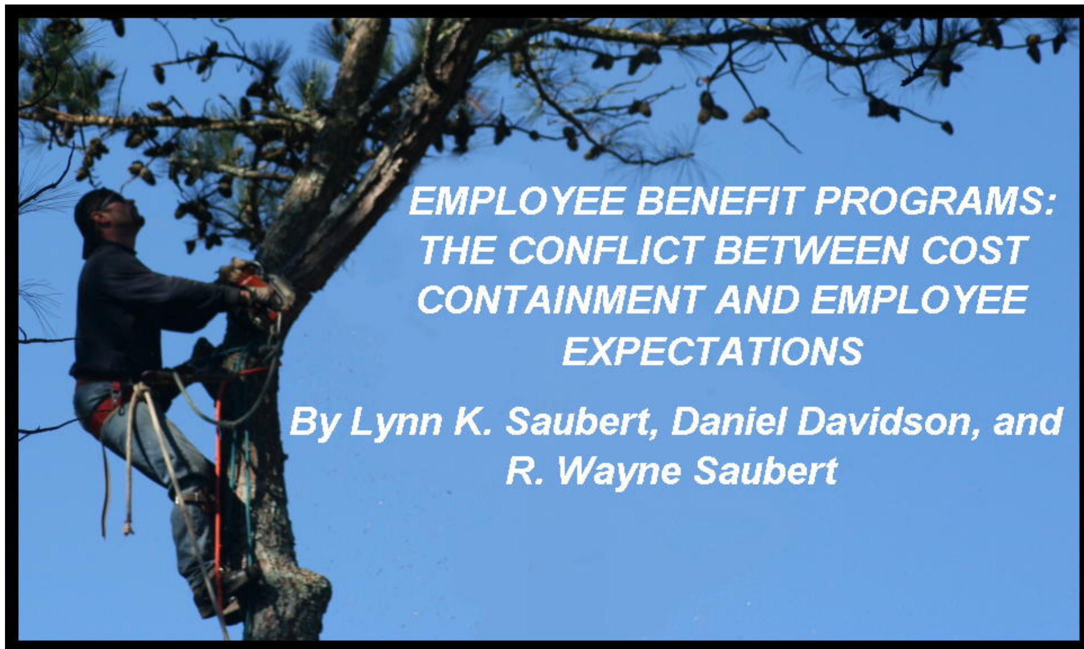

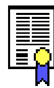

Peer Reviewed

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ABSTRACT

The landscape of worker benefits is changing in the United States. A combination of high costs and high potential liability has resulted in employers moving away from providing traditional defined benefit pension plans into offering defined contribution plans or some other employee-financed and managed plan. With the rising cost of health insurance, employers are changing the coverage provided to employees – if any coverage is provided – to plans calling for higher employee contributions toward the premiums and to higher co-payment requirements. Firms are also examining "wellness" standards for employees in an effort to contain costs. Retirees are finding that they may not have any employer-funded health insurance coverage. Today many employees face a very different work environment and a much more difficult time preparing for

retirement. A recent decision by GM to eliminate health insurance coverage for retired salaried employees illustrates how the cost of benefits can significantly impact employers, as well as how the implementation of cost-containment decisions impact employees and even retirees. This paper discusses some of the most important topics in these areas.

INTRODUCTION

The landscape of worker benefits is changing in the United States. Gone are the days when a person worked at one job for most of his or her working life, with a defined benefit pension plan to provide retirement benefits, fully funded health insurance coverage that often extended into the retirement years, and job security. Instead, we have a more mobile work force and a less stable employment environment. Workers expect to change jobs several times over the course of their working lives, often into totally new fields. This results in frequent "gaps" in health insurance coverage, questions about pension or retirement plans, and less expectation of job security for the average worker.

These changes have impacted employee benefits, and have also created serious issues concerning retirement. The typical American is spending more and saving less. Employers are more likely to provide a defined contribution pension plan for their workers, if they provide any pension plan at all, and the cost for health insurance coverage is increasingly covered jointly between employer and employee, with the employee's contribution increasing regularly. In addition, health insurance is less likely to be extended into the retirement years unless it is extended by the retiree at his or her expense. When these tendencies are combined with the shrinking package of employer-provided benefits, the prospects for a comfortable retirement are dimming. While Social Security was the savior of a prior generation, the level of these benefits, if they remain available, will not provide the same level of security to those nearing retirement age today. The current group of young employees or future employees will face a very different work environment and a much more difficult time preparing for retirement.

