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FAQs on Employee Benefits: Qualified and Non-Qualified Retirement Plans

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Our Employee Benefits practice focuses on helping business owners with retirement plans that they either have or might set up for their employees, including executives. We advise them on the format of the retirement plans, the choices that can be made, and more. We also advise on tax benefits that they will receive as business owners, while at the same time looking after their employees.

Why are employee benefits important?

Employee benefits are important both to the employers and to the employees. As we all know right now, the current labor market favors employees. So if a business owner would like to attract new employees and retain current employees, they should really focus not only on compensation, but also the complete benefit package that includes retirement plans, and other benefits, etc. Beyond employee satisfaction and retention, business owners can benefit from efficient employee benefit plans that can help reduce tax liabilities.

What are some recent trends or changes in the area of employee benefit plans?

It seems that a lot of companies are focusing on opening 401k plans to attract new talent. Many are opting for safe harbor plans. But there is also trend to have cash balance plans, especially by small business owners who prefer to be more flexible in providing benefits and saving for retirement.

What should employers know if they decide to set up a retirement plan? For example, are they held to a higher standard of care for overseeing retirement plans?

Yes, employers are held to a higher standard of care for overseeing retirement plans, as they are acting as fiduciary. It is something a lot of employers might overlook when considering setting up an employee retirement plan. Employers with plans (fiduciaries) must exercise *duty of loyalty* and *duty of prudence* with regards to the assets in the plan. *Duty of loyalty* means that the participating employees are the focus of the plan administration. The plan should not pay unnecessary fees, nor should it retain unnecessary services. *Duty of prudence* means the plan investments are selected wisely and monitored on at least quarterly basis.

Can an employer terminate an employee retirement plan?

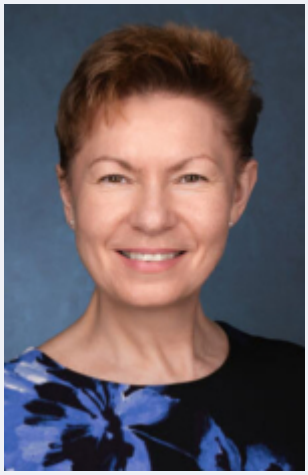
Yes; there is a procedure for terminating a retirement plan, which includes reporting requirements to the Department of Labor as well as the Department of Revenue. Knox Law can help guide employers who need assistance with terminating their plans.

If an employer makes a mistake with a retirement plan, is it easy to fix?

It depends. Some mistakes can be easily fixed. Recently, the Internal Revenue Service provided guidance how employers can self-correct certain mistakes. But if a mistake has been lingering for quite a while, there is a longer process to fix it, which might require filings with the Department of Revenue as well as the Department of Labor. However, it seems to be preferable to have employers stay in compliance and provide the benefits rather than penalize employers for mistakes. So the short answer is yes, employers can correct mistakes, but the complexity of the fix depends on the mistake.

Can employee benefits be a tool for business succession planning?

The short answer is yes; however, there is not one answer for all employers. Business owners would benefit from a consultation. We would discuss the best opportunities they have to engage in business succession by using, among other things, qualified or non-qualified deferred compensation plans.



Nadia A. Havard

Nadia A. Havard concentrates her practice in all areas of qualified and nonqualified retirement plans and employee benefits; transfer taxes; fiduciary income tax and trust administration; business; as well as estate planning and administration. She also helps nonprofits obtain and maintain their tax-exempt status.

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