



SAVE TAXES AND RETAIN EMPLOYEES WITH AN EMPLOYEE BENEFIT PLAN



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The implementation or evaluation of an employee benefits plan is a win-win situation for your construction company. It will give you opportunity to financially reward your employees, create significant write-offs for tax purposes, reduce your tax obligation, maximize benefits and compensation paid to your owners, and increase overall employee moral and productivity.

Since implementing and funding an employee benefit plan will incur an additional expense for your company, your taxable income and tax liability will be reduced. The added-value is that the money spent will go towards your retirement, as well as your employees' retirement. In addition, offering this type of employee benefit will help attract and retain employees.

Employee benefit plans range from retirement savings plans and college savings plans to insurance coverage. There are two types of Retirement Plans, the Defined Contribution Plan and Defined Benefit Plan. The Defined Contribution Plan is the more frequently used plan. Examples of a Defined Contribution Plan are the 401(k) Plan (Safe Harbor, SIMPLE, and Solo), Profit Sharing Plan, and SEP and SIMPLE IRAs.

The most common type of plan is the 401(k). It can be implemented by corporations, partnerships, and limited liability companies. The Safe Harbor 401(k) can be adopted by these entities as well as sole proprietorships. The Solo 401(k) is available to the same entities as a Safe Harbor 401(k) with the exception of corporations with common law employees. Entities with common law employees are typically tax-exempt organizations and thus would not benefit from a 401(k) plan. An employer can also sponsor other qualified retirement plans to "piggy back" on top of these 401(k) plans.

Each of the above plans allows employees to take a portion of their salary (up to \$15,500 in 2008) and put it into savings for retirement. In addition to the \$15,500 deferred from salary, employees who are age 50 and older can do a "catch-up" contribution. These are contributions up to \$5,000 in excess of the \$15,500 that can be deferred.

The employer also has the ability to provide a "matching" contribution. The employer's decision to contribute is optional. The only 401(k) plan where an employer contribution is mandatory is with the Safe Harbor 401(k) plan. With the decision to make a "matching" contribution the employer has created an additional expense reducing their taxable income and basically providing money to themselves and their employees rather than to the government.

**THIS ARTICLE WAS PUBLISHED IN THE
MAY 2008 ISSUE OF BUILDER/ARCHITECT MAGAZINE**

Employees that contribute to the plan defer tax on the income they earn. Any portion of wages contributed to the plan will not be taxed on the individual's tax return as wages and salaries earned. Instead it will be taxed as income when it is withdrawn from the 401(k) plan.

Employee contributions must be deposited as soon as administratively possible, yet no later than 15 business days after the month in which the deferrals were made. As for employer contributions, these must be deposited by the time the corporate tax return (with extensions) is filed for the tax year in which the deduction is taken. An exception exists in the case of Solo 401(k) plans. For unincorporated businesses with Solo 401(k) plans the employer and employee contributions are both due prior to the time the corporate tax return is filed for the tax year in which the deduction is taken.

As previously stated, the employer's choice to contribute to a 401(k) (with the exception of a Safe Harbor) plan is optional and discretionary. There are limits to the amount of the "matching" contribution the Internal Revenue Service will allow as a deductible employer contribution amount. This amount is 25% of eligible payroll. At the individual level this means that the maximum contribution (employee portion plus employer) per employee is 100% of compensation not to exceed \$46,000.

There are more stringent rules for employer contributions to a Safe Harbor 401(k) Plan. First of all, the employer is required to make a contribution when these plans are in place. Secondly, the Safe Harbor 401(k) requires a "match" of 100% of employee salary deferrals up to 3% of the employee deferral, plus an additional 50% of deferrals on the next 2% that is deferred. Therefore if an employee defers 6% of wages on \$100,000 of salary, the first 3% (\$3,000) of deferrals is matched by the employer. Of the remaining 3% of deferrals, only the next 2% (\$2,000) is matched, but by only 50% or \$1,000 for \$4,000 of total employer match expense on this one employee. Another option is to provide a match equal to just 3% of the employee's compensation, regardless of the amounts deferred by employees.

When you consider establishing one of these retirement plans you should consult your accountant, financial advisor and attorney. Your accountant or financial advisor will help you get things started. Your lawyer will help you to establish the plan and draft a plan document. This document lists the requirements and definitions which the plan administrator must stay in compliance with at all times. For instance, if an eligible employee cannot be younger than 21 years of age, an age requirement needs to be established. Typically a plan has a length of service requirement, but this requirement cannot be longer than a year from one's hire date. Then there may be issues such as leased employees or union employees, both which can be excluded from the plan, if desired.

Once the plan is established, the investments can be directed by the individuals, or the employer/trustee. In the case of the Sole 401(k) only the individual directs the investments. The plan will require reporting to the Internal Revenue Service. This reporting comes in the form of an informational tax return on Form 5500. There is no tax due with the return since it is for informational purposes only. The Solo 401(k) Plan requires reporting after assets reach \$100,000, and in this case only a Form 5500-EZ is necessary. When the number of eligible employees exceeds 100 participants an audit of the plan is required to ensure the plan is in compliance with the plan document set forth at inception, or any amendments made to it thereafter.



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