It is not just the young employees who are facing difficult times. Even retired workers can be affected by the changing environment. For example, on July 15, 2008, General Motors announced that it will discontinue retiree health benefits for its salaried retirees aged 65 and above as of January 2009. "This announcement … signals that a new era of ever-shrinking benefits has arrived."(Fuhrmans and Francis, 2008, July) GM will increase monthly pension payments to help offset the health benefits cuts, but this elimination of a retirement benefit is further evidence of the severity of the problem for employers and employees. "GM's move to cut retiree health benefits has implications for workers in other industries.

- As of now, all nonunion workers – even those who've earned retiree benefits – should understand that those benefits can be eliminated, either before or during their retirement.
- Workers planning to retire early might consider working at least part-time to keep active employee health coverage until they're eligible for Medicare at age 65." ("Tough Medicine," WSJ, 2008, July)

  (It should be noted that if the employer files for bankruptcy protection, even union benefits can be reduced, although ERISA does provide some protection for these plans.)

GM's conduct illustrates how the cost of benefits can significantly impact employers, as well as how the implementation of cost-containment decisions impact employees and even retirees. This paper discusses some of the most important topics in these areas.

A LOOK AT SOME RECENT TRENDS

Positive cash flow is essential to the success, or even the continuity, of any business. No enterprise can operate with a negative cash flow for very long, and finding ways to improve cash flow is beneficial for any business. Employee benefits are a "negative cash flow" item, and one that can be changed or controlled more easily than many other expenses. As a result, many companies struggle with employee benefit issues.

Employee benefits can be a double-edged sword for businesses, especially small and medium-sized firms. Providing a benefit package is a major expense for these ventures, but not providing an attractive benefits package may make attracting or retaining employees more difficult. Therefore the business has to decide whether to offer a benefit package, thus incurring a significant expense, or not to offer a package, with the resulting potential reduction in cash outflow, but with a negative effect on retaining current employees or hiring employees in the future. The company must also decide, if benefits are to be provided, what benefits should it provide and how much of the cost, if any, should be borne by the employees? The tradeoff between salary levels and benefit levels must be considered. Employees will view these two differently, depending on the age, marital status, number of dependents and other considerations of each employee. The tax impact of providing and receiving salary versus benefits must also be weighed. These are among the questions that an employer will confront while considering benefit issues.

As companies struggle with the costs of employee benefits, some changes or modifications to key benefits are evolving. Among these are the provisions for retirement plans and health insurance, both for current employees and retired employees. As companies try to contain benefit costs, additional

factors are being added to the mix, such as employee life styles, physical attributes and genetic disposition. The nature of these emerging factors may prove highly controversial as they are incorporated into the benefit scene.

Retirement Plans

An area of significant change is that of retirement plans. Historically, large companies sponsored defined benefit retirement plans for their employees, which provided defined (specified) benefits to the employee upon retirement. These plans, when combined with Social Security benefits, let the employee know generally what he or she could expect to receive upon retirement, usually based on the employee's latest salary and length of service. In 1979, more than 60 percent of private sector employees were covered by such a plan, but by 2005 this number had declined to 10 percent. (Bureau of Labor Statistics) The cost of these benefit packages, along with the possibility of facing open-ended liabilities that accompany such packages and the required cost of Pension Benefit Guaranty Corporation (PBGC) insurance, has made such plans the dinosaurs of American industry.

The main movement has been from defined benefit pension plans to defined contribution plans, where the contributions are defined (specified) but the benefits to be derived are not. In a defined contribution plan such as a 401(k), a 403(b) or a profit-sharing plan, the employee contributes to the plan, often with the employer matching the contribution up to some percentage of the employee's salary. Because the employee is making some of the contribution these plans are less expensive for the employer. The employer's obligation is settled with the payment of its share of the contribution, eliminating any long-term pension liability. The Bureau of Labor Statistics also reported that in 1979 approximately 18 percent of private sector employees had a defined contribution plan; by 2005 this had increased to more than 60 percent.

