Employee Benefits Report

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Sizing Up an Employee Stock Ownership Plan

Are employees more productive if they own a piece of the company? Workplace analysts overwhelmingly say yes. That's why many employers offer Employee Stock Ownership Plans (ESOPs).

ESOPs appear to increase sales, employment, and sales per employee by about 2.3 percent to 2.4 percent per year over what would have been expected absent an ESOP, according to a study by Rutgers University.

Don't confuse ESOPs with stock option plans. The latter grant employees the right to buy company stock at a specified price during a specified period once the option has vested. An ESOP, in contrast, is a type of tax-qualified employee benefit plan in which most or all of the assets are invested in the employer's stock. Like profit-sharing and 401(k) plans, which are governed by many of the same laws, an ESOP generally includes at least all full-time employees meeting certain age and service requirements. Employees gradually vest in their accounts and receive their benefits when they leave the company (although they may take distributions prior to that).

Employees do not actually buy shares in an

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This Just In…

More than two out of three Americans surveyed received a failing grade on a quiz about financial products, services and concepts, according to the Financial Matters study from Northwestern Mutual.

Although overall financial literacy remains low, of those surveyed who received a D or F on the Financial Matters quiz, 88 percent reported wanting to know about their own personal finances.

Permanent life insurance is among the most misunderstood financial products. Only one in four Americans realizes that permanent life insurance can pay dividends (27 percent) and nearly half (49 percent)

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ESOP. Instead, the company contributes its own shares to the plan, contributes cash to buy its own stock (often from an existing owner), or, most commonly, has the plan borrow money to buy stock, with the company repaying the loan. All of these approaches have significant tax benefits for the company, the employees, and the sellers.

Size matters

As a rule of thumb, ESOPs work best for companies with more than 20 employees. The following basic guidelines can help you determine if an ESOP would be worthwhile.

For a small company, lawyers tell us fees for drawing up plan documents and government filings typically cost $10,000 or more. Most ESOP attorneys have plan documents ready to go. Their fees depend greatly on the time they spend with you figuring out what the documents should include. If you come well prepared, already understanding the basics of ESOP rules and knowing what you want your plan to do, you can control your costs.

Your plan administration costs—keeping records, filing reports, sending plan account statements, etc.—will vary with the number of employees you have. There are certain fixed costs, so larger firms will have some economies of scale. A firm with 20 employees might reasonably expect to pay around $2,000 per year as a base cost, plus $30 to $60 per employee.

Costs vs. Benefits

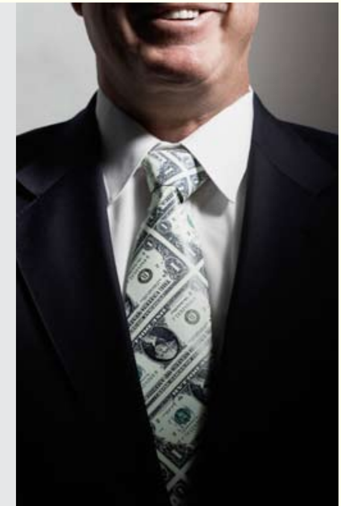
Setting up an ESOP will cost money, but it will bring many advantages to your company. In addition to employee satisfaction and productivity, ESOPs allow companies to:

- Purchase shares of a departing owner: Owners of privately held companies can use an ESOP to create a ready market for their shares.
- Borrow money at a lower after-tax cost: ESOPs are unique among benefit plans in their ability to borrow money. The ESOP borrows cash, which it uses to buy company shares or shares of existing owners. The company then makes tax-deductible contributions to the ESOP to repay the loan, meaning both principal and interest are deductible.
- Create an additional employee benefit: A company can simply issue new or treasury shares to an ESOP, deducting their value for up to 25 percent of covered pay from taxable income. Rather than matching employee savings with cash, the company will match them with stock from an ESOP, often at a higher matching level.

(Source: National Center for Employee Ownership, www.nceo.org)

incorrectly believe that term life insurance is more likely to have cash value than permanent life insurance.

The U.S. Financial Literacy & Education Commission offers some free tools to help individuals better understand and gain control of their finances at www.mymoney.gov. Topics include dealing with mortgages, planning for retirement, saving and investing and more.



Like all plans of this kind, ESOPs have limits and disadvantages. For example, partnerships and most professional corporations cannot use ESOPs, though S corporations can use them. Plus, private companies face the sometimes major expense of having to repurchase shares of departing employees.

For more information on ESOPs, 401(k)s and other tax-favored benefits, please contact us.

All in the Family: Definitions that Could Affect Your FMLA Compliance

On the face of it, the Family and Medical Leave Act (FMLA) seems easy enough. It assures employees time off from work to care for a sick family member. But in this day and age, who exactly is "family"? How you determine whether someone is a "family member" could mean the difference between complying with the FMLA or facing expensive fines.

Here are highlights of the Department of Labor's FMLA definitions for children and parents.

Children

The FMLA defines a "son or daughter" as a biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis.

This broad definition of "son or daughter" is intended to reflect the reality that many children in the United States live with a parent other than their biological father and mother. Under the FMLA, an employee who actually has day-to-day responsibility of caring for a child may be entitled to leave, even if the employee does not have a biological or legal relationship to the child.

"In loco parentis" commonly refers to a relationship in which a person has put himself or herself in the situation of a parent by assuming and discharging the day-to-day or financial obligations of a parent to a child with whom he or she has no legal or biological connection.

Your firm's FMLA administrator has the right to ask for and receive documentation of the family relationship for any individual who asserts in loco parentis, biological, adoptive, foster or stepparent status for purposes of FMLA leave. Such documentation may take the form of a simple statement asserting the relationship. The statement

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may include, for example, the name of the child and a statement of the employee's in loco parentis relationship to the child. An employee should provide sufficient information to make the employer aware of the in loco parentis relationship.

