

The Business Owner®

Retirement Saving Plans for Small Businesses

You want to maximize your personal retirement savings. You want to minimize personal and business taxes. You want to attract quality employees and minimize employee turn over. You want to minimize expense and maximize profit. You want to avoid complexity, paperwork, time-demands and liability risk.

This is a lot to balance. Retirement savings plans offer the promise of many of these benefits as well as risk of running afoul of the undesirables. Nevertheless, hear this – the benefits far outweigh the detriments. Recent changes in tax law and innovation of web-based plan administrators have substantially reduced cost and complexity, and increased allowable contributions and flexibility, of retirement savings plans for small businesses. SEP and SIMPLE plans cost nothing to set-up and have no annual maintenance expense. Even the more complex plans such as the profit share, defined benefit / 401(k) plans should cost small businesses no more than \$2,000 to set up and annually administer, and the IRS will allow you to take a TAX CREDIT of up to \$500 per year for the first three years of the plan.

The two primary reasons to look into a retirement plan for your business are:

1. Attract, reward and retain employees.
2. Maximize owner benefits and reduce taxes.

The only reason that you might not be interested in the above is if you are struggling for the survival of your business. Granted, you are not too worried about taxes if you are not making money, and you are not able to fund your retirement accounts if you have no funds. Of course, you need to focus first on securing the viability of the business. However, when you do, a good benefits plan will help you attract and retain employees that can also help you succeed.

Overview of Plan Options

The three types of plans available to small businesses are the Simplified Employer Pension (SEP), SIMPLE IRA and Qualified Plans. They each include the following key features:

- A. Available to any business with fewer than 100 employees (even a 1 person business).

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The Business Owner

7010 S. Yale, Suite 120, Tulsa, OK 74136

918-493-4900 • 800-634-0605 • Fax: 918-493-4924

E-mail: info@TheBusinessOwner.com • www.TheBusinessOwner.com

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The Reference Source

for owners of
small and mid-size
businesses and
the professionals
who advise them
... since 1975.

From The Editor

Free money!

In a world where everything is taxed, pre-tax deposits into retirement accounts and tax-deferred investment growth is the closest thing we're going to get to "free money". Recent tax law changes designed to boost paltry saving rates have made retirement savings options even more flexible, attractive and low cost.

This issue of *The Business Owner* presents the plan options for you and your business.

They're not just for large businesses. They're great for you. Call your financial advisor and put one in place before year-end.



David L. Perkins, Jr.

Sincerely,

David L. Perkins, Jr.
Publisher and Editor

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Editor and Publisher, *The Business Owner*
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David@DavidLPerkinsJr.com

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AREA OF FOCUS: Bankruptcy Law • Debtor/Credit Law
ssoule@hallestill.com

Kathy Piersall, A Blue Moon Arts, production editor

This publication is owned and published by David L. Perkins, Jr., LLC, 7010 S. Yale,
Suite 120, Tulsa, Oklahoma 74136; 918.493.4900; Fax 918.493.4924. Info@TheBusinessOwner.com.

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EMPLOYEES AND EMPLOYMENT/LAW

Federal Family and Medical Leave Act (FMLA)

The Federal Family and Medical Leave Act (FMLA) is a federal law that was put in place in 1993 to protect employees and their dependents from job loss or demotion resulting from the employee's need to provide short periods of intensive care for himself, herself or his or her family members.

What Employers Must Comply with FMLA?

If your business has fewer than 50 employees, you are exempt! Exempt means that you have no obligation to abide by the requirements of FMLA. If you have more than 50 employees you may still be exempt if, on the date that the employee requests FMLA leave, your company does not employ 50 or more within a 75 miles radius of the employee's workplace. Incidentally, all public sector employers, private schools and employers with federal contracts must comply with FMLA law.

What FMLA Requires of "Non-Exempt" Employers

FMLA requires that certain "non-exempt" employers provide leave (unpaid) to qualifying employees under three circumstances:

- 1. Birth, Adoption or Placement of a Foster Child with Employee** - Eligible employees are entitled to 12 weeks leave for the care of a new child or children ... in the case of twins, triplets, etc. Leave must be taken during the twelve months immediately following birth/adoption/placement, and it must be taken "all at once" (i.e. the employee is not entitled to intermittent leave or a reduced schedule of leave). The employer may request reasonable documentation to prove the existence of the covered family relationship.
- 2. Care of a Spouse, Child or Parent that has a Serious Health Condition** - Both physical and psychological conditions apply. The family member must be a spouse, child or parent of the employee. "Spouse" includes a common law marriage in states where such is recognized. A "son or daughter" means a biological, adopted, foster and stepchild. "Child" is a person under age 18, or age 18 or older and "incapable of self-care because of a mental or physical disability." Stepchildren are not considered children for FMLA leave purposes unless the employee formally adopts the stepchild. Married couples or parents of a child who are employed at the same work site are only entitled to an aggregate of 12 weeks of leave for child-care purposes, or for the care of a child, spouse or parent with a serious health condition.
- 3. Serious Health Condition that Renders Employee Unable to Perform His/Her Job** - A "serious health condition" is "an illness, injury, impairment, or physical or mental condition that involves either inpatient care or continuing treatment by a health care provider." Examples of common qualifying conditions include stroke, heart attack, cancer, appendicitis, childbirth, severe bone

Employers with Less than 50 Employees and No Federal Contracts Are Exempt from FMLA Law.

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Focus on Value Drivers to Maximize Business Value

The day will come when you want out. Given all your hard work and sacrifice, you deserve a big pay day. So, why not set yourself up today for that to happen?

As it turns out, buyers have a lot in common. Below is a list of characteristics that, when present in a business, entice buyers to pay more. Conversely, a lack of these characteristics detracts from the price received. These “value drivers” are listed in rough order of importance.