Even with the growth of defined contribution plans, too many employees do not participate in a retirement plan or do not adequately contribute to the plan they have.

A group called Conversation on Coverage, which is a coalition of employer, retiree and business groups, is actively addressing "what is widely perceived as a serious flaw in today's workplace retirement system: too many working Americans saving too little, with the risk that many will struggle financially in retirement." (Francis, 2007, May) In an article on this issue, Francis reported that a 2006 Labor Department survey found that only 60 percent of the country's 110 million private-sector employees were covered by a workplace retirement plan. Of those eligible, many failed to participate. At that point, 30 percent of Americans had no retirement savings, and half of all 401(k) participants had saved less than $55,000. In another report, Mincer found that "At the end of 2006, the median account balance . . . was $66,650, up from $24,898 [in

1999].” (Mincer, 2007, August) She also reported that in 2006, “18 percent of 401(k) participants eligible for loans had taken one against their accounts.” A study by the Center for American Progress (released July 16, 2008) “found workers in 2004 had $31 billion in outstanding 401(k) loans, a fivefold increase from $6 billion in 1989.” (MSN Money, 2008, July)

As an alternative to 401(k) s, many small companies are using the Simple-IRA or Savings Incentive Match Plan for Employees. (Internal Revenue Service) This is a retirement saving plan designed for small businesses, those with 100 or fewer employees. Available since 1996, these plans are designed to be easier to use and less administratively complex. They provide tax advantages for both employers and employees. Small companies are finding these plans very advantageous, especially when compared to the more complex alternatives.

Companies with 401(k) or the Simple-IRA plans need to be cautious in the administration of these plans. Management needs to be aware of the tax requirements, limitations and deadlines to assure that contributions are tax deductible and earnings grow tax-free. Administration of the plans can provide additional challenges. A recent (February 20, 2008) Supreme Court Decision, LaRue v. DeWolff, Boberg and Associates, Inc, (128 S.Ct. 1020, 2008) found in favor of LaRue, the petitioner. LaRue alleged that the former employer/plan administrator had breached a fiduciary duty (under ERISA) by failing to follow his investment decisions. This opinion for the first time granted individuals the right to sue under ERISA for alleged breaches of fiduciary duties, and thus will increase the responsibility of plan administrators, often the employer itself, to ensure that the plan is properly administered. This, in turn, may increase the cost of plan administration, encouraging some firms either to restrict the choices of the employee participants in how funds are invested, or to decide to no longer offer such a plan, thus forcing the employee to find and fund his or her own plan from an outside source. The implications of the LaRue case, the availability of Simple-IRA plans, and the need for employees to take steps to provide for their retirement will ensure that this area remains volatile for quite some time.

Health Insurance

Health insurance is another benefit that provides numerous challenges to the employer. Companies are reviewing, and often revising, their health insurance packages for current employees. Many companies are also revising, or even eliminating, health insurance coverage for retired employees who expected to have continuing coverage upon retirement under the employer’s plan.(National Coalition on Health Care) Escalating health care costs have led to increasing health insurance premiums, which in turn have led many employers to revise the coverage provided to employees, including requiring greater contributions by employees, as well as selecting policies that call for higher deductibles and higher co-payments from the employees for the coverage provided. “Employee contributions average about ¼ of the total employees’ coverage cost and about

1/3 of the total cost of the health benefits (including family coverage). This proportion appears to be stable and has not changed over the past five years." (Health Insurance, 2006) Employee contributions to health care coverage increased by 143 percent from 2000 to 2006. However, even with increases in employee contributions and higher deductibles and co-payments, these health care costs continue to increase, with a related increase in the cost for the employer. Even with employees contributing significantly more toward their insurance coverage, the percentage of people with employment-based health insurance has declined from 70 percent in 1987 to 59 percent in 2006. One third of the businesses in the U.S. did not offer health insurance as a benefit in 2006.

