Employee Benefits-The Key to Attracting and Retaining Staff in the Oral and Maxillofacial Surgery Practice

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The human resource function in the oral and maxillofacial surgery practice encompasses a broad range of staffing issues. However, next to salary, the benefit package offered to staff is often the most important consideration for the staff and the employer. From the employer’s standpoint controlling the spiraling costs of healthcare and other staff benefits offered is a constant challenge and one of the most contentious items contained in the practice’s annual budget. There is a “win-win” answer for both the employer and the staff and that is the use of a “Cafeteria Plan.”

A Cafeteria Plan is a written plan (Internal Revenue Code Section 125) under which all participants are employees, and the participants may choose between two or more benefits. A cafeteria plan permits employees to choose between a selection of non-taxable benefits offered through the Cafeteria Plan or to receive cash, which is taxable.

Employers can design and use Cafeteria Plans to limit the annual increases in benefit costs they have incurred in the past by establishing an annual benefit allowance per fulltime staff employee, which may be used by the employee to choose their personal benefit structure. One of the major advantages of this approach is that it treats every fulltime employee equally. The differences in costs per employee so often encountered when paying health insurance for employees and fully funding either single or married family coverage can be eliminated. Outlined below are common attributes and typical choices available in Cafeteria Plans.

Benefits that can be offered include:
- Health and accident insurance, including dental insurance. The coverage can include the employee and the employee’s spouse and dependents.
- Group term life insurance, which can also include insurance on the life of the employee’s spouse or children.
- Medical benefits for non-covered services.
- Disability insurance and accidental death and dismemberment insurance. The coverage can include the employee, and the employee’s spouse and dependents.
- Dependent care assistance payments.
- Elective contributions under a Section 401(k) plan. Section 125(d) generally excludes any form of deferred compensation from the list of qualified benefits under a cafeteria plan; however, an exception exists for 401(k) plan contributions.
- Elective paid vacation days. This permits the employee to receive more or fewer vacation days than are provided on a nonelective basis.
- Long-term care.
- Cash (taxable benefit).

Benefits which cannot be offered:
- Qualified scholarships under Section 117.
- Educational assistance payments under Section 127.
- Meals and lodging furnished for the convenience of the employer.
- The “catch-all” fringe benefits offered under Section 132. These include qualified employee discounts and working condition fringes.

Employee Advantages of a Cafeteria Plan
The most significant advantage of a cafeteria plan is selection. Surveys indicate that individual employees
have vastly different preferences for fringe benefits depending on their personal situation. The ability to choose a tailored benefits package can be very valuable to an employee, and thereby to the employer. Employee fringe benefits are adopted to attract, motivate, and retain employees. These are the same objectives of any compensation arrangement, but all employees like cash because it can be spent as they please. Employees expect a certain level of fringes in addition to cash, and a cafeteria arrangement allows choice, a benefit similar to cash. Fringe benefits also offer the advantage of nontaxability. If the employee “purchases” a non-taxable fringe through a cafeteria plan, he or she generally does so with pre-tax dollars.

**Employee Tax Advantages**
Purchased benefits are acquired with pre-tax dollars. The employee tax advantages include the 1) pre-tax benefit of reduced income and social security taxes; and 2) the post-tax benefit of increased take-home pay.

**Employee Disadvantages**
The first principal disadvantage is the “use it or lose it” principle. Any allocated money not used within a year must be forfeited. Proper plan design and employee education can minimize the “use it or lose it” principle and create significant tax savings.

**Employer Advantages of a Cafeteria Plan**
Employers can plan and implement as part of their overall benefit structure the ability to establish annually a fixed amount they wish to incur in costs in providing employee benefits. Full-time employees can be treated equally in the benefit planning through the use of a Cafeteria Plan.

**Employer Tax Advantages**
The employer tax advantages include 1) salary reductions allocated to non-taxable benefits are not subject to the employer FICA and FUTA taxes; 2) depending on state law, workers’ compensation taxes may be reduced; and 3) reduced compensation may reduce the employer’s required contribution to a qualified plan.

**Employer Disadvantages**
The internal and external administrative expenses associated with the cafeteria plan should be considered in relation to the practice’s benefit planning goals for cost containment and the tax savings associated with the implementation and use of a Cafeteria Plan.

**Examples:**
- Flexible Benefits/Cafeteria Plan
- Tax Savings Plan
- IRS Section 125

**Guidelines**
Section 125 tax law imposes the following requirements, which must be considered in the design of a cafeteria plan:

1. **Limitations on who can participate:**
   As mentioned earlier, all participants in a cafeteria plan must be employees. A self-employed individual is not an employee. A self-employed

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**Illustration of Employee Payroll**