1. **Growth:** Revenue and profit growth is the number one driver of value. Establish a pattern of growth and you will establish a substantial premium for your business. Of importance as well is rate of growth relative to that of the overall economy and, more particularly, of the industry in which the company participates.
2. **Profit and Profit Margins:** Buyers buy businesses to make money. The higher the established profit, the more the buyer can and will pay to obtain those profits for his or her benefit. Profit margins are important as well. Are they higher than the industry averages? Gross and operating profit margins that consistently exceed industry averages will command higher values.
3. **Customers:** Diversification of customers and customer tenure, loyalty and credit worthiness are important considerations when valuing a business. What would the impact on the company be if the largest customer were lost? If the answer is very little, then the company has virtually no customer concentration risk and, therefore, a higher value will be merited. If the answer is substantial, buyers won't want to bear that risk without being handsomely compensated for doing so. Generally, if a company does not have a customer that accounts for 10% or more of revenue or profit, then there is little concentration risk.
4. **Management Quality and Depth:** Buyers are concerned with whether the proven profit stream will continue after purchase. To the extent the business has a diverse group of top managers and employees that will continue with the business, the buyer's perceived risk will decline. The result is a willingness to pay more for the business. Management depth, quality, tenure, experience, success record and education are all criteria of importance.
5. **Healthy, High-Growth Industry:** Industry health and growth makes it easier to grow revenue and profits. Equally as important, competition tends to be not as fierce in expanding industries. There is enough business 'to go around' ... so profit margins are higher. Find and serve an expanding industry and your job will be easier ... as will your sale price. The stronger the industry, the higher the values.
6. **Multiple Industries:** If the product or service offerings of a company are sold into multiple industries, a higher value is justified. The business can grow to

twice the size (assuming each industry niche is of equal size) and enjoy meaningful industry diversification. For example, a maker of titanium tubing has traditionally sold to industrial customers, but has recently successfully penetrated the sports equipment marketplace. This business will command higher values.

7. **Proprietary Products:** The more proprietary in nature of the products or services, the higher the value. In other words, is what you offer unique to anything offered by anyone else? Unique, of course, in a way that is meaningful or valuable to a certain customer group or groups? For example, a non-exclusive distributor enjoys little differentiation or protection from pricing pressure, whereas a manufacturer of a proprietary line of products should enjoy a more defensible market position and ... higher profit margins.
8. **Product Mix and Diversification of Gross Profit:** The greater the number of products and services the company sells, and the greater diversity of contribution to overall gross profit, the lower the risk inherent in business. Businesses with a healthy product mix and good gross profit diversification deserve and earn higher valuation multiples.
9. **Market Niche; Market Position; Brand Awareness; Identity:** If a company fills a definable niche, commands a special leadership position in a niche or niches, or has strong and favorable brand awareness in its market, the business probably enjoys higher profit and growth rates. As such, buyers will pay more.
10. **Low Debt:** While debt is not really a value driver, it substantially affects the net-cash received by the seller.

Buyers buy businesses to make money. The higher the established profit of your business, the more the buyer will pay to obtain those profits.

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Did you know that there is more to your subscription than just this newsletter? Using the password below, log in to the members-only section at www.TheBusinessOwner.com. You'll find helpful information, tips, tools and back issues. If you are a business owner with at least 2 employees and own at least 25% of your business, you can log into the Business Owner Forum and communicate with other business owners!

Password for August 1 – September 30: **Interest**

continued on next page

Focus on Value Drivers to Maximize Business Value, continued from previous page

When a business is sold, the seller basically sells the net equity of the business. Whether the sale is affected via a sale of the business' assets or shares of stock, something must be done with the debt of the business. If the buyer assumes the debt, he or she will do so as a form payment to you, lowering the cash you get at closing. Further, in an asset sale you'll owe federal and state taxes on the amount of debt assumed by the buyer. If the buyer does not assume the debt, the seller will have to pay off the borrowing WITH AFTER TAX DOLLARS.

11. **Interim Results:** Buyers are interested in what the business will do in the future. The best indication is the present. Strong current performance can justify higher prices, and a dip in performance will quickly deflate value.
12. **Off Balance Sheet and Contingent Risks:** Risk and uncertainty lower values. If elements such as the following exist, correct them ... or wait for the issue to subside ... before attempting to sell your business:
 - existing or pending litigation.
 - real or possible environmental liabilities.
 - lease problems or uncertainties.
 - industry or market uncertainty.
 - customer concentration.
13. **Future Maintenance Costs and Capital Expenditure Requirements:** For the business to earn the profits projected by the buyer, or to continue to expand, how much money must be spent? Can the existing assets and staff handle the production requirements for the foreseeable future, or will new dollars have to be spent to replace, expand or ... worst case ... relocate? Future capital expenditure needs will have to come out of future profits, lowering the value of the business.
14. **Quality of Financial Information:** Financial statements present the financial condition and performance of a company. To the extent that a buyer feels certain that these reports are accurate and may be relied upon, his or her

Revenue and profit growth is the #1 value driver.

perceived risk will be low. So, keep detailed and accurate books and records that will breed comfort and confidence in them. The result is a willingness to pay more for the business.

15. **Appearance:** Does the business "show well?" Is it attractive in appearance? Is the facility clean, painted and bright? Does the office appear clean and organized, or cluttered and unprofessional? Are the logo, marketing materials and website up to date and convey a positive, vibrant image? Just as a clean and waxed car sells for more, so will a business.
16. **A Growth Plan:** Buyers are interested in the future. Lay out a path for significant future growth and profit and ... if the buyer believes he or she can make it happen ... he or she might be willing to pay more. At times, much more.

The above list is not meant to be all-inclusive, but is fairly comprehensive in scope and touches on the key areas of value and risk typically investigated and considered by buyers of businesses. □

"You grow by exploring strength, not acclimating weakness."

TECHNOLOGY

Has Your Computer Slowed?

Has your computer slowed significantly since purchase? Spyware — programs that automatically slip into your computer and track, and report, your web activity — have become a significant problem. Spyware robs your computer of resources and slows it down. Fight back by doing the following:

1. Always run an updated version of a major anti-virus software program, such as Norton (www.Norton.com) or McAfee (www.McAfee.com).
2. Regularly update your Windows software. To do so (free) from your Internet Explorer web browser, go to the Windows update page of the Tools menu.
3. Load at least one, but preferably two or three, of the following free anti-spyware programs — Ad-Aware (<http://lavasoft.element5.com/software/adaware/>), Pest Patrol (www.pestpatrol.com/), Spybot (<http://safer-networking.org/en/home/index.html>) and Spy Sweeper (www.spysweeper.com/). □

**A CONCISE OVERVIEW
BUSINESS VALUATION
FOR BUSINESS OWNERS, MANAGERS, AND
THE PROFESSIONALS WHO ADVISE THEM**

Straight Talk that Will Help You:

- Value Any Business
- Read Income Statements and Balance Sheets
- Recognize Value "Drivers"
- Discuss and Understand Goodwill and "Blue-Sky"
- "Recast" Income Statements and Balance Sheets
- Understand and Deal with Minority and Control Positions
- Check Your Value Conclusion for Reasonableness
- Know the Difference between Individual Buyer, Financial Buyers and Synergistic Buyers
- Understand Types of Value, including:

- Fair Value	- Replacement Value	- Pay-Back Period
- Market Value	- Present Value	- Going Concern Value
- Book Value	- Future Value	- Fair Market Value
- Tangible Book Value	- Adjusted Value	- Liquidation Value



\$24.95

Written by David L. Perkins, Jr., of *The Business Owner*.

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If You Want To Sell Big, Think Big

I love creativity. You can learn a lot by studying creative companies and creative people.

