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How to Compete for Top Talent in a Tight Labor Market

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By now, most of us have heard, perhaps numerous times, that we're experiencing record-low unemployment numbers and that the job market is incredibly competitive. In fact, you might have experienced the challenge of attracting key people, or worse, you've lost those key people to a competitor. While many companies offer 401k plans with strong matching contributions as a method of attracting and retaining employees, the reality is that, for high income earners, those additional dollars to a qualified plan (401k, 403(b), etc.) likely won't move the needle much and don't ensure that key person stays in his or her seat. In addition, qualified plans are governed under ERISA and don't provide much flexibility in determining who participates in the plan and who does not.

Non-Qualified Planning

Enter the "non-qualified plan." Non-qualified plans resulted out of necessity as legislation and tax reform constrained employers' ability to "discriminate" amongst employees and employees' opportunity to contribute to their qualified plans. Whereas ERISA-based plans mandate a certain level of participation from the employee base, non-qualified plans allow employers to be selective in making that determination. Additionally, non-qualified plan contributions aren't bounded by ERISA limits and can be structured to achieve a specific purpose.

Elective Deferred Compensation

A common example of a non-qualified plan is what's called an Elective Deferred Compensation (EDC) plan. In this arrangement, an employer provides key personnel the opportunity to defer additional money (salary and/or bonus) beyond what the 401(k) allows to be paid out at some point in the future. That money grows most typically by a fixed rate, i.e. 5% per year, and without tax, but can also be tied to the 401k investment lineup or some other benchmark. Oftentimes these plans are utilized by "Top-Hat" employees to restore their 401k contributions after receiving a year-end refund, by top salespeople to mitigate tax liabilities, and high wage earners to save for specific events, i.e. college, weddings, retirement, etc.

Supplemental Executive Retirement Plan

Another example of a non-qualified plan is a supplemental executive retirement plan (SERP). This type of plan is often used to attract, retain and reward key executives by allocating an amount of money to a participant's account based on achieving certain metrics. Those metrics can be set to incent revenue growth, profitability, or any other pertinent and controllable measure of success. And, the employer can include a vesting schedule on any benefit accrued (think: "Golden Handcuffs") to ensure the executive remains with the company for the desired period of time.

If you're struggling to attract the top talent, you're worried about competitors poaching a key person, or you want to reward an executive for their years of service, a properly structured non-qualified plan can help achieve the desired result.

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