MEDICINE & **FINANCE:**

By Cameron **Short**

Increase Retirement Contributions for Key Employees With a Carve-Out Plan

Today's economic and political environment has left many physicians working increasing hours, left with little time to ensure their hard-earned money is working just as hard in a retirement plan. So when it comes to building your practice's retirement plan with viable options for wealth building and deferring taxable income, what is the best solution for you?

There are many different available options for your practice in setting up retirement plans such as defined benefit and defined contribution plans. A defined benefit plan, such as a pension, is designed to provide a specific amount of monthly income in retirement. It is advantageous in that it allows for significantly larger contributions during working years than does a defined contribution plan, such as a 401(k). And of course, larger contributions result in decreased income tax bills or increased income tax refunds. Investments within both types of plans are professionally managed, providing the opportunity for your money to grow as efficiently as possible and risks to be minimized.

Defined benefit plans can be a great option for high-earning physicians who are looking to invest significant amounts of their income toward retirement. Yet, because employers are required to fund defined benefit plans for employees in a non-discriminatory manner (by providing a contribution on behalf of all eligible employees), this option can be prohibitively expensive for employers.

If you're facing such a dilemma for your practice, consider incorporating a "carve-out" plan – a plan designed to focus the majority of an employer's contribution to a select group of employees, usually key or highly compensated employees, yet still offer solid benefits for all employees.

A carve-out plan is created when the employer offers both a defined benefit plan and a defined contribution plan at the same time. In a carve-out plan, the majority of employees are covered in the defined contribution plan, while the owner and highly compensated employees are "carved out" to be covered in the defined benefit plan.

By including the key or highly-compensated employees in a defined benefit plan and the remaining employees in a more affordable 401(k) plan, you can keep your retirement plan in compliance with non-discrimination regulations, while keeping expenses at a minimum.

For more information on whether or not a carve-out plan would be a good fit for yourpractice's retirement plan, consult your financial advisor and tax advisor today.

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Consider the following example:

(An actual case of pretax contributions)

A 52-year-old physician earning more than $245,000 yearly
2010 401(k) safe harbor contribution $36,700
2010 Defined benefit contribution $143,000

Total pretax contribution for 2010 . $179,700

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two years after termination of employment. The geographic area varies depending upon the location and the practice's drawing area. A practice in Center City Philadelphia may have a restricted area of only a few miles, a suburban Philadelphia practice may have a 10-mile restricted radius, while a rural area in Central Pennsylvania may have 30 miles. Instead of using a radius from the practice site, a map may be used as the practice may draw significantly more patients in one direction as opposed to other directions. If the physician is only working at certain practice locations, the restricted area may run only from the locations at which he or she was "regularly practicing" (perhaps spending at least 20% of his or her time in the 12 months prior to termination).

The contract will also usually set forth the remedy or remedies for violating the non-compete. These include obtaining an injunction, suing for actual damages, and/or an agreed-upon liquidated damages amount to "buy-out" the covenant. A common liquidated damages amount is one year's salary.

A typical non-solicitation clause provides that the physician will not solicit patients, referral sources or employees after he or she leaves the practice.

CO-OWNERSHIP

Most practices are not willing to commit to partnership before the associate begins employment. The contract may not mention anything about partnership. Sometimes, however, the contract will state that the intention (but not the obligation) is to offer co-ownership after two or three years. Other times, a separate non-binding letter of intent will be provided with the employment contract which may set forth the potential terms of the buy-in.

FINAL THOUGHT

This article has reviewed common provisions found in an initial physician employment agreement. Keep in mind, whether you are the employer or the employee, each deal is unique and each contract should be drafted, analyzed and negotiated to fit the particular situation. Having experienced healthcare attorneys representing each party also may help finalize the deal in an expeditious manner.

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