When I deliver motivational speeches to corporations, I'm always looking for examples of creativity. I've learned some remarkably unique sales techniques by talking to various members of my audiences.

- Lynn endeared herself to the sellers of a 200,000 sq. ft. industrial building. She was one of several real estate brokers trying to get the listing, so Lynn drove out to the building, took smashing photos of the billboard she had installed that said, "We're ready to go!" She put them in her presentation, and the client loved it. Lynn got the listing.
- Rod had a sheet metal customer who couldn't take delivery on a \$1 million order because he didn't have a place to put it. Rod leased a building for his customer for 3 months and paid for it ... and got a customer for life out of the deal.
- Barbara, who has a plumbing and heating business, told me that word-of-mouth is the best advertising. Her company installed a furnace which was constantly in need of service ... circuit board, blower and so on. So her company decided to replace it at no cost to the customer. The customer was so happy that he told 10 people, which resulted in a lot of new business.
- Steve and his commercial real estate brokerage were invited – along with five competitors – to present to a large company, with only two days notice. He went up in a plane and took some aerial photos of the proposed site and put them in a brochure for the meeting. They were the first company to present - at 8:30 a.m. - the worst position. At 10 a.m., Steve got a call to say that the client cancelled all the other appointments. "You showed us what proactive means."
- Jay told me that once he was on a sales call in Sun City, Arizona. The customer fancied himself as a screenwriter and asked Jay to read the part of Ben Franklin's son in one of his scripts. Although it had nothing to do with their business, he complied. Twenty minutes later they wrote up the order.
- The owner of a restaurant began "School Nights" to benefit a local school, and donated a percent of total revenue from that night. A "reading program" was added which enabled teachers to give a free sandwich coupon to students that read 5 books. A Wall of Fame displayed pictures of successful students. TOTAL restaurant revenue increased 75%!
- For a highly sought after prospect, Ben discovered the client loved classical music. He burned a Mozart CD and personally delivered it. Ben got the business.
- Lance is a big believer in what I call Clip and Ship. He was recently at a father/daughter dance. Lance recognized a lot of the other dads - people that he's done business with or would like to do business with. He took photos of them with their daughters and sent prints to them. They loved the photos and remembered who sent them. Great PR!
- Mary Anne, a power company manager, makes herself available 24 hours a day, 7 days a week. During a service outage, she received a call from a customer at 2 a.m. She was at the location with a technician in the middle of the night to correct the problem. After every appointment with a prospective customer, she handwrites a thank-you note and mails it the same day. Little things mean a lot ... not true. Little things mean everything.

Mackay's Moral: Creativity creates business. □



Harvey Mackay

About the Publisher

David L. Perkins, Jr. owns, writes, edits and publishes *The Business Owner*, the newsletter of choice for more than 25,000 business owner subscribers that are serious about building wealth through successful private business ownership.

Mr. Perkins draws editorial ideas and inspiration from his daily work as a merger and acquisitions consultant, where he has advised on more than 100 purchase/sale transactions involving both private and public companies. His M&A consulting firm is Vercor, LLC, which he co-founded in 2001. Vercor has seven U.S. offices and five European affiliate offices. Vercor specializes in sell-side representation of businesses valued between \$2 million and \$75 million (see www.VercorAdvisor.com).

Mr. Perkins holds a Bachelor of Psychology degree from the University of Oklahoma and a Master in Business Administration degree from the University of Notre Dame. He has formal training in business valuation, is a Certified Business Intermediary and is a licensed real estate broker. He also editorially pulls from prior experience in commercial real estate leasing and brokerage, commercial bank lending and private company financial management.

David L. Perkins, Jr. is the author of [A Concise Overview of Business Valuation](#) and co-author of [The Business Sale. An Owner's Most Perilous Expedition](#). Both may be purchased at www.TheBusinessOwner.com.

When time allows, Mr. Perkins will accept engagements to speak to groups of business owners on topics within his areas of expertise, including buying a business, selling a business, business valuation, strategic planning and financial self-assessment for the business owner.

David L. Perkins, Jr. and his staff stand ready to serve you and yours in the following areas:

- Assistance with the purchase, sale or valuation of a mid-size private company (see www.VercorAdvisor.com)
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Tax-Sheltered Investment Accounts: Your Ticket to Paradise

Taxes are a huge drain on your wealth. Each time you earn income or realize a gain on an investment, you pay Uncle Sam. One of the only ways to plug the hole is to get investments into tax sheltered accounts — retirement savings accounts such as an IRA or 401(k). Investments in these accounts accumulate tax-free! The cumulative benefit, over time, is substantial. Here is a comparison.

The first table below shows the tax-free equivalent annual rate of return, when the taxable rate of return is 8%. If your investments are in a tax free account such as an IRA or 401(k), and your regular overall state and federal tax rate is 35%, you actually earn the equivalent of a 12.3% in your tax sheltered account. In this case, you earn an additional 54%!

Tax-Free Returns Substantially Higher

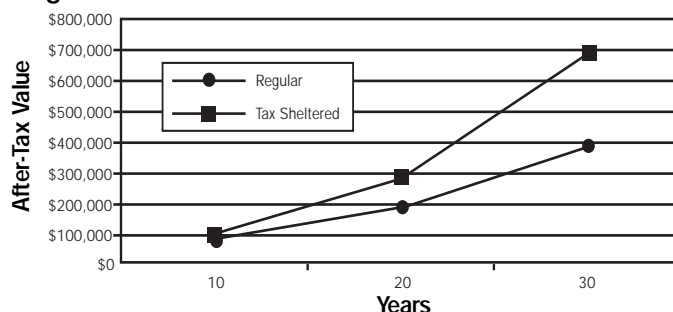
Your Overall Tax Rate	Annual Return	Pre-Tax Equivalent*	Bonus Return	Percent Increase
40%	8%	13.3%	5.3%	66%
35%	8%	12.3%	4.3%	54%
30%	8%	11.4%	3.4%	43%

* calculated via the formula $8\% / (1 - \text{tax rate})$

Over time, the impact of this additional rate of return — coupled with the pre-tax contribution allowance — can be substantial. To illustrate, let's assume that Sam puts \$5,000 of his income (after tax) each year into a regular investment account and earns, on average, 8% per year. Julie forgoes the same annual after-tax amount of salary, but because she is taking advantage of a salary reduction option in a retirement saving

plan (and therefore the dollars go into her account pre-tax), her \$5,000 after tax commitment equals \$7,692 on a pre-tax basis, given that she is in the 35% overall income tax bracket. She also earns 8%, but investment returns in her account compound tax-free. The table below shows the difference in the account balances of Sam and Julie at 10, 20 and 30 years.

