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This article presents general guidelines for Georgia nonprofit organizations as of 6/26/2012 and should not be construed as legal advice. Always consult an attorney to address your particular situation.

Employee Benefits:
Frequently Asked Questions

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In General

Is our organization required to provide benefits to its employees?

- Generally, no. An employer is not required to provide benefits such as retirement plans, health coverage or paid time off to its employees. The law does require non-profit employers to pay social security and Medicare taxes (commonly known as FICA taxes) on behalf of their employees, as well as maintain worker's compensation insurance if they have at least three employees.

What types of benefits are most commonly provided by non-profit employers?

- The benefits most commonly provided are retirement plans (such as 403(b) or 401(k) plans) and health and welfare benefits such as medical, dental and vision. These benefits are discussed in more detail below.

What rules typically govern the administration of benefit plans?

- The primary laws governing benefit plans are the Internal Revenue Code and the Employee Retirement Income Security Act (commonly referred to as ERISA).
- Benefit plans are generally subject to documentation, participant communication, reporting and participation requirements.
- Additionally, plans are generally prohibited from discriminating in favor of employees who are highly compensated.
- The rules governing benefit plans are complex. Your plan provider or legal counsel will be able to help ensure that your plan remains in compliance with applicable law.

Retirement Plans

What is a 403(b) plan?

- A 403(b) plan, also known as a tax-sheltered annuity plan, is a retirement plan for certain employees of public schools, employees of certain tax-exempt organizations (501(c)(3)) and certain ministers.
- Generally, it allows eligible employees to defer a portion of their salary through payroll deduction which grows tax free until it is withdrawn at retirement.

What is a 401(k) plan?

- A 401(k) plan is also a retirement plan that allows employees of companies and tax exempt organizations to make deferrals from their salaries which grow tax free until withdrawn at retirement.

Are there any key differences between the two or any advantages to offering one type of plan over the other?

- Some very simple 403(b) plans are subject to fewer regulatory requirements than a 401(k) plan.
- Both types of plans have documentation, reporting and participation requirements.
- 401(k) plans can sometimes be less expensive to administer.

How does my organization go about adopting a 403(b) or 401(k) plan?

- Most smaller organizations rely upon the assistance of an insurance company or broker to help them set up the plans. Such providers usually have standard forms and communications materials.
- Talking with other non-profits about their plans and providers is a good way to find plan providers.

What are some common administrative errors with respect to a 403(b) or 401(k) plan, and how can they be avoided?

- The plans have written terms that must be followed. Operational errors regarding withdrawals and loans are not uncommon. Errors can be avoided by working closely with your provider to make sure the plan is operated in the manner in which it is written.

<u>Health and Welfare Plans</u>

What are health and welfare plans?

- Health and welfare plans generally include any employer plan that doesn't provide retirement benefits. Some of the most common types of health and welfare plans are medical, dental, vision, disability and life insurance plans.

How are health and other welfare plans usually funded?

- One of the most common ways to fund a plan is through an insurance contract (a plan funded this way is often referred to as a "fully insured plan"). This means that participants' benefit claims under the plan will be paid by the insurance company. Sometimes, a plan may be "self-insured." This means that the employer pays for the benefits under the plan either out of its general assets or by setting up a trust. Self-insured plans are usually not cost-effective for smaller employers. In either event, the premium costs under the plan are generally paid through employee contributions, employer contributions or both.

What is a cafeteria plan?

- A cafeteria plan is an arrangement that permits employees to elect to have amounts deducted from their paycheck pre-tax to pay for any benefits they elect to receive under the plan.
- Examples of benefits that may be offered under a cafeteria plan include health, dental vision, disability and life insurance benefits. A cafeteria plan may also feature a medical and/or dependent care flexible spending account. These arrangements permit employees to pay for certain medical expenses (for example, co-pays and deductibles) or dependent care expenses (for example, day care or elder care) with pre-tax money.
- Despite its name, a cafeteria plan is not required to offer a wide selection of pre-tax benefits; for example, a cafeteria plan may simply permit employees to make pre-tax contributions to pay their share of the premium under a health plan.
- The primary advantages of adopting a cafeteria plan are the tax benefits to the employees and the employer. Because an employee's contributions to the plan are pre-tax, the employee's taxable income is reduced. The employer generally is not required to pay FICA tax on the amounts deducted from the employee's paycheck and contributed to the plan.
- The Internal Revenue Code generally requires participants to choose the cafeteria plan benefits they want before the beginning of the plan year (generally known as an "open enrollment" period). There are strict rules about when an employee may change a cafeteria plan election in the middle of the year.
    - For example, if an employee elects during open enrollment to receive health coverage for the following year, he generally will be required to pay for that coverage for the entire year. He cannot decide in June to cancel his health premium payments, except under certain narrow circumstances defined in the Internal Revenue Code.
    - In contrast, if an employer provides health coverage outside of a cafeteria plan (in other words, the employees pay their health plan premiums with after-tax amounts), then employees may retain some flexibility to make coverage changes in the middle of the year (but the employees and employer would of course lose the tax savings offered by a cafeteria plan).
- Like retirement plans and other health and welfare plans, cafeteria plans are required to have a written plan document.

How does my organization go about adopting a medical or other welfare plan for its employees?

- Again, most smaller organizations rely upon the assistance of an insurance company or HMO to help them set up a health or welfare plan. Such providers usually have standard forms and communications materials.
- Talking with other non-profits about their plans and providers is a good way to find plan providers.

Is my organization permitted to provide different levels of benefits to different employees or classes of employees?

- It depends. As noted above, the rules governing benefit plans generally prohibit plans from providing better benefits to highly compensated employees than to other employees. These rules currently do not apply to fully insured health and welfare plans; however, under the health care reform law passed in 2010, fully insured plans will become subject to these rules in the near future. Additionally, the Internal Revenue Code contains special rules prohibiting cafeteria plans from discriminating in favor of highly compensated employees. However, subject to these rules, you may be able to offer varying benefit packages with different types of benefits to different employees, such as employees who work in different parts of the country, employees who work part-time or temporary employees.

- There are also rules prohibiting health plans from treating individuals differently based on their health status or other health-related factors.
- The rules governing nondiscrimination in health and welfare plans are complex and are currently in a state of flux. You should work with your plan provider or legal counsel to ensure that any benefits provided to your employees remain in compliance with these rules.