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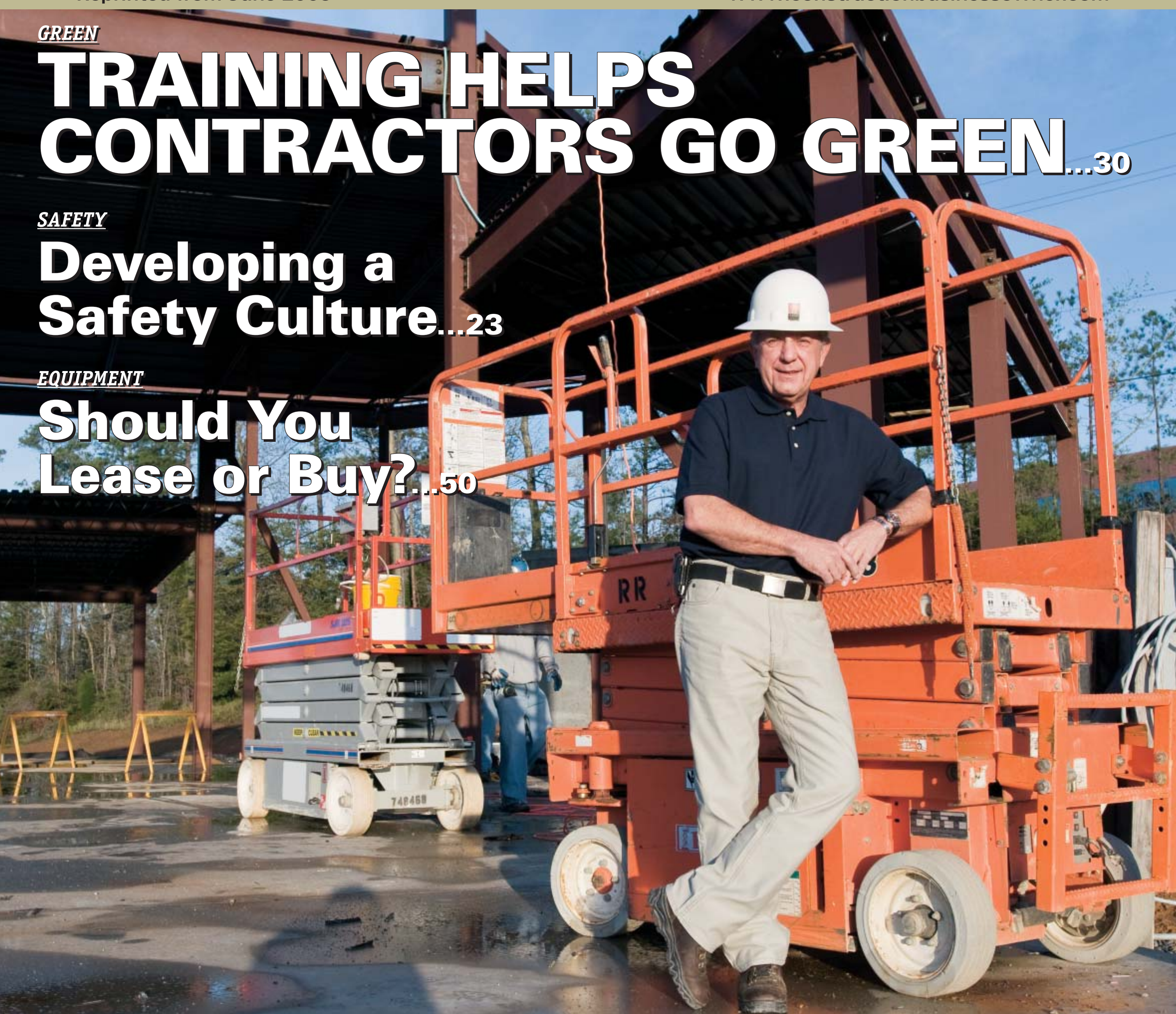

IMPLEMENT A PREVAILING WAGE RETIREMENT PLAN

by Adam Bonsky

Company owners are often frustrated over their inability to use a 401(k) to save money for retirement. Generally speaking, IRS regulations limit owners and other highly compensated employees to contributing a maximum of 2 percent more than the average contributed by all non-highly compensated employees* and if hourly employees are contributing nothing, well, the math isn't hard to do.

Business owners who do prevailing wage work and use the fringe allocation of the specified wage to set up a bona fide benefit plan for their hourly workers can use that allocation to greatly improve their own retirement benefit.

"Putting a prevailing wage retirement plan in place can really help both the company owners and the hourly workers using highly-specialized plan design," says Fringe Benefit Group's Regional Sales Director Karen deMontigny.

She cites as an example a client for whom she implemented a New Comparability plan which, in general, lets companies establish two or more classes of employees and designate higher employer contributions to select employee groups.

"This client did 70 percent prevailing wage work," deMontigny says. "They always made profit-sharing contributions at year-end for their employees. Under a traditional 401(k) plan, they were limited as to what they could contribute for themselves. By using the New Comparability profit-sharing allocation, the owners were able to put away the maximum $49,000."

There are several other ways prevailing wage contributions can be used to benefit owners and key employees. Before further exploring these concepts, a bit of background on prevailing wage laws and the advantages of setting up a bona fide benefit plan may be helpful.

> "'Putting a prevailing wage retirement plan in place can really help both the company owners and the hourly workers using highly-specialized plan design.'"

Payroll Savings Now

Federal construction contracts in excess of $2,000 are subject to the Davis-Bacon Act, which requires payment of locally "prevailing wages" including the "anticipated cost of prevailing benefits." Generally this is expressed as a per-hour wage and per-hour cash equivalent value of benefits, and is often based on a union scale. Prevailing wages are set by the U.S. Department of Labor and are included in the bid specifications of covered contracts.