<table>
<thead>
<tr>
<th>Typical</th>
<th>Cafeteria</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross Pay</td>
<td>$2,000</td>
</tr>
<tr>
<td>Medical Insurance</td>
<td>0</td>
</tr>
<tr>
<td>Medical Expenses</td>
<td>0</td>
</tr>
<tr>
<td>Dependent Care Expenses</td>
<td>0</td>
</tr>
<tr>
<td>Taxable Income</td>
<td>2,000</td>
</tr>
<tr>
<td>Taxes (30%) Federal, State, FICA</td>
<td>-600</td>
</tr>
<tr>
<td>Net Income</td>
<td>1,400</td>
</tr>
<tr>
<td>Post Tax Medical Insurance</td>
<td>-100</td>
</tr>
<tr>
<td>Post Tax Medical Expenses</td>
<td>-100</td>
</tr>
<tr>
<td>Post Tax Dependent Care Expenses</td>
<td>-200</td>
</tr>
<tr>
<td>Net Spendable Income</td>
<td>$1,000</td>
</tr>
<tr>
<td>Increase in Monthly Spendable Income</td>
<td>N/A</td>
</tr>
<tr>
<td>Increase in Annual Spendable Income</td>
<td>N/A</td>
</tr>
</tbody>
</table>

**Illustration of Employer Savings**
The savings are based on 10 employees sheltering $2,000 each on an annual basis:

- Annual salary sheltered | $20,000 |
- FICA savings 7.65% of $20,000 | $1,530 |
- FUTA/SUTA savings of approximately 3% | 600 |
- **TOTAL SAVINGS** | $2,130 |
individual is treated as his or her own employer. Leased employees* are treated as employees if the leased employee performs services on a substantially full-time basis as part of an agreement between the employer and a third party, with the agreement lasting a minimum of one year. The services performed must be similar in nature to what the other employees perform.

2. Limits on how and when choices can be made and changed:
By definition, a cafeteria plan must permit the employee to choose between two or more benefits. The choice of benefits must be made prior to the start of the year and generally cannot be changed. The employer can provide a given amount of money to utilize in the purchase of benefits, which is not a salary deduction for the employee. Additionally, the plan may provide that the employee choices be made through salary reduction where the employees agree to reduce their compensation in exchange for purchasing non-taxable benefits under the plan. If the employee elects to allocate compensation to the purchase of a benefit, the allocated amount is forfeited if the employee does not actually use the benefit.

The following circumstances will permit the employee to revoke an existing election of benefits and make a new one within a single plan year:
• Marriage or divorce
• Death of a spouse or child
• Birth or adoption of a child
• Termination or commencement of employment of a spouse
• Switching from full-time to part-time employment by the employee or the employee’s spouse
• Switching from part-time to full-time employment by the employee or the employee’s spouse
• Court ordered change in coverage, such as an ERISA qualified medical support order
• Employee’s spouse or dependent becomes eligible for Medicare or Medicaid coverage
• An unpaid leave of absence by the employee or the employee’s spouse
• A significant change in the health coverage of the employee or the employee’s spouse attributable to a spouse’s employment
• A significant change in the cost or coverage offered by an independent third party provider of health care under the plan

3. Limits on what benefits can be included:
Generally, a cafeteria plan can offer the employee a choice between cash and non-taxable fringe benefits. However, certain non-taxable fringes are either unavailable or limited as part of a cafeteria arrangement. See page 1 for a list of permitted benefits.

4. Limits on discrimination and favor of highly compensated employees:
A properly designed cafeteria plan must meet non-discriminatory testing standards. Annually, the plan must complete discrimination testing as well as the appropriate reporting to the Internal Revenue Service.

5. Recordkeeping and disclosure requirements:
The plan must maintain sufficient records to permit a determination that the requirements of any statutory benefit exclusion are satisfied.

Successful oral and maxillofacial surgery practices recognize that one of their greatest assets is a knowledgeable, well-trained workforce. A Cafeteria Plan with its ability to allow employees to personally select their benefits and with tax savings advantages is one of the keys to attracting and retaining quality employees.

*Recent trends in human resources have resulted in a greater use of Professional Employer Organizations (PEO’s), commonly recognized as “employee leasing” entities. PEO’s and employers contractually create a co-employment relationship with the staff and the PEO, for a negotiated fee, assumes the human resource responsibility for payroll, employee benefits, qualified plans, etc. Because the PEO has a large census of employees, they have the ability to negotiate more favorable rates for employee benefits than a smaller employer organization. The use of Professional Employer Organizations is an extensive area that will be reviewed in a future article.
Practice Buy-Ins and Pay-Outs

Who should attend?
Residents and OMSs considering what to look for when joining a practice.

- WHAT IT MEANS TO MAKE YOUR ASSOCIATE YOUR PARTNER
- THE OBLIGATIONS THAT YOU UNDERTAKE IN A PARTNERSHIP
- WHAT IT MEANS TO SELL AN INTEREST IN YOUR PRACTICE
- YOUR OBLIGATIONS IF EITHER OF YOU LEAVES THE PRACTICE
- METHODS AND VALUES AND HOW TO BEST STRUCTURE THE TRANSACTION
- VALUING THE HARD ASSETS, ACCOUNTS RECEIVABLE AND GOODWILL
- ALTERNATIVE MEANS OF STRUCTURING THE BUY-IN TO CO-OWNERSHIP
- THE OPTIONS TO CONSIDER TO PROTECT BOTH YOURSELF AND YOUR PRACTICE
- HOW TO BE SURE THIS IS A GOOD DECISION FOR YOUR PROFESSIONAL FUTURE
- CONCRETE EXAMPLES PERTINENT TO OMS PRACTICES

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