, a ''plan official'' is a fiduciary of an employee benefit plan and/or a person who handles funds or other property of such a plan. A fidelity bond guards the applicable plan against losses due to fraud or dishonesty — for example, theft — by any covered plan official.

Fiduciary Liability Insurance. Fiduciary liability insurance, unlike a fidelity bond, is not mandated by ERISA.[10] Fiduciary insurance is designed to insure the plan against losses caused by breaches of fiduciary responsibilities and, simultaneously, protect the covered fiduciary or fiduciaries from any personal liability resulting from such breaches.

Checking to make sure a fidelity bond (in the appropriate amount and form) is in place is **completely necessary**; checking to ensure that an approximate amount of fiduciary liability coverage is in place is a **best practice**. An indemnification agreement/provision benefitting employees serving as plan fiduciaries may also be worth considering. Note, however, that ERISA carefully regulates these arrangements

[8] 29 U.S.C. Part 4.

[9] *Donovan v. Bierwirth*, 680 F.2d 263, 272 n.8 (2d Cir. 1982).

[10] ERISA §412.

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(voiding some as against public policy), so this area should be carefully navigated.[11]

Overall, maintaining a 401(k) plan can be a successful experience; however, it requires some hard work for the employer team who is establishing it — both at the outset and on an ongoing basis.

3. ADMINISTRATIVE "GOTCHAS"

The article started with a reference to the old adage "no good deed goes unpunished." That sentiment is echoed again here. A closely-held business decides to do the "right thing" and offer some form of benefits for its workforce. It signs the contract with the vendor, goes through the open enrollment process, and sets up the payroll system to remit mandated employee contributions, but the work does not end there. In fact, there a few common places where employers — and many times smaller, emerging, or well-intentioned closely held businesses — miss a step or two vital to proper compliance with the administrative landscape enveloping benefit plans.

Administrative Compliance Missteps

Adopting a §125/Cafeteria Plan Document

In order to facilitate pre-tax premium contributions for most benefits (think health, life, disability, FSA — not 401(k)), I.R.C. §125 requires that a written plan document (often referred to as a §125 plan, cafeteria plan, and/or flex (or flexible benefits) plan) be adopted. A failure to adopt a proper written plan can result in adverse tax consequences to both the employer and employees — clearly an undesirable outcome.

Legal counsel should review any plan that is/will be adopted to ensure compliance with the myriad of applicable legal guidance.

In addition to being written, the plan should be properly adopted. Evidence of the plan's adoption should be made by corporate or board resolution (or otherwise as approved by delegation).

Managing Claims and Appeals

What's a claim as opposed to a casual inquiry? Stated in an oversimplified manner, a request for a plan benefit, or benefits, made by a claimant (generally an employee, participant, or authorized representative) in accordance with a plan's reasonable procedure for filing benefit claims must be treated as a claim for benefits.[12]

Compare a claim for benefits with a casual inquiry regarding benefits, which is more of a general question that is not specific enough to rise to the level of a claim (and need not be treated/processed as such). **A word of warning:** there are not many bright line rules here and a plan sponsor should be cognizant of whenever there is a basis for concluding that the person making an informal inquiry is actually trying to file or further a claim for benefits. For example, is asking about whether a particular treatment or condition a claim?

A protocol for responding to claims and appeals should be adopted (and followed!). The rules governing the claims and appeals process requires certain reviewers at certain times reviewing and communicating specific information. Note that a failure to adhere to these rules may result in the loss of the deferential standard of review in litigation (i.e., the court may review the claim on its own rather than deferring to the initial reviewer — which can increase the cost of litigation and decrease the employer's chances of successfully defending the lawsuit).[13]

Timely Responding to Requests for ERISA Documents

Penalties may apply with respect to a failure to timely respond to requests for certain ERISA information (e.g., plan documents, summary plan descriptions (SPDs)).[14] Again, a protocol for forwarding and responding to such requests should be adopted and compliance with the same should be audited.

Annual Filings/Top Hat Plan Filing

Generally speaking, there is a requirement to complete and file an annual return/report (on the Form 5500) for each benefit plan.[15]

Smaller plans **may** have "a pass" for filing a return for certain unfunded plans, but increases in coverage can cause a "springing obligation" to file in the next year.

