401(k) Plan Disclosure Statement

There are many different retirement plan options available to individuals and small businesses. Of special note is the enhanced status of the IRA. Federal Law has added many new features to the IRA to make it a very attractive retirement plan choice.

The 401(k) generally is not a good retirement plan for a company that has fewer than ten deferring participants. Small 401(k) plans can be compliant but are not practical in most cases. Here are some important considerations if a 401(k) plan is implemented for companies with fewer than nine deferring participants who defer at a low rate averaging only 1% or 2% per participant.

1. Highly Compensated Employees (HCEs – company owners, their lineal relatives, or employees making more than $110,000 annually) are limited to how much they can contribute. If there is a low participation or low deferral rates, the HCE would most likely be able to contribute more to an IRA than in a 401(k) plan. Further, even if only $1 is placed in a 401(k) plan by a participant or their spouse, this can severely limit what they could otherwise contribute to an IRA.
2. 401(k) plans are Top-Heavy if more than 60% of all the plan assets are in the accounts of company owners or key employees. If a plan is Top-Heavy, the client company is required to make a 3% profit sharing contribution to all eligible employees. Eligible employees include those who participate and those who do not participate but meet the eligibility requirements of the plan. Small plans are especially prone to becoming Top-Heavy.
3. If the client company elects to terminate its Service Agreement with the PEO, the plan cannot be terminated and employee accounts may become fully vested. Distribution may not occur while a participant is employed by the client company. However, your company may elect to merge the plan assets into another 401(k) plan.

The Payroll-Deducted IRA may be a better choice than a 401(k) plan for some companies for the following reasons:

1. The contribution maximum is currently $5,000 per year. Individuals age 50 and over can contribute an additional $1,000 per year under the "catch-up provision," bringing their total contribution limit to $6,000.
2. IRAs are more flexible than 401(k) accounts. There are liberal distribution rules, and the IRA is controlled by the individual not the plan sponsor or plan administrator.

I have considered the above issues concerning IRAs and establishing a 401(k) plan and have elected to proceed with the 401(k) plan.

Acknowledged:

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Company Name

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Company Representative Date