Regular Vs. Tax Sheltered



Julie has done little more than take advantage of basic retirement planning options offered by the IRS and used by millions of people, but her savings is substantially higher.

It is important to note that the money in Sam's account is tax paid, so he will owe no tax on his funds upon withdrawal. Julie's money will be taxed upon withdrawal at her ordinary income rate, but we have adjusted her account balance in the table above to show the after tax value, assuming an overall tax rate of 35%. Julie's actual account balance after 30 years is \$1.064 million. The after-tax amount is the \$692,000 value used in the table. □

Retirement Plan Comparison Table

	SEP	SIMPLE IRA	Qualified Plan/401(k)
Employee Size Limit	Under 100	Under 100	No Limit
Administrative Burden	Very Low	Very Low	Higher
Cost	Very Low	Very Low	Higher
Employer Contributions	Mandatory	Mandatory	Discretionary
Max. Annual Salary Deferral	None	100% of Salary, up to \$9K ¹	100% of Salary, up to \$41,000 ²
Max. Annual Account Deposits	\$41,000	\$15,500 ³	\$165,000 ⁴
Vesting	Immediate @ 100%	Immediate @ 100%	Employer's Discretion
Hardship Withdrawals Allowed	No	No	Yes
IRS/Non-Discriminatory Testing	No	No	Yes, Once per year

¹ 2004 amount if under 50 years of age. \$10.5K if over 50.

² 2004 amount

³ 2004 amount if employee is over 50 and defers his or her maximum (\$10.5K), and employer matches 3% and employee's salary is the maximum allowed, \$200K.

⁴ Assumes Defined Benefit (DB) Plan, 2004 limits.

"Do not seek to follow in the footsteps of the old; seek what they sought."

Matsuo Basho (1644-1694)

Retirement Saving Plans for Small Businesses, continued from cover

- B. Businesses may expense ("deduct") contributions that it makes to retirement accounts of employees, in the year of contribution.
- C. Contributions are not taxed as income to employees (i.e., contributions are made pre-tax).
- D. Owners of the business may participate just as any employees, as long as he or she is an employee or has earned income from the business. This means that virtually any business entity type will apply just the same, sole proprietorship, LLC, S-Corp, C-Corp., Partnership, etc.

SIMPLIFIED EMPLOYER PENSION (SEP)

The SEP is a simplified method for an employer to offer a plan and contribute to retirement accounts of employees. It allows the employer to deposit contributions directly into traditional IRA accounts of employees, eliminating the need for the employer to manage and invest monies for employees and deal with the more complicated and costly requirements of other plans. Virtually all employees must be included in the plan; and vesting is immediate for all employees (i.e., employees can take their money, all of it, at any time). Employees cannot contribute a portion of their own salary, however, so there is no matching component. Employees may set up their own IRA (separate from their employer-sponsored SEP-IRA) and make contributions to it.

Eligibility: Each employee 21 years of age or older who has worked for the company for three of the last five years and earned more than \$450 in the current year must be included in the plan and receive the employer payments.

Flexibility: All employees who meet the above-described standard (a very low one) must be included. Contributions do not have to be made every year, but when contributions are made, they must be based on the same formula for each employee.

Contribution Limits: The employer can elect to contribute to each employee amounts up to 25 percent of annual salary, to a maximum of \$41,000 (2004).

Other: Any business may set up a SEP, and there is no business size requirement. Your bank, brokerage firm or insurance agent should be able to help. Employers may have a SEP in addition to a qualified plan such as a profit sharing and/or 401(k) plan.

SAVINGS INVENTIVE MATCH PLAN FOR EMPLOYEES (SIMPLE IRA)

This plan is similar to the SEP in that it is simple and inexpensive to set up and maintain, and contributions are made directly to IRA accounts of employees. It is different from the SEP in that employees may allocate portions of their salary to be deposited (called "salary reduction contributions") and employers only have to contribute to an employee account if the employee does so. The employer match is mandatory.

Eligibility: Any employee who is reasonably expected to receive \$5,000 in the current calendar year and received \$5,000 or

more during the two prior years may participate. The employer is generally required to match employee salary reduction payments, dollar for dollar, up to three percent of compensation.

Flexibility: Employers may choose a less stringent employee qualification standard, but not a more stringent one. Employers may lower their matching contribution to less than three percent (but no less than one percent) in any two years of a rolling five-year period.

Contribution Limits: Employees may contribute up to 100 percent of their pay, up to \$9,000 if under 50 years of age in 2004 (\$10,500 if over 50).

Other: Many banks, insurance agents and brokerage firms can help you with set up. Employers cannot have any other plan in addition to a SIMPLE. Salary reduction contributions are subject to Social Security, Medicare and unemployment (FUTA) taxes. Matching contributions are not.

Note: If your company currently has a 401(k) plan, you can adopt the cheap and easier SIMPLE IRA account structure if you meet the employer size limits. The "SIMPLE 401(k)" is still a qualified plan, however, and must meet the other requirements of the qualified plans.

QUALIFIED PLANS

Also called H.R. 10 plans or Keogh plans when covering self-employed individuals, qualified plans are more complex and costly than SEP and SIMPLE, but offer the employer increased flexibility in design and increased contribution limits. There are two types of qualified plans — Defined Contribution and Defined Benefit.

- A. **Defined Contribution (DC) Plans.** Allow the employer to contribute amounts to employee retirement accounts equal to 100 percent of salary, not to exceed \$41,000 (2004) per employee. There are two types of DC plans:
 - a. **Profit-Sharing Plan:** A plan for sharing your business profits with your employees. A pre-set contribution plan is not required as long as contributions are "regular and substantial." Distributions of contributions must, however, be made to employees on a pre-established formula. Employee forfeitures that occur with vesting schedules can be re-allocated to employees based on the pre-set allocation plan or be used by the employer toward future contributions. In addition, employers can include a 401(k) component to their profit-sharing plan. Doing so allows employees to elect to make salary-reduction contributions. The 2004 limit on elective deferrals is 100 percent of salary up to \$13,000 if the employee is under 50 years old; \$16,000 if over 50. 2005, the limit is \$14,000/\$18,000. 2006, it's \$15,000/\$20,000. Salary reduction contributions are subject to Social Security, Medicare and unemployment (FUTA) taxes. Matching contributions are not.

continued on next page

Retirement Saving Plans for Small Businesses,
continued from previous page

b. **Money Purchase Pension Plan:**

Contributions are fixed and not based on your company profits. For example, you will contribute to each employee's account an amount equal to 10 percent of his compensation, annually. Employees may NOT elect to make salary-reduction contributions.