Since eliminating health insurance is probably not the ideal solution, employers are seeking other methods to try to control or reduce health benefit costs, or at least to minimize the increases. The average annual premium for an employer health care plan for a family of four was approximately $12,100 in 2007, with coverage of a single employee costing more than $4,400 per year. With health care costs rising faster than inflation, this makes controlling or reducing these costs extremely difficult unless some creative approaches are taken. A recent trend, and a creative approach, has been the development of a "paternalistic" attitude by employers toward the health and wellness habits of their employees. Many employers are adopting a "wellness" approach, actively encouraging their employees to live healthier lives, thus reducing health insurance claims and thereby, hopefully, reducing health insurance premiums, a saving for both the employer and the employee. Certainly, the willingness of employers to provide on-site physical workout facilities or health club memberships or to have cafeterias that provide more healthful food alternatives may be appreciated by many employees. These provisions may also contribute to a healthier environment for the employees, and may even lead to a change in lifestyle that will have long-term benefits for them.

Several other initiatives are more controversial. Although they are usually couched as benevolent interests, employers are actively encouraging – if not requiring – employees to stop smoking and/or to lose weight "for the employee's good." While the benefit to the employee may be worthwhile, such initiatives toward smoking cessation and weight control are controversial, frequently being viewed as overly intrusive into the individual life and lifestyle of the employee. Even more controversial is the practice of some companies in monitoring the mental health of employees. Genetic screening, in which predictions of an employee's health and health risks are assessed based on potential genetic predispositions to certain diseases or conditions, takes the process one step further. Too far, some would say.

Retiree Health Benefits

Another changing area is the provision of retiree benefits. Approximately two decades ago, the Financial Accounting Standards Board (FASB) required the recognition of corporate liabilities for post-employment benefits. Such benefits may include tuition reimbursement and life insurance coverage, but by far the most important benefit for retirees was health insurance. Corporations strongly opposed the passage of this standard. Companies had accounted for such costs on a pay-as-you-go basis, recognizing the insurance expense as the coverage was provided. Accounting regulators disagreed with this pay-as-you-go method of expensing the cost, instead adopting rules similar to those for pension accounting, whereby the future costs must be recognized as earned by the employees with the offsetting liability included on the balance sheet.

In the process of implementing the new standards, companies reviewed, and many subsequently changed, their policies with respect to the provision of retiree health care. The resulting impact has left millions of retirees without the coverage that they anticipated. Some companies opted to continue providing coverage for existing retirees, while phasing out the provision of benefits for those subsequently hired. Many used a formula based on age and years of service for qualifying for future benefits, but often, even if an employee qualified, the corporate share of the costs decreased, leaving the retiree to bear a greater share of the future cost. In some cases employees who failed to qualify were informed that no retiree health insurance would be available, while in other cases they were not even informed. In the worse case scenario, retirement health benefits were eliminated to all participants, whether currently retired or actively employed.

An offshoot of the retiree health insurance controversy is the differential treatment of retirees opting to retire before they qualify for Medicare coverage. When companies provided greater bridge benefits for these employees, the issue of age discrimination was raised. The EEOC ruled that companies could provide differential benefits to this class of retiree. The decision was justified on the basis of the greater public good. The following justification was provided:

> "In promulgating this rule, the Commission recognizes that the issues surrounding health care coverage, especially for retirees, are complex and that retiree health benefits are highly valued by older Americans. Although employers are under no legal obligation to offer retiree health benefits, some employers choose to do so and thereby provide retired workers with access to affordable heath coverage at a time when private health insurance coverage might be otherwise cost prohibitive. Because the commission has determined that its prior policy created an incentive for employers to reduce or eliminate retiree health benefits, the agency has concluded the public interest is best served by an ADEA policy that permits employers greater flexibility to offer these valuable benefits. The

final rule is not intended to encourage employers to eliminate any retiree health benefits they may currently provide." ("Age Discrimination in Employment")

In 2007, the Third Circuit Court of Appeals upheld this EEOC Rule allowing employers to reduce health insurance benefits for retirees who become eligible for Medicare. (AARP v. EEOC) A Kiplinger Retirement Report provides the following summary: "A federal appeals court says employers can cut health benefits for retirees age 65 and older. The decision upheld a proposed rule by the Equal Employment Opportunity Commission that would let employers trim health benefits only for Medicare-eligible retirees without violating federal age-discrimination laws." (Kiplinger Retirement Report, 2007, July) In March 2008, the U.S. Supreme Court denied the AARP petition for review, in effect upholding the Third Circuit Court's ruling. (AARP et al. v. Equal Employment Opportunity Commission)