It's also important to understand the filing requirement distinctions between retirement plans (e.g., 401(k)s, pensions, and ESOPs) as compared to health and welfare plans. Retirement plans almost **always** require an annual filing; an audit may be required as well.

An unfunded plan maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees (commonly known as a " top hat " plan) will generally be excluded from needing to comply with various provisions of ERISA (including the fiduciary responsibility rules) if a one-time notice is timely filed with the government.

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[11] ERISA §410.

[12] ERISA §503, 29 C.F.R. §2560.503-1; Benefit Claims Procedure Regulation FAQs (A-5).

[13] *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101 (1989).

[14] ERISA §104(b)(4).

[15] ERISA §104(a)(1); IRC §6039D; *but see* Notice 2002-24.

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Avoiding Conflicts of Interest

Hiring (and monitoring) service providers/vendors for benefit plans is one of many fiduciary functions. In short, this means that the best interest of the participants and beneficiaries needs to be center stage in this decision making.

> **Example:** Mary is the founder of Company X. Company X decides to adopt a 401(k) plan, effective January 1, 2019. When setting up the plan, Founder Mary cannot simply hire her cousin or best friend to perform services for the benefit plan unless a prudent fiduciary would hire that individual/company as well (and there's not otherwise a prohibited transaction).

When in doubt concerning if/when/how a transaction with a benefit plan can be entered into, plan counsel should be engaged.

Proper plan compliance takes more than signing a contract and enrolling participants. That said, adoption of some simple best practices for reviewing and maintaining plans, and ensuring consistent operation of those plans in a compliant manner, can avoid costly and cumbersome headaches for closely-held businesses down the road. Remember, "an ounce of prevention is worth a pound of cure."

4. PERKS

The benefits offered to the "rank and file" workforce do not necessarily tell the entire story of benefits and compensation in family-owned and closely-held businesses. To the contrary, most closely-held and family-owned businesses maintain a litany of perks adopted to enhance the package made available to those "key" groups. We commonly think of club memberships, company cars, and private jet excursions, to name a few. While executives may come to expect these perks as part of their compensation package, these perks don't come without the need for careful vetting of certain tax and compliance considerations.

Tax and Compliance Considerations for Perks

Is it Includible in Taxable Income?

The starting place in answering this question is tax code §61, which states, in relevant part, that "Gross income means all income from whatever source derived, including (but not limited to) . . . [c]ompensation for services, including fees, commissions, **fringe benefits**, and similar items." (emphasis added).

Unless another Code provision carves out a "perk" from the definition of gross income, it is included. That fact notwithstanding, many executive perks are not taxed without any meaningful consideration of why the executive should benefit from such a gross income exclusion.

Examples

- **Company-Provided Cell Phone.** Provision of such a phone will be excluded from gross income and exempt from employment tax withholding if provided primarily for noncompensatory business purposes. Here, even de minimis personal use is ignored.[16]
- **Onsite Meals.** While, generally speaking, an employer can exclude from income the value of de minimis meals provided to an employee, an employer is precluded from excluding from the wages of a highly compensated employee the value of meals provided at an employer-operated eating facility if that meal isn't available on the same terms to all employees or a group of employees defined under a reasonable classification that doesn't favor highly compensated employees.[17]
- **Personal Travel on Company's Private Jet.** This personal use is also considered a fringe benefit provided to the employee or owner in which income almost always needs to be imputed to the individual, or reimbursed, for use of the plane.[18]

Practitioner Tip: When the value of the perk/fringe benefit is **not** included in income, there should be a sufficient legal basis found in a particular provision of the Code (or supplementary IRS guidance) indicating that there's an exclusion for that specific purpose.

Is it Deferred Compensation?

After determining whether a perk should be included in gross income, it is necessary to determine whether it is/may be "deferred compensation" under tax code §409A.

Typical examples of arrangements covered by §409A:

- Split dollar life insurance plans;
- Excess deferred compensation and "wrap" plans (plans that provide for deferrals in excess of statutory limits such as the limitation on employee deferrals under a 401(k) plan);

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16 IRS Memorandum: Interim Guidance on Reimbursement of Employee Personal Cell Phone Usage in Light of Notice 2011-72 (Sept. 14, 2011).

