Benefits

Background

Employee benefits are those incentives, amenities, or perquisites ("perqs") that employees receive above and beyond their basic salaries or wages. Certain benefits are required by law (such as overtime pay or excused absences under the Family and Medical Leave Act). Additional benefits or "benefit packages" are generally negotiated as employment terms and conditions between employer and employee. They may be negotiated individually between the parties or through labor-management contract negotiations affecting classes of employees as a whole. Importantly, if employees are represented by bargaining units within a union, they cannot negotiate directly with employer representatives for any change, addition, or deletion of a benefit (this statement does not relate to employee "choice" benefits packages, popularly referred to as "cafeteria plans," discussed below).

An employee benefit may be something as simple as free soft drinks during working hours or as complex as stock options or profit sharing plans. Typically, benefits include such advantages as health and life insurance, paid vacation or time off, flexible work hours, holiday pay, and retirement or PENSION pay.

Federal Laws that Impact Employee Benefits

Laws that Mandate Certain Benefits

There are certain employee benefits, above and beyond wages, that are legally required of all employers. These include social security contributions, federal and state unemployment insurance, and worker's compensation. The unemployment insurance program was established under Title IX of the federal **S**OCIAL **S**ECURITY **A**CT OF **1935** (42 **USC** 1101), which also governs social security contributions. Minimum working conditions and working environments are mandated by the federal Occupational Safety and Health Act (OSHA).

Laws that Impact Employee Benefits

- The **E**MPLOYEE **R**ETIREMENT **I**NCOME **S**ECURITY **A**CT (ERISA) regulates employers who offer pension or retirement benefit plans to their employees. One of the most important components of ERISA as it relates to employee benefits is that certain employers and plan administrators must pay premiums to the federal government for insurance to protect employee retirement benefits.
- The Comprehensive Omnibus Budget Reconciliation Act (COBRA) has an important provision requiring the continuation of health-care benefits for employees whose employment is terminated

(voluntarily or involuntarily) for a certain number of months, which may be further extended if employees pay the associated costs.
- The National Labor Relations Act (NLRA) guarantees freedom of choice and majority rule for employees in choosing exclusive bargaining representatives to negotiate benefits for covered bargaining unit employees.
- The Labor-Management Reporting and Disclosure Act of 1959 (also known as the Landrum-Griffin Act) protects employee contributions to union funds by requiring labor organizations to file annual financial reports.
- The Family and Medical Leave Act (FMLA) requires employers with 50 or more employees to allow up to 12 weeks of unpaid, jobprotected leave for the birth or ADOPTION of a child or the serious illness of an employee or a spouse, child, or parent.
- Veterans' Preference laws permit special employment preference rights for eligible veterans applying for governmental jobs. The preferential factors apply only at the time of initial hiring and/or in the event of a reduction in force.

Optional Employee Benefits

Following is a list of some of the more common employee benefits, sometimes referred to as fringe benefits, negotiated between employers and employees as conditions of employment. No law or constitution requires the offering of any of these benefits. However, once they have been contractually negotiated as part of the terms and conditions of employment, the failure to provide such benefits may expose employers to liability for breach of contract claims.