While recent guidance from the Department of Labor clarifies that employees, including lesbian, gay, bi-sexual and transgender (LGBT) employees, can take leave to care for a child for whom the employee is serving as a parent, even if there is not a legal or biological relationship to the child, the FMLA does not apply to same-sex couples. Because federal law does not recognize same-sex relationships, the FMLA does not require employers to provide an employee leave to care for a same-sex partner or spouse.

Parents

For FMLA leave purposes, the Department of Labor defines "parent" broadly as a biological, adoptive, step or foster parent, or an individual who stood in loco parentis to an employee when the employee was a child.

An employee's parents-in-law are not included in the definition of "parent" for purposes of FMLA leave. However, as with the definition for in loco parentis of a child, in loco parentis can refer to a person who acted as a parent to one of your employees.

The fact that the employee also has a biological, adoptive, step or foster parent does not preclude a determination that another individual stood in loco parentis to the employee when the employee was a child. The specific facts of each situation will determine whether an individual stood in loco parentis to the employee within the meaning of the FMLA.

Unless an in loco parentis relationship existed when the employee was a child, an employee is not entitled to take FMLA leave to care for a grandparent, an aunt or uncle, or another non-covered relative with a serious health condition.

For additional information about the FMLA, visit the Wage and Hour Division Website, http://www.wagehour.dol.gov or call the toll-free helpline, 1-866-4-USWAGE (1-866-487-9243), available 8 a.m. to 5 p.m. in each time zone. ■

Take the Hassle Out of Benefits Administration with Third-Party Administrators

Self-funding your organization's benefits plans comes with a worthy list of advantages, but "ease of use" is not one of them. For this reason, many organizations that self-fund turn to third-party administrators (TPAs) to handle the brunt of the paperwork.

A TPA may handle claims processing, collection of premiums, manage workers' compensation and disability programs, contract for PPO (preferred provider organization) services, provide utilization review of claims, and provide similar ancillary services to the operation of your benefit plan. Other TPAs specialize in administering retirement and saving plans for employees.

TPAs can also help your organization comply with the alphabet soup of applicable federal employment and discrimination laws, including:

- Employee Retirement Income Security Act (ERISA)
- Health Insurance Portability and Accountability Act (HIPAA)
- Consolidated Omnibus Budget Reconciliation Act (COBRA)
- Americans with Disabilities Act (ADA)
- Pregnancy Discrimination Act
- Age Discrimination in Employment Act
- Civil Rights Act
- Tax Equity and Fiscal Responsibility Act (TEFRA)

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- ❑ Deficit Reduction Act (DEFRA)
- ❑ Economic Recovery Tax Act (ERTA)

Some companies hire a third-party administrator to handle all benefit administration, while others outsource only some tasks. The technical nature of employeebenefit plans makes outsourcing a cost-effective choice for many employers.

Selection criteria

If you're looking for a third-party administrator to handle your benefits program, make sure the company is licensed to work in your state. You can get this information through the state's secretary of state office.

After you confirm licensing, check the company's customer list. Some TPAs specialize in large businesses, while others focus on small business, nonprofits, or companies that employ organized labor. You'll save time and money by confining your search to companies that specialize in your type of organization.

Consider also the services the TPA offers. Many offer unbundled, or cafeteria, plans that allow you to choose the services you want. Unbundled services give you more flexibility, but TPAs may offer discounts if they can service your company in more ways than one.

If you want the TPA to provide retirement plans, ask for a proposal detailing the different types of plans appropriate for your organization, and make sure it explains all of the details, both positive and negative, of each.

Your final decision will revolve around how much control you're willing to relinquish. Some employers do not want to be involved in any aspect of administering employee insurance and retirement plans. Others want more control. Third-party administrators are generally flexible in this area, but make sure you and the administrator are in agreement before signing what will likely be a long-term contract. For more information on selecting and working with a TPA, please contact us. ■

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Is Self-Insuring for You?

Under a self-insured plan, your organization assumes the financial risk for providing health benefits to your employees. In practical terms, self-insured employers pay for claims out-of-pocket as they are presented instead of paying a pre-determined premium to an insurance carrier for a fully insured plan. Typically, a self-insured employer will set up a special trust fund to earmark money (corporate and employee contributions) to pay incurred claims.

Since a self-insured employer assumes the risk for paying claim costs for its employees, it should have the financial resources and cash flow necessary to meet this obligation, which can be unpredictable. For this reason, small employers and those with poor or unpredictable cash flow often find self-insurance unfeasible. However, companies with as few as 25 employees maintain viable self-insured health plans.

There are a number of good reasons to self-insure:

- You can customize the plan to meet the specific healthcare needs of your workforce, as opposed to purchasing a "one-size-fits-all" insurance policy.
- You maintain control over the plan reserves, enabling you to maximize interest income—income that would go to an insurance carrier otherwise.
- You do not have to pre-pay for coverage, which could improve cash flow.
- Your organization is not subject to conflicting state health insurance regulations/benefit mandates, as self-insured health plans are regulated under federal law (ERISA). And self-funded organizations save state health insurance premium taxes, which are generally two to three percent of the premium's dollar value.
- You're free to contract with the providers or network best suited to meet your employees' needs.

While large employers may have the financial reserves to cover high healthcare costs, smaller employers should protect themselves against unpredicted or catastrophic claims. Most self-insured employers purchase stop-loss insurance to reimburse them for claims above a specified dollar level.

And remember—self-insurance isn't just for medical benefits. Some companies choose to buy a group medical plan through an insurer, while self-insuring dental and other benefits. For information, please contact us. ■

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