17 IRC §132(e)(2).

18 IRC §162; Treas. Reg. §1.162-2(b)(1); foreign travel has special rules, *see* Treas. Reg. §1.274-4(f)(1).

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- Incentive deferral plans;
- §457(f) deferred compensation plans (for tax-exempt entities);
- Phantom stock plans and stock appreciation right plans;
- Restricted stock plans;
- Deferred compensation arrangements for board of director members or for consultants;
- Taxable welfare benefits;
- Certain perks (use of car, country club payments, internet connection, cell phone use);
- Some severance plans;
- Employment agreements that contain any provisions deferring compensation;
- Bonus plans that include deferral features or that are paid more than 2½ months after the year for which the bonus is granted; and
- Stock options granted at less than fair market value.[19]

Oftentimes perks are paid in the form of a reimbursement (e.g., submitting a paid invoice for club membership to be repaid to the executive). While the company is likely to have a reimbursement policy in place, whether that policy complies with §409A is another story.

Section 409A generally requires that expenses eligible for reimbursement be objectively determinable and reimbursed within a limited period of time following the date in which the expense is incurred.[20]

The rules on reimbursement are numerous and include (but are not limited to): the requirement that all reimbursements must occur by the end of the taxable year following the year in which the expense was incurred; and the requirement that the amount of reimbursements in one year not affect another year. That last requirement is often the biggest stumbling block for employers.

Example: A multi-year (say, for our purpose, two years) employment agreement limits reimbursable expenses for club membership over the life of the agreement (rather than on an annual basis) to $50,000. This multi-year reimbursement provision violates §409A. If the employee incurs and submits reimbursement for $30,000 in expenses in the first year of the contract, the amount eligible for reimbursement in the second year is necessarily affected (i.e., reduced to $20,000 from $50,000). Similar §409A reimbursement problems would arise for a specified reimbursement amount that applies to a non-calendar contract year (for example, ''during the first year following hire'') in an employment agreement.

While ''the boss'' may have certain ideas or expectations about what s/he will receive in terms of perks, carefully considering the tax treatment of all perks/fringe benefits is essential. If there are failures in this regard, it may be possible to correct them; however, as with most corrections, corrections under §409A for identified problems and underreporting (and/or underwithholding) are subject to more favorable corrections when corrected sooner than later.

5. EXECUTIVE AND DEFERRED COMPENSATION

When a company is small, emerging, and/or closely-held, some things (including executive compensation) might have been left more informal and/or subject to a fair amount of discretion and haphazard change given a variety of circumstances (including the health of the business).

Innocuous Arrangements or Concessions That Could Unexpectedly Lead to Big Tax Problems

'Pay Me Later'

The organization is struggling and the CEO says: ''I know I'm due wages this year (2018), but we're a little tight on cash, so just pay me next year.'' Seems reasonable, right? Well, it may be reasonable, **but** if the compensation is earned in year one (2018) and paid in year two or later (2019 or beyond), we have created deferred compensation.[21]

Unless the compensation is structured to meet an exemption from §409A, it must comply with those draconian rules (including having the arrangement set forth in writing specifying time and form of payment, among other things). Counsel versed in §409A should be consulted in this scenario so as to avoid unintended tax consequences.

'We'll Formalize it Later'

A group of siblings strike a ''handshake deal'' whereby they agree that each will receive certain compensation if/when they retire.

[19] Treas. Reg. §1.409A-1.

[20] Treas. Reg. §1.409A-3(i)(4).

[21] Treas. Reg. §1.409A-1(a)(1).

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Again, having informal, unwritten deferred compensation arrangements may violate §409A.[22] Counsel needs to be involved to properly structure and document the arrangement to avoid immediate taxation and penalties on that future payable compensation.

'We'll Fund it Now'

The sibling deal noted above is properly documented (phew!) and now there's concern about liquidity to fund the benefits if/when they become due. So, the siblings set up a trust and fund the deferred compensation arrangements. Seems smart, right?