- Health and Life Insurance: Contrary to popular belief, no federal law requires employers to grant health and life insurance coverage to their employees. Health insurance coverage may be totally provided by the employer but is more often based on co-payment of insurance premiums with the employee. Spousal and/or dependent coverage is also an option. Long-term DISABILITY insurance is a premium benefit that most employers do not offer without substantial contributions from the employee toward the cost of the premiums.
- Paid Holidays: Contrary to popular belief, no federal law requires employers to grant paid holiday benefits to their employees. Paid holiday benefits are generally in the form of receiving full pay for a non-worked holiday or receiving premium pay for having worked on the holiday. The number of days designated as holidays varies from employer to employer, although certain ones are considered "standard," irrespective of an employee's personal beliefs or customs. They include: New Year's Day, Memorial Day, the Fourth of July, Labor Day, Thanksgiving, and Christmas Day. There are a handful of other days that employers may consider holidays, including Presidents' Day, Veterans' Day, Martin Luther King Day, etc.
- Pension and Retirement Benefits: This area of benefits, although optional on the part of the employer, invokes the greatest federal and state governance. Pension programs are covered in a separate entry. However, if a private employer does not provide a pension plan, the federal Internal Revenue Code permits individual workers to establish their own individual retirement accounts (IRAs) with registered financial institutions and to set aside a certain percentage of EARNED INCOME each year as tax-deferred contributions to the accounts. Self-employed persons may establish Keogh retirement accounts, which accomplish the same purpose.
- Paid Leave: This benefit may be in the form of vacation pay, paid sick leave, "personal days," funeral leave, military leave, or jury duty.
- Supplemental Pay: This benefit is used as an incentive for working less than desirable days or shifts. It includes overtime, weekend, or holiday pay, shift differentials, and nonproduction bonuses.

Nontraditional and Emerging Employee Benefits

In a way to induce employee hiring and retention, a number of employers have resorted to fewer common benefits packaging or offerings. These may include such desirable amenities as employee stock ownership plans (ESOPs), tuition reimbursement or paid higher education, dental or optical insurance coverage, child daycare services, paid parking or other commuting subsidies, fitness center or private club memberships, legal aid plans, company cars, flextime hours, casual work attire, home office assignments, and "domestic partner" benefits. A common benefit in the retail industry is a percentage discount on employee purchases of company products.

Employee "Cafeteria Plan" Benefits

Cafeteria plans, created by the Revenue Act of 1978 and governed by Section 125 of the Internal Revenue Code, are tax-qualified flexible benefit plans that offer employees choices in putting together their own benefits package by choosing from a list of options (thus, the term "cafeteria," indicating a pick-and-choose approach to individualized benefits). The popular plan program allows employees to choose between taxable benefits (such as cash or vacation pay) and at least two nontaxable benefits (such as term-life, dental, or health insurance).

Cafeteria plans are characterized by "open enrollment" periods during which plan participants must choose and enroll for selected benefits. The plans are renewed on a yearly basis, and mid-year alterations or amendments are only permitted when there is a "change in status" of an employee (e.g., change in marital status, number of dependents, a change in residence, a change in employment status, or a return from unpaid leave).

Section 125 benefits plans, including cafeteria plans, allow pre-tax allocation of employee wages toward benefit contributions, thus reducing the employee's TAXABLE INCOME. Another benefit plan qualified for Section 125 tax treatment is the Flexible Spending Account (FSA) which allows employees to set aside pretax monies to help pay for unreimbursed medical expenses and/or dependent care. However, in both forms of plans, unused benefits and unspent funds are forfeited.

Benefit Incidence Among Medium to Large Employers

The National Compensation Survey (NCS) of the U.S. Bureau of Labor Statistics tracks and publishes data on benefit incidence (expressed in terms of percentages of workers with access to or participation in employer-provided benefit plans). According to the last published NCS Survey (2001, based on 1999 data), the most prevalent employee benefit available to workers in the private sector was paid time off (with paid vacation and paid holidays being the most recurrent benefits).

Paid sick leave and term life insurance was an employee benefit enjoyed by more than half of all private-sector workers (in the 70s percentile for both). Fifty-three percent of employees participated in health care plan benefit programs, and 48 percent were covered by retirement or pension plans (most of which were contribution plans). Short- and long-term disability benefits were available to 36 and 25 percent of employees, respectively. The other frequently offered benefits were non-production bonuses (available to 42 percent of employees) and jobrelated education assistance (available to 41 percent of employees).

Benefit coverage in general was much more prevalent (predictably) among full-time employees: 64 percent of full-time, versus 14 percent of part-time employees, were covered by health care plans (overall, 53 percent of all employees were covered). Likewise 56 percent of full-time (versus 21 percent of part-time) employees were covered by retirement benefits plans (with 48 percent of all employees enrolled).