B. Defined Benefit (DB) Plans:

Contributions are based on what is needed to provide established, definitely determinable benefits to plan participants. Actuarial assumptions and computations are required to figure these contributions, so experts must be engaged on a regular basis. Employee forfeitures, which occur when employees leave before they are fully vested, cannot be distributed to employee accounts but rather are used by the employer to meet future contribution requirements. Annual contributions of up to \$165,000 are allowed in 2004! Employees may NOT elect to make salary-reduction contributions.

Benefits Paid To: Employer's that have any of the above Qualified Plan variations may craft their own employee eligibility requirements as long as they do not discriminate between employees and owners. As such, Qualified Plans offer the ability for employers to exclude more employees than do the SEP or SIMPLE.

Other: Set-up of a Qualified Plan requires more extensive documentation and cost. Most companies adopt master or prototype plans made available by plan providers and pre-approved by the IRS. There are many Qualified Plan/401(k) plan administrators. Call your banker, investment advisor or insurance agent. Fidelity manages the largest amount of retirement plan assets. The Principal has the most small business accounts.

NOTE 1: A 401(k) plan is an elective component of a Qualified Plan. It is simply a provision that allows the employee to elect to instruct his employer to make salary-reduction payments to his retirement account. Employers may elect to match, but are not obligated to do so.

NOTE 2: A SARSEP is simply a SEP set up before 1997 that includes a salary reduction arrangement. SARSEPs can no longer be set up, but old ones are allowed to continue to exist. ☐

Business Owner's Toolbox

U.S. Small Business Administration

www.SBA.gov

The U.S. Small Business administration offers a bevy of programs to support the small-business owner, including special programs for minority-owned businesses, military supply businesses and export assistance. It assists small businesses that wish to sell to the U.S. Government, and offers debt finance programs that every small-business owner should consider.

Management Training

www.amanet.org

The American Management Association provides practical training and business tools needed to improve individual and organizational performance — and achieve bottom-line results. Seminars, conferences, current issues forums and briefings, as well as through AMA books and publications, research and print and online self-study courses.

Online Business Valuation Calculator

www.TheBusinessSale.com

Although the editors of *The Business Owner* don't recommend making any decisions based on "quicky" valuation mechanisms of any type, there is nothing wrong with having a little fun. This website seems to be a pretty good one, and it probably gets you in the ballpark.

Web-Based Comparison Shopping — Easy, Saves Money

Looking to buy a new computer, car, truck, furniture, projector, golf clubs? Identify what you want, then comparison shop. It's easy and saves money. Here are the best sites:

www.Shopping.yahoo.com

www.Shopping.com

www.BizRate.com

www.PriceGrabber.com

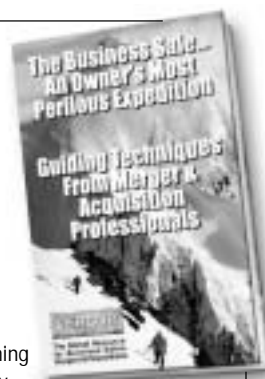
www.Froogle.google.com

The business sale process is a mountain of uncertainty. The right guide is critical for maximizing the selling price of your company.

The Business Sale...An Owner's Most Perilous Expedition provides practical steps to navigate an owner through the uncharted journey of selling a business.

It reveals tactics to help sellers:

- Understand the role of professional advisors.
- Maximize your chance of success with strategic pre-sales planning
- Prepare your offering documents to best position your company
- Avoid common pitfalls that plague inexperienced sellers
- Evaluate the different types of buyers
- Learn which tangible and intangible assets can elevate value
- Chart a course through sensitive negotiations
- Sustain momentum
- Properly structure the deal



\$24⁹⁵

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Pros and Cons of Small Business Retirement Plans

SEP

Pros

- Very low cost to set-up and maintain.
- High annual tax-deductible retirement limits (\$41,000 in 2004).
- Even a one-person company (sole proprietor) can set up.
- Very little IRS scrutiny.
- Annual employer contributions may be skipped, on occasion.

Cons

- Employer must contribute to retirement accounts of ALL employees.
- Employees may not contribute a part of their paycheck to their SEP account.
- Employees vest immediately, so there is no “golden handcuff” component.
- Accounts do not permit “hardship” withdrawals for health or financial crisis.
- Only for employers with 100 or fewer employees.

SIMPLE

Pros

- Very low cost to set up and maintain.
- Employees may elect to have a portion of their salary contributed, pre-tax, to their account.
- Employers only required to contribute to accounts of employees who themselves elect to contribute (typically 35% of all employees)
- Available to a even a one-person company (sole proprietor).
- Very little IRS scrutiny.

Cons

- Lower annual tax-deductible contribution limits.
- Employers must contribute every year, without exception.
- Employees vest immediately, so there is no “golden handcuff” component.
- Accounts do not permit “hardship” withdrawals for health or financial crisis.
- Only for employers with 100 or fewer employees.

Qualified Plans

Pros

- Annual employer contributions not mandatory.
- Generally enable larger annual tax-deductible retirement account contributions.
- May allow for more stringent employee qualification requirements.
- May allow for longer-term vesting (i.e., golden handcuffs).
- 401(k) plan does not require employer matching.
- No employer size limit.

Cons

- Higher set up and administration costs.
- Subject to more stringent IRS scrutiny, compliance and penalties for non-compliance. □

Ask the Expert

Matt Henderson, owner of Henderson Financial Group, Inc. and long-time benefits consultant, offers the following comments regarding retirement benefits plans for small businesses.

“If either tax reduction or employee retention is important to you, a retirement plan is a great option. Recent IRS regulation changes and marketplace competition have made expense a non-issue in many cases. The SEP and SIMPLE plans cost almost nothing, literally, to set up and administer. In choosing between the two, many of my clients complain that the SEP is too much of an entitlement plan. Employees come to expect it. The SIMPLE offers a ‘we’ll help you if you help yourself plan.’ For that reason, it’s a more popular choice with my clients.

If you earn above-average profits and you are willing to bear a little higher expense to reduce taxes, boost your retirement savings or reward loyal employees, the profit-sharing, 401(k) and/or defined-benefits plans can offer substantial benefits.

If you have a primary or side business that is profitable and your only employees are yourself, your spouse, parent or child, do the new Solo 401(k). It’s a no-brainer.”

Mr. Henderson is an advisory board member of *The Business Owner*. He can be reached at Matt.Henderson@GoHenderson.com or 918-428-LIFE. □

“Partnership is not about equal opportunity employment. It is about a soul mate.”

Alan Weiss

The SOLO 401(k)

Is your company a one-man band? One-woman band? If so, you have plenty of company. The U.S. Census bureau reports that 70 percent of all U.S. businesses have just one employee – the owner. With the recent tax law changes, you are no longer left out of the retirement plan gravy train. In fact, you have been put on the fast train.