Sample Calculation

Assume XYZ Construction Company has fifteen employees doing prevailing wage work. These employees work approximately 1,000 hours each per year. The fringe amount above the base rate is $4/hour and the average approximate additional payroll cost when paying fringe dollars as cash wages is 25 percent.

15 employees X 1,000 hours = 15,000 total hours

15,000 hours X $4 = $60,000 in additional payroll

$60,000 X 25 percent = $15,000 XYZ Construction Company Savings

Many contractors pay the fringe benefit portion of the prevailing wage as additional cash wages, believing it's the easiest way to comply with the law. But allocating this amount to a bona fide benefit plan or plans results in significant cost savings. Benefits that might be included in a bona fide benefit plan offering are retirement, medical, dental, vision and life insurance plans.

The reason contractors save money by offering a bona fide benefit plan is that when the fringe portion of the prevailing wage is used to provide benefits for hourly workers, this amount is not subject to payroll costs such as FICA, FUTA, state unemployment taxes and workers compensation insurance. Although there are variances in the rates for the last two, conservatively these taxes represent an additional $.25 on each dollar paid as cash wages.

The savings realized by allocating the fringe portion of the prevailing wage to bona fide benefit plans means two things for contractors: bids submitted for government work will be much more competitive, and/or their profitability will improve.

With record numbers of contractors registering to bid on federal and state contracts, competition for the opportunities presented by President Obama's Economic Stimulus package will be fierce. And it's expected that compliance with government regulations will be tightened as well, given promises of accountability and transparency for the funds appropriated.

Advantages for Company Owners

The combination of facilitating more competitive bids, offering quality benefits for hourly workers, and increasing company owners' ability to contribute to their own retirement accounts is hard to beat.

Without allocating the fringe portion of the prevailing wage to a bona fide benefit plan, most owners can't contribute anything for themselves. Or they may try, only to end up getting a refund at the end of the year, on which taxes and potential penalties must be paid.

Many company owners and traditional 401(k) plan administrators don't realize that prevailing wage contributions can be counted as elective deferrals for the hourly workers who receive them. Simply by taking advantage of this, owners of companies that do a lot of prevailing wage work can often increase their own 401(k) contributions to between 10 and 15 percent of their income.

Alternatively, if your company typically makes a profit-sharing contribution, prevailing wage contributions can count toward that amount, saving your company thousands of dollars in addition to the already-significant reduction in payroll costs. Or if your company is comfortable with a Safe Harbor plan design, which requires a minimum company match or profit-sharing contribution to all employees, prevailing wage contributions can be counted toward both the profit-sharing contributions and used to increase the amount owners and highly-compensated employees can defer.

Working with a company that specializes in prevailing wage plans and can offer personalized plan design benefits owners on many levels. A company that does profit-sharing can reduce the amount spent on contributions for hourly workers, and increase the amount owners can defer. The chance of getting a refund is eliminated, along with any taxes and penalties that would be owed. Tax savings are realized for both the company, which is not taxed on monies contributed; and the owner, who doesn't pay personal income tax on the amount contributed on his or her behalf.

Some companies may still hesitate, concerned that although they may be doing a great deal of prevailing wage work one year, this may not be the case in subsequent years. However, the plan can be easily turned on and off or adjusted from year to year to meet the needs of the business owner.

A company that has an existing 401(k) plan can still take advantage of a prevailing wage plan. A separate plan can be set up specifically for prevailing wage contributions, and at year-end the plans can be tested together for compliance. Given that most retirement providers don't support prevailing wage contributions, look for a partner with experience in this specific industry.

Getting Employee Buy-In through Education

Some contractors worry their workers will object to a benefit plan when they see the reduction in their paychecks, but the current economic climate makes that unlikely. During enrollment presentations, the bidding process is explained to workers.

Implement A Prevailing Wage Retirement Plan

Most quickly understand that savings generated by offering the plan help the company win bids, which means they're more likely to continue to have jobs. With so many workers unemployed, many for long periods of time, any objections usually disappear. In addition, the plan helps them put money away for retirement and provide medical insurance for themselves and their families, as well as ancillary benefits like vision, dental and life insurance.

In the Northeast, bidders are already competing against four times the number of contractors as they were a year ago. DeMontigny says one of her clients told her he usually sees between five and seven bidders competing for prevailing wage jobs in his industry. On the last job he bid, there were twenty two. It's more important than ever to submit the most competitive bid possible. If companies you're competing against are saving money with a prevailing wage benefit plan, and you don't have one, you're already at a disadvantage.

Many contractors view public works projects generated by the Economic Stimulus Plan as a welcome lifeline. By correctly using prevailing wage laws and contributions to their full advantage, it can also represent an opportunity for both business owners and hourly workers to build more secure futures for themselves and their families while better positioning the company to compete and grow profits. ■

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Footnote:

*If the average amount deferred by all non-highly compensated employees is less than 2 percent of their pay, highly-compensated employees (such as owners) can defer twice the average percentage deferred by non-highly compensated employees. If the average amount deferred by non-highly compensated employees is between 2 percent and 8 percent of their income, highly-compensated employees can defer the percentage deferred plus 2 percent (i.e., if the average amount deferred by hourly workers is 3 percent, highly-compensated employees can defer 5 percent of their income). If the average amount deferred by non-highly compensated employees is 8 percent or above, highly compensated employees can defer 1.25 percent multiplied by the average percentage deferred (i.e., if the average amount deferred by non-highly compensated employees is 8 percent, highly-compensated employees can defer 10 percent of their income, up to the statutory maximum of $16,500, or $22,500 with the catch-up provision for individuals who are more than fifty years-old.