Key employee retention opportunities following the FTC's ban on noncompete agreements

In the name of fair competition, the Federal Trade Commission (FTC) issued final regulations banning most noncompete agreements in late April of 2024. The impact of these new regulations is far-reaching and prohibits entering or enforcing a noncompete agreement even if entered into before the effective date of the new regulations, which is September 4, 2024. Even the fact that a noncompete was specifically negotiated and paid for is not relevant. Furthermore, employers must now advise those who otherwise could be covered by noncompete provisions that they are no longer bound by them. Employers are also barred from representing that workers are subject to noncompete clauses.

The FTC estimates that about 30 million, or about 18%, of workers in the United States are subject to noncompete provisions that hamper their ability for new employment or starting their own businesses.[1] With so many employees no longer subject to these agreements, business owners need to find new ways to retain their key people. Lincoln has financial solutions that can be used to recruit, reward and retain key talent through the following strategies.

Executive bonus (Section 162) plan

An executive bonus plan using life insurance can provide a simple yet powerful addition to a business's total executive compensation benefit package for top performers. The business decides who will participate and can choose to provide a single bonus to employees or "gross" the bonus up to cover the income tax the employee will owe on the bonus. There's little to no out-of-pocket expense to the employee and retention is made possible by restricting employees' access to policy cash values for a period, such as until retirement. Such an arrangement is referred to as a Restricted Executive Bonus Agreement (REBA). These plans are easy to implement and maintain and offer an immediate tax deduction to the business for the annual bonus paid to the employee.[2] The employee owns the policy and therefore names the policy's beneficiary, thus providing an income tax-free legacy. During life, any growth in the policy typically grows tax-deferred and tax-efficient income may be available through policy loans and withdrawals.[3] An Exec Bonus plan can also be used to provide valuable long-term care planning solutions through our Lincoln *MoneyGuard*® product suite or to provide a supplemental retirement benefit with a Lincoln annuity product.

[1] Jennifer Liu, "Workers earning up to $58K a year could soon become eligible for overtime pay," CNBC.com, Apr. 24, 2024, https://www.cnbc.com/2024/04/24/workers-earning-under-58k-a-year-could-soon-become-eligible-for-overtime-pay.html#:~:text=The%20FTC%20estimates%2030%20million

[2] The deductibility of the bonus is subject to the reasonable compensation limits established by Internal Revenue Code (IRC) Section 162(a).

[3] Policy loans and withdrawals will reduce death benefit and policy values; may cause the policy to lapse and may have tax consequences.

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Split-dollar plan

A split-dollar life insurance arrangement may be an effective way to offer supplemental retirement income, valuable death benefit protection, or both to selected employees. It's mutually beneficial because the business owner and employee agree to share the benefits of a life insurance policy. Premiums are generally funded exclusively by the business and the plan can be designed to leverage the amount of policy control the business would like to have. These plans are flexible and generally easy to implement and maintain. Plan design options can help reduce the impact to a company's financial reporting. For the key employee, there is potential tax-advantaged income through policy loans and withdrawals, depending on the type of split-dollar arrangement.[1] Overall, these plans can provide an income tax-free death benefit and a way to obtain survivor benefits and supplemental retirement income for an employee or employees.

Nonqualified deferred compensation (NQDC)/supplemental executive retirement plan (SERP)

A SERP is an attractive compensation tool designed to help top executives and certain owners supplement their retirement income. Because traditional retirement plans have contribution limits, high-income earners could face a retirement income gap if they solely relied on qualified plans. A SERP is an employer-paid deferred compensation agreement that provides supplemental retirement income to a key employee, based on the employee meeting certain vesting requirements or other specific conditions. When funded with life insurance, the company obtains a tax-advantaged asset to pay benefits and benefit payments are tax-deductible. SERPs also require less administration and funding than qualified plans[2] and provide the potential to recover plan costs with income tax-free death benefit proceeds received if the key employee dies.[3] The employee may receive survivor benefits for their loved ones and a tax-deferred benefit to reward them for their contributions to the business.

For more information on how you can help business owners retain, reward and recruit using Lincoln solutions, contact your Lincoln representative or the Advanced Sales team at AdvancedSales@LFG.com or 800-832-5372.

[1] Policy loans and withdrawals will reduce death benefit and policy values; may cause the policy to lapse and may have tax consequences.

[2] This type of plan may need to comply with IRC Sec. 409(a).

[3] If certain requirements under IRC section 101(j) are not met, the death benefit of an employer-owned life insurance contract will generally be taxable income to the employer to the extend the death benefit proceeds exceed the premiums paid.

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