The new single-owner business retirement plan has become known as the “Solo 401(k),” also referred to as an “Individual 401(k).” It has the high annual tax-deductible contribution limit as with the SEP, but allows this maximum to be reached at much lower income levels. The cost and administrative burden is substantially less than the traditional 401(k).

The chart below compares the maximum contributions available in 2003 for the two primary small-business retirement plan options. The chart presumes that the business is incorporated and reflects both the maximum employee and employer contribution components.

**Comparison of Retirement Plans
Maximum Contributions (2003)**

Business Owner Wages for 2003	SIMPLE	SEP	SOLO 401(k)
\$20,000	\$8,600	\$5,000	\$17,000
\$40,000	\$9,200	\$10,000	\$22,000
\$60,000	\$9,800	\$15,000	\$27,000
\$80,000	\$10,400	\$20,000	\$32,000
\$100,000	\$11,000	\$25,000	\$37,000
\$112,000	\$11,360	\$28,000	\$40,000
\$120,000	\$11,600	\$30,000	\$40,000
\$140,000	\$12,200	\$35,000	\$40,000
\$160,000	\$12,800	\$40,000	\$40,000

The \$40,000 contribution limit (\$41,000 in 2004) may be achieved by any implementation of the available profit share and salary deferral components of the Solo. The employer profit-share portion can equal 25 percent of salary, up to a maximum allowable salary of \$205,000. Salary deferrals equal to 100 percent of salary may be taken, for a maximum contribution of \$12,000 (2003).

Profit-share contributions are tax deductible, regardless of the type of legal entity. All contributions to retirement accounts are pre-tax, and employer

contribution portions are not subject to social security tax or self-employment tax.

The Solo 401(k) is only for businesses that have no employees outside of the owner, immediate family members of the owner or employees that meet any of the following criteria:

- persons under 21 years of age.
- person with less than one year of service.
- work fewer than 1,000 hours per year.
- union employee.
- nonresident alien.

In short, the owner of a business may have employees and still install a Solo 401(k) ... as long as each employee fits into one of the above criteria.

If you and your spouse are actively involved in your business and have sufficient business earnings, both of you may be able to contribute and deduct up to \$82,000 for retirement in a single year.

Question: *If I have a side business, will a Solo 401(k) benefit me, even if the business doesn't make much income?*

Yes. A side business is a prime candidate for a Solo 401(k). A traditional employee, if he or she has a side business, may now make additional deductible retirement contributions very rapidly via a Solo 401(k) plan. With just \$20,000 of income from your side business, you may be able to deduct up to \$17,000 and only pay income taxes on the remaining \$3,000. The rapid deductible contribution rate (in this case, 85 percent) can be very appealing to those wanting to save more for retirement, particularly if the income generated from a side business is not required for their immediate needs.

Maximizing Your Solo 401(k): A 'Side Business' Example

Bill is an employee of a corporation at which he has been contributing the maximum amount to that company's 401(k) plan (currently, \$13,000). Bill is also the sole shareholder of a corporation that he created five years ago for a side business. That business currently generates \$40,000 of income, and Bill

doesn't need the income to support his family's routine expenses. If Bill establishes a Solo 401(k) for the corporation, he can contribute an additional \$23,000 this year toward his retirement:

Salary deferral (max)	\$13,000
Employer contribution (25% of \$40,000)	\$10,000
TOTAL Solo 401(k) Contribution	\$23,000

With these additional contributions, Bill can nearly triple the total amount he contributed to retirement plans in 2003 (i.e., \$13,000 in 2003 with his primary corporate job and \$36,000 in 2003 with both his primary job and his side business). Bill will only pay income taxes on the remaining \$18,000 of the \$40,000 of income earned from his side business.

However, Bill can do better. If Bill's wife, Betty, is involved with the business and earns a salary of \$10,000, she can contribute her full compensation as salary deferral. The total contributions for Bill and Betty would be calculated as follows:

Salary deferral (Bill)	\$13,000
Salary deferral (Betty)	\$10,000
Employer contribution - Bill (25% of \$30,000)	\$ 7,500
Employer contribution - Betty (25% of \$10,000)	\$ 2,500
TOTAL Solo 401(k) contributions	\$33,000

Bill and Betty will now pay income taxes only on the remaining \$7,000 of income generated from their side business and they'll avoid current income taxes on \$33,000 of the business income. Combined, they will contribute \$46,000 toward retirement in 2003 (\$33,000 from the side business and \$13,000 from Bill's primary job)!

Conclusion

The new Solo 401(k) plan offers small business owners a practical way to rapidly contribute toward retirement and drastically reduce income taxes. While not everyone may qualify for a Solo 401(k), those who do can enjoy substantial benefits. □

Logo and Look: Selecting the Visual Elements that Support Your Brand Vision

Developing a professional image and implementing it consistently is essential to establish an identity that others quickly recognize and remember. Your logo is an important element of that effort. Granted, your logo is just one of your many branding efforts, but it is important . . . just as is everything you do, say, print and display. All these things either develop or detract from your brand "image."

Your Logo

Much emphasis is placed on the logo as the visual identifier for a company. Many companies get caught up in trying to create the "perfect" logo — something that represents and conveys every aspect of their business strategy at first glance. They think that the right icon will become the next Nike Swoosh™. True, a good logo can help create customer recognition of your company, but it can't explain your business. It doesn't create the personal experience that is the foundation of brand awareness. To create the kind of awareness that enables a logo to stand on its own takes a great deal of resources.

Small businesses need an appropriate logo, one that suits their industry, company and personality. They shouldn't try to capture every detail of their business vision, values and strategy. It's only a piece of the entire ensemble — like a broach or cuff links.

Think Personality

Before selecting a logo image, think about what kind of brand personality you want to project: Formal? Serious? Bold? Energetic? Capable? Light hearted? High tech? It's also about your customers. Who are you targeting? What kind of image will appeal to them? Check out your competitors. What kind of images are they using?

Then ask yourself, will your business processes support the kind of image you've chosen? Make sure all your employees understand what your image means to them and how they should present themselves and interact with customers. Make sure you can deliver

what you promise — be it service, great products or panache.

Have Your Logo Professionally Created

Your logo will be a very visible cue of your organization. Have it professionally created by someone who understands the requirements of the many forms in which your logo will be used — print, projection, display, broadcast and even embroidery. Each deals with color in a different way. Some colors can be displayed but not printed and vice versa. Consider the different sizes that your logo must be reproduced. A busy image that looks great on a large display probably won't look good when reduced to a tiny image on your business card. Further, how will customers emotionally respond to your visual image? Do the colors elicit the response you desire?