COST CONTAINMENT

Many different facets are involved with "health issues" as they impact today's workplace. These issues vary from physical health to mental health to financial health. The cost of providing assistance to employees in these areas, and to what degree, is often likely to be "at odds" with the company's concern for its own "health," especially its financial health. Obviously companies want productive and contented employees. Training costs are a huge investment, and high turnover just exacerbates the problem, so a healthy, happy, committed workforce should result in less turnover and greater loyalty to the company. On the other hand, benefits are expensive. Executives are pushed to cut costs and maximize profits; indeed they are often rewarded for doing so. Thus, executives may have to decide between healthier, happier, committed workers and a potential reduction in cost with a related increase in profits. The resolution of this conflict is difficult, as companies juggle the cost/benefit issues of employee management.

As part of the cost containment effort, companies have moved away from the traditional defined benefit retirement plans by providing less expensive (to the firm) alternative retirement plans that are funded to a significant extent through employee contributions. Employers are more likely to offer their employees the opportunity to participate in a 401(k), a 403(b), a profit-sharing plan, or a Simple-IRA. Using any of these plans rather than a defined benefit plan allows the firm to contain and/or control costs and shifts much of the burden and the responsibility to the employee.

In a similar vein, many companies are changing their health insurance coverage for employees. A significant number of businesses no longer offer health insurance as part of the employee benefit package. Other firms have selected coverage that includes a higher contribution toward the insurance from

the employee, as well as higher deductibles and higher co-pay requirements. Even with these changes in the coverage provided, their health care costs continue to rise, leading a number of businesses to initiate some sort of wellness program in an effort to contain the cost of health insurance as much as possible.

Health insurance benefits for retirees have declined even more. While some companies decided to honor their commitments to former employees by continuing to provide health insurance coverage, they have decided not to offer health insurance coverage after retirement for current employees, even those close to retirement age. Even for those companies that decided to continue to contribute toward the insurance coverage of retired employees, the amount of the contributions remained constant while the cost of the coverage increased, forcing the retiree to make up the difference in cost or lose his or her coverage. Some companies just decided to eliminate the contributions for retiree health insurance for all of its participants, often without informing them. While this did succeed in containing cost, it had a negative public relations impact and many former employees are disgruntled at best.

Wellness Plan Issues

Many of the wellness plans that companies have instituted in an effort to contain costs have been somewhat controversial. In an effort to keep the cost of insurance down, the employer has adopted what many consider to be an overly paternalistic approach to its employees. Among the more controversial of these paternalistic wellness programs are those that require smoking cessation and/or impose weight management standards on the employees. Most people would agree that smoking and obesity are hazardous to your health. Not all agree that employers have the right to intrude upon an employee's right to privacy, nor to require that an employee not smoke or mandate that an employee lose weight in order to be insured through the employer's coverage, or even to continue to be employed by the company.

The smoking problem has several facets. The first is providing a smoke-free working environment, a requirement that is increasingly mandated by state and/or local law. The perils of second hand smoke are well documented. Additional safety concerns have led many companies to ban smoking in the workplace. This is probably more controversial when the workplace is more amenable to smoking clientele, such as bars and restaurants. Having a smoke-free workplace is one thing, but it is another issue entirely for a company to compel smoking cessation. While many would applaud those companies that have offered to pay for or make available smoking cessations programs or aids, there may be less support if the company tries to require its employees to participate. Employers will need to decide whether they are willing to offer smoking cessation programs or aids, thus incurring the expense of doing so, and then requiring their employees to cease smoking. If an employer has an anti-smoking policy, it can assert that it has no employees who smoke and that it will

not hire applicants who smoke; the employer may then be able to negotiate a better premium rate from insurers. However this raises a legal and ethical question. Can smoking be banned outside the workplace or in the parking lots? The employer may prefer to discourage smoking while on the job and then either charge smokers a higher rate as their contribution to health insurance or provide a discount to employees who do not smoke.