The greatest disparity in benefit incidence was in relation to the size of the company or establishment. For example, 81 percent of workers in companies with more than 2,500 employees had a retirement plan, compared with just 30 percent of workers with small establishments of 50 employees or less. Paid holidays were offered to 82 percent of employees in large establishments, compared to 66 percent in the smallest establishments.

Blue-collar and service workers were more likely to have their health care benefits fully paid for by their employers than their counterparts in professional or technical jobs. Goods-producing industries had a higher incidence of benefits coverage than did service-producing industries. Finally, geographic location affected benefits coverage, although less dramatically: 53 percent of workers in the Northeast and Midwest—compared with 47 percent in the West, and 43 percent in the South—were covered by retirement benefits. Overall incidence of benefits, expressed by specific benefit, was as follows. (All fifty states were included in the NCS survey.)

- Retirement benefits: Forty-eight percent of all workers were participating in retirement plans. This number included 79 percent of union employees and 44 percent of nonunion employees. Employee contribution plans outweighed defined benefits by approximately 15 percent.
- Health care benefits: Fifty-three percent of all workers were covered by health insurance plans. This number included 73 percent of all union members and 51 percent of non-union members.
- Dental care benefits: Fifty-two percent of all workers enjoyed dental care insurance benefits, and 52 percent of union workers had dental coverage.
- Life insurance: Fifty-six percent of all workers had term life insurance as an employee benefit. This number included 78 percent of union members and 76 percent of those in professional or technical fields. The retail trade had the lowest incidence of life insurance benefits.
- Paid sick leave: Only 53 percent of all workers had paid sick leave, parallel with a 54 percent union member benefit incidence. Incidence (occurrence of available benefits, not occurrence of use of the paid sick leave) was highest among professional and technical employees (81 percent).
- Short-term disability insurance: Thirty-six percent of all workers were covered under short-term disability plans, with highest incidence among union employees (66 percent).
- Paid vacation: Just under 80 percent of all employees enjoyed paid vacations, higher among union members (86 percent) and professional/technical employees (88 percent) (75 percent for blue-collar or service employees). Forty-three percent of part-time employees were eligible for vacation benefits.
- Paid holidays: Seventy-five percent of all employees were paid for holidays. This number included 82 percent of union employees and 75 percent of non-union employees, but 36 percent of part-time employees. The retail industry faired poorly, with only 50 percent of employees being paid for holidays; manufacturing and utilities companies offered paid holidays to approximately 92 percent of their workers.
- On-site CHILD CARE: Only three percent of all workers participated in this benefit, with highest incidence (ten percent) in companies employing 2,500 or more. Prevalence of this benefit was slightly higher in the Northeast and lowest in the West.
- Severance pay: Twenty-two percent of all workers were protected with severance pay benefits, slightly higher (28 percent) among union members. The benefit most often occurred in companies employing 2,500 or more (53 percent), and the benefit appeared most frequently in the finance, insurance, and real estate industries (44 percent).
- Educational assistance: Work-related education assistance appeared as an available benefit most often in companies employing 2,500 or more (70 percent) and in the finance, insurance, and real estate industries (69 percent). Overall benefit incidence was 41 percent. Ten percent of employees received an education benefit that was not work-related.

- Savings and thrift plans: Of those establishments with 100 or more workers, 87 percent of participating employees may choose how their funds are invested and 65 percent may choose how the employer's matching funds are invested. The most recurring investment choices were company stock funds, COMMON STOCK funds, bond funds, government SECURITIES, and guaranteed investment contracts.

Additional Resources

"Employee Benefits in Private Industry." United States Department of Labor, Bureau of Labor Statistics, National Compensation Survey. 1999. Available at http://www.bls.gov/news/release/ebs2.t01.htm.

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