Think Long Term

Colors go in and out of style. Icons or characters which are "in" today may soon be VERY "out". Brands that have endured have used more universal images: AT&T uses a globe; Coca-Cola just uses its name; Disney uses its name and its characters (Mickey Mouse, etc); and Prudential uses the rock. All of these are enduring images. They are also brands that consistently live up to their broader image in the marketplace.

Think Globally

Are you planning to sell internationally? The implications of images differ from culture to culture. Make sure your image carries the right cultural connotation in the countries where you plan to do business. For example, the rural American mailbox icon used in early e-mail systems had no meaning in most other cultures.

Think about the Whole Graphics Package

Everything that is used around the logo also contributes to the image — color schemes, fonts, graphics, flow charts and web icons. Are all of these consistent with your brand vision? Do they all support

both the explicit and implicit aspects? The overall look of marketing brochures, documents and presentations contributes to the overall "brand image." Here's where one of today's biggest problems lies.

The proliferation of desktop publishing software has taken brand image from the hands of trained graphic designers and placed it with many "do-it-yourselfers." Start-up and small companies often choose this route in an effort to save money. More often than not, the result is unprofessional, unorganized and an inconsistent "look and feel," or "cookie cutter" templates that don't provide any uniqueness. We have all seen presentations, web sites and marketing materials that look different depending on which employee created them. They often combine a rainbow of colors, multiple fonts, overused clip art and busy backgrounds that detract from the message.

True, desktop publishing has made it easy for anyone to create their own presentations, letters and other documents, but it hasn't given them the training in design principles, printing and presentation techniques. If you are serious about your business, get serious about your branding.

The Big Picture

When it comes to branding, remember that it is not a part-time endeavor. It is not as easy as creating a logo and a tag line. These things are important, and you need to get them right, but your company "persona" develops from everything you do. Your executives and employees are ambassadors of your brand. How they interact with customers, how they behave in the business setting and sometimes personally, even how they look, impact your company's image.

Whether we like it or not, people make judgments about us based on personal image. Just as they'll make a decision about another person in about 20 seconds, based on image, so, too, will you and your business be judged. A compelling message can miss the mark if the audience is distracted by the wrong kind of image.

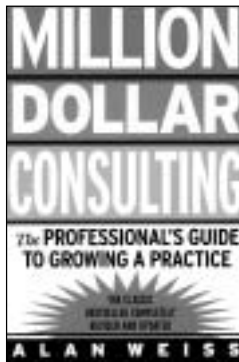
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Book Review: *Million Dollar Consulting*

By Alan Weiss (McGraw-Hill)

Most every business today is primarily a service business. You consult within your area of expertise, helping clients get more of what they need — quicker, faster and cheaper. This book IS for you, and it will help you become more successful and profitable.

As Mr. Weiss says, “This book is about movement and progress. It is for entrepreneurs who want to build a blazingly successful business.” By “successful” he means as he has done — consistently earn seven figures per year, lead



the good life, work smart and not hard, and generate the money required for both retirement and for living well now, today, in the present.

Excerpts from *Million Dollar Consulting*:

- A consultant is someone who provides value ... through specialized expertise, skill or resources ... via assisting a client in improving the status quo in return for mutually agreed-upon compensation.
- Consultants bring one or more of the following to move the client from their status quo to an improved condition: information, expertise, knowledge, behavior change, special skills and contacts.

- Most consultants spend too much time on unnecessary information gathering prior to submitting a proposal. Conceptual agreement is all that's needed to make a proposal.
- Provide choices, each that lead to hiring you.
- Most products today are commodities. You must bring more than products to add real value and earn higher profits.
- Emphasize results, not tasks. Get the customer focused on the value you add. Charge a percentage of the value you add.
- Charge on perceived client value, nothing else.
- It is better to move when you're 80 percent ready and make up the other 20 percent while you're moving. The delay in waiting for the final 20 percent is dysfunctional and adds little value to the buyer.
- Every interaction with a prospect should be seen as a personal moment of truth, and you should be thinking of the fourth sale, not the first.
- How much you bill is not relevant. The only thing that matters is how much you keep.
- Your approach should not be to knock people's doors down and prove yourself. You should create attraction in various ways so that prospects approach you and ask if you might be able to help them.
- If you never accept an assignment that calls for you to do something you

haven't done before, you will never earn significant money.

- Fees should never be established at a level designed merely to acquire the business to compensate for low-buyer commitment. No one will be pleased with the outcome.
- A special product may make you competitive. Differentiated services may make you distinct. Only carefully crafted relationships will create breakthrough success.
- Always require an up-front fee. Also, offer a discount for paying for the entire project up front. You'll be amazed at how many will take it.
- When negotiating, concede nothing without getting something in return ... or lose credibility and profit.
- The earlier and more aggressive you establish high fees, the richer you will become.
- The absolute indicator of when to raise fees is when the value has increased in the eyes of the client.
- Successful consultants ask for two things after a successful engagement: What other people do you know who can use these same services? May I use you personally as a reference?
- If you don't blow your own horn, there's no music. ☐

This book is about movement and progress. It is for entrepreneurs who want to build a blazingly successful business.

Logo and Look: Selecting the Visual Elements that Support Your Brand Vision, continued from previous page

This article is the third of a nine-part article series on branding called *The ABC's of Small Business Marketing*. Coverage will include the natural offshoots of branding: marketing, advertising and selling.

May-June 2004 Issue: *Your Marketing Message: Back to the Drawing Board*

July-August 2004: *Avoid Marketing Mayhem: Establishing Your Brand Vision*

> This Issue: Sept-Oct '04 Issue: *Logo and Look: Selecting the Visual Elements that Support Your Brand Vision*

Nov-Dec '04 Issue: *Tag Lines and Ad Copy: What You Say Should Support Your Brand Vision*

Jan-Feb '05 Issue: *Guided Missile Marketing: Selecting Mediums with Maximum Payload*

Mar-April '05 Issue: *Marketing for Dummies? Build in Quality Control*

May-June '05 Issue: *Master Your Marketing: Monitoring and Feedback Enable Continuous Improvement*

July-Aug '05 Issue: *Creative Creatures: Working with Marketing, PR and Ad Professionals*

Sept-Oct '05 Issue: *Win the Marketing Game: Be Proactive or Perish* ☐

Jean Wilcox and Jane Cameron contributed their expertise to this article series. They are partners of CattleLogos Brand Management Systems, LLC and co-authored Abullard's ABC's of Branding.

Plugging the Hole of Customer Defection

Lost customers represent one of the biggest sources of profit hemorrhage. Some studies suggest that businesses lose, on average, 30% of their customers each year. If you are a heart surgeon, you might not depend on repeat business. But most businesses make their money from returning customers. Attracting and securing new customers is just far too expensive. In fact, a study published in the *Harvard Business Review*

Returning customers are five time more profitable than new customers.

calculated that, on average, existing customers are five times more profitable than new customers.