Several issues related to smoking and smoking cessation programs are discussed in the Friedman and Chagala Employment and Labor Update for 2006. This outlines the requirements that must be met for a wellness program that provides a "reward" based on health. While discussing the issues that could be raised under ERISA, HIPAA, ADA, Title VII, as well as other federal and state laws, they conclude "… this is an evolving area and employers would be wise to review current trends and legal outcomes."

Obesity is a very serious issue in the United States. The strain on one's body, increase in blood pressure, threat of heart attacks, strokes, diabetes or other risks pose many problems for the overweight. In some cases, physical attributes have been important factors in obtaining and maintaining employment. A typical example is the airline attendant position, one in which size and weight have been important attributes. Most law enforcement agencies have physical fitness guidelines, which include weight ranges. If the employer can establish that size and/or weight is a bona fide occupational qualification (BFOQ), he or she can legitimately discriminate on that basis, thus negating the issue. In many other occupations, however, weight is not a BFOQ, and thus is not a legitimate basis for discrimination against any employee or applicant who does not fit the desired "profile."

As with smoking, an employer who has an anti-obesity policy can assert that it has no employees who are obese and that it will not hire applicants who are obese, the employer may then be able to negotiate a better premium rate from insurers. The employer may prefer to discourage weight problems or obesity among its employees by charging employees for health insurance coverage based on body mass index (BMI) or some comparable standard. Employers who try to affect the size/weight of their employees, even in the name of "wellness," face the same sorts of legal and ethical issues as do those employers who want to prohibit smoking by their employees. In fact, the legal issues will be more severe since a number of localities or states have adopted anti-smoking legislation, but none have adopted any anti-obesity legislation to date.

Another, perhaps even more controversial, situation involves mental health screening. Studies show significant absenteeism and lost productivity due to depression or mental anxiety. Tests have been developed and are available to screen for potential mental health issues and problems. If such issues or problems are identified, independent counseling can be arranged to address the

issue. While employers may have valid reasons for wanting to know about such issues and to address them promptly, employees have expressed concern over privacy issues raised by such programs. Fears of discrimination related to employment or insurance, as well as concerns about the social stigma of mental illness, have prevented many from participating in these programs.

In all of the above issues, privacy is a serious concern. Each of these areas also presents potential legal and ethical considerations. Companies must protect the integrity of their records while also complying with any and all applicable federal and state statutes and regulations. For example, HIPAA may require the employer to keep certain data separate from the normal data in employees' personnel files. The ADA and Title VII may also have regulatory standards that will require certain data or documentation that would not be required if neither applied to the employee. These are also evolving areas in which employers should review current trends and legal outcomes.

Many companies avoid the entire problem by employing part-time employees. The March, 2008 report on employment statistics indicates that there are currently 24.9 million people employed part-time in the United States. (News, Bureau of Labor Statistics) According to the government release, this includes persons who indicated that they would like to work full-time but were working part-time because their hours had been cut back or they were unable to find full-time jobs. Others hire people as independent contractors, or attempt to claim that they have hired independent contractors, thereby avoiding the cost of benefits. (Frauenheim) [Legally, independent contractors can't be directly supervised, supplied with workspace or tools, or otherwise treated like employees. A number of businesses, including Federal Express "classify" their workers as independent contractors rather than employees, thus avoiding the problem of providing benefits to these workers.]

A number of companies have severely curtailed either the type or the extent of benefits offered, while others are employing new health conscious programs to promote a healthier work force, or to attempt to preclude those workers perceived as "less healthy." Regardless of the means, companies must be aware of the legality of their actions. In this litigious society, it is extremely important that the human resource division review all policies regarding the company's benefit plans. If there is no HR division, the corporate attorneys or labor specialists should be consulted.

CONCLUSION AND RECOMMENDATIONS

Management faces tough choices in many of these issues. Cost containment is a major objective in today's tight money environment, but some costs are extremely difficult to contain. Benefit packages can have a significant impact on the ability of a firm to recruit and to retain employees, yet the cost of

such benefit packages have increased at a much higher rate than inflation. Defined benefit plans, once a staple of employment, are much less common today, in part due to the mobility of the work force and in part due to the insurance and related expenses of providing such plans. Defined contribution plans are much more prevalent today, and they have less regulatory requirements than defined benefit plans. However, a recent Supreme Court opinion has raised the specter of potentially greater liability for employers and plan administrators unless some verifiable safeguards are put in place. Employers need to consider carefully the costs and the benefits of providing retirement plans for their employees. If the employer decides to offer a retirement plan to its employees, it should consider providing the employees one of these plans; either a 401(k) plan, a Simple-IRA plan, or the opportunity for employees to participate in a 403(b).