Well, unless the trust is set up as a ''rabbi trust'' (also called a grantor trust), the trust corpus will become taxable to the beneficiary immediately. A ''rabbi trust'' is generally established as an irrevocable trust created for the benefit of the plan participants but with respect to which the assets remain subject to the claims of the employer's general creditors in the event of the employer's bankruptcy. Otherwise, the assets may only be used to pay benefits under the plan.[23]

Once a rabbi trust is funded, consider the litany of investment vehicles, including company owned life insurance (i.e., COLI).[24] COLI is sometimes purchased by a company to help ensure that the company will have the cash to fulfill its promise to provide benefits. The employer is the owner and beneficiary of the policies and pays the premiums. The employer will pay benefits to the employee with funds obtained from borrowing against the cash value of the policies and from the proceeds received on the death of the employee.[25]

§409A Doesn't Apply ('That's a Public Company Concern')

Assuming §409A doesn't apply to an organization is a critical mistake. While the IRS hasn't yet released promised guidance regarding partnerships or LLCs, most of the §409A rules (including the stock option rules) apply to such entities by analogy.[26]

While certain more draconian provisions (e.g., the six-month delay in payments made on account of a separation from service) are limited to public companies, the law generally applies to private and public companies alike.[27] When a company is or may be setting up deferred compensation (even in adopting a new executive employment agreement), §409A counsel should be engaged to ensure the arrangements do not unexpectedly result in unintended unfavorable tax treatment.

Assuming a Separation/Severance Agreement Won't Trigger Tax or Benefit Considerations

A few hallmark ''gotchas'' in separation/severance agreements include:

- Agreeing to keep an employee on benefit plans after his/her termination. This may or may not be permissible, depending on the circumstances.
- Including a release of claims without an outside time frame for executing the agreement (e.g., saying an individual has at least 21 days to execute the agreement but no expiration date is contained therein). Here, it's important to consider possible §409A triggers.
- Delaying payments (either one or a series) into a second tax year without consideration of tax implications. Again, §409A may present cause for concern.
- Changing the time and form of payment of previously negotiated payments. While rehashing a previously struck deal may seem like a good deal (and may be preferred by the company and separating employee), §409A may cause issues with such an arrangement.[28]

Paying out Benefits/Severance on a 'Sham' Separation or Failing to Pay When There Is a Bona Fide Separation

Paying out amounts due based on a separation from service when there **isn't** a ''separation from service'' or not paying when there **is** each can trigger major tax problems.[29]

Section 409A generally only allows for payment in certain limited circumstances, including a separation from service. Whether a separation from service has occurred under §409A's definition may or may not be different from the company's practice on termination of employment. Counsel engagement may be necessary to help determine whether a separation from service has occurred.

Example: The organization has decided that Mom, now CEO, will ''retire,'' change her title to Executive Vice President and only come in four days a week instead of five (or six or seven) — under these facts, there is **no** separation from service (or sever-

[22] Treas. Reg. §1.409A-1(c)(3).

[23] PLR 8113107, PLR 8329070, PLR 8418105, PLR 8509023.

[24] IRC §101(j).

[25] Consider whether a Form 8925 must be filed (generally required to be filed by a policyholder owning one or more employer-owned life insurance contracts).

[26] Treas. Reg. §1.409A-1(b)(7), Notice 2005-1.

[27] IRC §409A(a)(2)(B).

[28] Treas. Reg. §1.409A-3.

[29] Treas. Reg. §1.409A-1(h).

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ance from employment, which is the relevant term of art for 401(k) plan purposes), so payment from nonqualified deferred compensation arrangements (and 401(k) plans) cannot begin on those grounds.

Alternatively, Mom CEO hasn't come into the office but once a month for three years and doesn't work remotely, but remains ''available'' for advisory/consulting services (which have never been nor are ever expected to be used) and still draws a salary. Here, if she performs no services and the expectation is that she will not perform any such services, she has incurred a separation from service. Thus, payments due upon a separation from service should be made (or commence, as applicable) despite her continued treatment as an ''employee.'' Note, whether the organization can continue to deduct her compensation as a reasonable business expense (and/or keep her enrolled in active employee benefits as an ''employee'') is an entirely separate topic.

CONCLUSION

While benefits and compensation are a necessary part of attracting, engaging, rewarding, and retaining talent (both rank-and-file and management), properly implementing and managing these programs takes work. Finally, being proactive in ''cleaning up'' any issues will almost certainly limit liability for future problems (and liability) on audit or in litigation.

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