Health insurance is perhaps the most important benefit that can be provided for employees, but it is also quite possibly the most expensive, and it is the one that is most likely to have significant cost increases in the future. Health care costs have increased by about 150 percent over the past eight years, forcing employers to make some hard decisions. If the employer decides to continue offering health insurance, it is likely to require the employee to pay a higher proportion of the premiums. In order to reduce the overall cost of the insurance, the employer may choose a policy that has a higher deductible amount and higher co-payments by the employees. In either event, the cost to the employee will increase significantly, which is likely to cause some resentment. The employer should first consider whether to offer health insurance as a benefit or to offer another option, such as a flexible spending account or a medical savings account, plans that provide some medical coverage but that are funded and owned fully by the employee.

Yet companies must remain competitive, which means they must obtain and retain competent personnel. In balancing these factors, the accounting people must work with and, in many cases, rely on the Human Resource Division. The Human Resource Division, in turn, must remain current on the regulatory environment which covers personnel issues. While this is a costly aspect of managing a company, it may prove far more costly to ignore the legal and economic consequences of making errors and incurring liabilities.

Employers have a strong incentive to offer differential coverage or differential contributions to health insurance based on lifestyle choices of the employee. Employees who are smokers or those who are seriously overweight are more likely to incur higher medical costs, so it would seem to follow that they should be charged a higher fee in order to be allowed to participate in the coverage. However, such treatment is likely to encounter legal challenges, and the cost of defending against the lawsuit could offset the anticipated insurance premium savings, even if the employer prevails in the trial. The EEOC issues a Compliance Manual, a guidance booklet analyzing fringe benefit discrimination

claims under various federal acts. This explains how discrimination laws apply to discrimination claims in health and life insurance, long-term and short-term disability benefits, severance and pension benefits, and other retirement incentives. There is such an array of federal and state laws and regulations dealing with these types of issues that any assistance in interpreting the requirements is extremely helpful. For example, discrimination in the assignment of contributions to a health insurance plan based on the lifestyle choices of the employee might be viewed as an illegal discrimination.

The International Labour Organization (ILO) issued a second Global Report on discrimination in the workplace. According to this report, new forms of discrimination are becoming problematic. In addition to sex, race and disability, ". . . those with a genetic predisposition towards certain illnesses, and those who pursue lifestyles that are deemed 'unhealthy', such as smokers and people who are overweight, are increasingly encountering prejudice in the workplace." (ILO, 2007)

Legally, companies are not required to provide retirement packages, health insurance or other benefits to employees. However, many full-time and salaried employees expect some sort of benefit package, and companies that do not offer a benefit package are at a severe disadvantage in recruiting and retaining employees. If a company does offer such a package, can the firm make employee participation optional? Perhaps a more intriguing question is whether the company can make employee participation conditional? Do employers have the right to mandate participation? Do employers have the right to prohibit participation? Can they offer benefits to selected groups of employees while excluding others, based on lifestyle choices or genetic predispositions? All of these issues present serious challenges to employers.

Positive cash flow is essential to the success, or even the continuity, of any business. No enterprise can operate with a negative cash flow for very long, and finding ways to improve cash flow is a great benefit for any business. Employee benefits are a "negative cash flow" item, and one that can be changed or controlled more easily than many other expenses. The number of companies sponsoring benefit packages has dramatically decreased. Of those still sponsoring benefit packages, many have changed to plans that place more of the financial burden on the employees in an effort to contain costs and positively affect cash flow. Employers need to remain aware of the costs associated with benefit packages, and must find a way to balance the desire to offer an attractive benefit package that will help in retaining and recruiting employees with the need to maintain a positive cash flow. The success of the firm in juggling these often conflicting objectives may be the determining factor in the success or failure of the firm, especially among small and medium-sized businesses.

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