So to be successful, businesses must find ways to create loyalty. Otherwise, they'll remain stuck on the treadmill, spending a considerable amount of time and money replacing lost customers rather than

growing. One way to reduce customer attrition is to provide great products and services to all customers. Of course ... but wouldn't it be nice if you knew when a PARTICULAR customer was about to defect? Then you could give some special attention and turn him around.

Until recently, tracking customer behavior was just too daunting for most businesses. But today, with the plummeting cost of computer hardware, software and disc storage space, the task

can be a very profitable one.

Businesses must find ways to create loyalty so they can grow rather than just replace customers.

It entails tracking customer usage patterns and identifying changes in those patterns. Basically, you look for patronage frequency that is abnormal or extends beyond what has been established. What is "abnormal" is customer specific, based on the particular customer's own historical pattern of patronage. For example, if you have a customer who visits once a week, on

average, with a typical variance of one week (i.e., two weeks maximum gap between patronage), you'd have to consider him "missing in action" if three or four weeks go by without a visit. Again, the key is to find actionable information based on a customer's individual frequency of visits and not arbitrarily on the shopping patterns of some mythological "average customer."

Of course, customers break behavior patterns for lots of reasons that have nothing to do with you — vacation, illness, new job, etc. — so you have to be careful.

You've Spotted One. Now What?

When a customer goes MIA, the immediate task is to get the customer back. Contrary to popular belief, it's not that hard. He already has a relationship with you. He knows what you can do for him, and he has patronized you in the past, above others, for a reason. Time is of the essence, however. You must entice him back, or address the issue that is causing change, before he establishes a new pattern of behavior that does not include you.

Experts claim that if you discover that someone's MIA and within a few weeks begin a campaign to get him back, you have

a high probability of success. If you let six months go by, the odds are stacked against you.

For a cigar store, action might mean sending him an invitation to an exclusive "showing" of a new product. For a supplier of educational supplies, it might be the same ... or an invitation to a seminar on a new teaching method. For businesses that have fewer but larger-dollar customers, it might be a personal phone call or visit.

Plug the Hole

Include in your program methods for obtaining feedback from MIAs. What is causing defection? Then use the information to "plug the hole."

Loyalty Comes from Real Relationships that Deliver Value

Implementation of a customer retention program is usually combined with a "loyalty program." These programs, like the frequent-flier miles programs, usually allocate points, rebates or awards for patronage, usage or purchases. Loyalty programs don't work if they're based on marketing gimmicks. They work only if they help build genuine relationships. Loyalty is about the customer experience each and every time the customer returns.

Consultants who specialize in implementation of loyalty programs, designed to reduce customer defection, should be able to design a program for a single-location business for around \$2,500. Then there is usually a monthly maintenance fee in the \$300 to \$500 range.

Is it Worth the Time and Money?

An effective customer retention program is an incredible competitive advantage. While all your competitors' customers go through the revolving door at a rate of 30% a year, you're at 10%. Not only are your customers more profitable because they are almost all repeat customers, but you also deny your competitor his normal flow of your defections. Eventually you'll end up with the lion's share of the market — booking superior profits via repeat business and able to afford further improvements to your offerings and your customer attraction and retention programs. □

Dave Williams (DWilliams@LoyalTec.net), founder and President of LoyalTec, LLC (www.LoyalTec.net), contributed his expertise for this article. LoyalTec helps retailers increase their profits by leveraging their own customer data to increase customer value, retention and referral activity. Free white papers on this topic can be found by clicking on 'Resources' at www.LoyalTec.net. Other loyalty program providers include Givex (www.Givex.com) and Seibel (www.Seibel.com).

"Whether you think you can do it or think you can't, you are right."

Federal Family and Medical Leave Act (FMLA): An Overview, continued from page 3

breaks and spine injuries. Conditions that are not generally considered “serious” include voluntary or cosmetic treatments, common cold, flu, ear aches, upset stomachs, minor ulcers, headaches other than migraines, routine or orthodontic problems, etc.

What is a “Qualifying” Employee?

To be eligible for FMLA leave benefits, an employee must have worked 1,250 hours for his non-exempt employer ... and those hours must have been within 12 months of the request for leave. Thus, an employee who works 40 hours per week will become eligible in approximately eight months.

Employees Must Apply in an Acceptable Manner

Employees are obligated to notify their employer in a timely manner of their need for FMLA protected leave. The employee is not required to mention FMLA, but simply a qualifying reason for requesting leave. The employer may deny the request if the employee does not reasonably communicate and cooperate with the employer throughout the leave request and approval process; give reasonable notice when such is possible; or fails to provide medical information that supports a leave request.

Employer Obligations

Employer requests for leave request verification and documentation should be made in writing within two business days of the employee's request. If the leave was unforeseeable, the employer should request certification within two business days after the leave begins. Certification requests must include notice of the consequences for failing to provide adequate certification. If an employer deems submitted certification information insufficient, the employee needs to be given a reasonable amount of time to cure any deficiency. Finally, the employer should document all communications with employees relating to FMLA leave requests.

Reinstatement of Employees who Take FMLA Leave

Non-exempt employers are obligated to restore the employee returning from FMLA leave to his same or an equivalent position, and the employee must not lose any accrued seniority. An “equivalent position” is one that is virtually identical to the employee's former position in terms of pay, benefits and working conditions including privileges, perquisites and status.

“Key-Employee” Exemption

A “key employee” is one who is among the highest paid 10 percent of employees employed within 75 miles of the employer's worksite. Under this exemption, a key employee may be denied job restoration if his or her restoration would cause “substantial and grievous economic injury” to the operations of the employer. When such a determination has been made before the conclusion of the key employee's leave, the employer must give written notice to the key employee of intent to deny reinstatement. The notice must enumerate the reasons for the determination.

Employers Must Post FMLA Information

FMLA requires non-exempt employers to post notices that

explain to employees the provisions of FMLA and procedures for filing leave requests and complaints. These postings should be at each worksite, large enough to be readily seen by employees and applicants for employment. Obtain posters at your State Department of Labor. If the employer provides any written guidance to employees concerning employee benefits or leave rights in an employee handbook, information concerning rights and responsibilities under FMLA must be included.

Fitness for Duty and Certification for Return

Employers may require that employees returning from an FMLA-qualifying leave for their own serious health condition(s) obtain medical certification indicating that he is able to resume normal work. If the employer requires such, the employee must provide certification from his or her own health-care provider. Certification must indicate that the employee is capable of returning to work at his or her normal job and position.

Intermittent Leave

When necessary, a qualifying employee may take up to 12 weeks of leave on an intermittent basis (rather than in one single block of time) because of his or her own serious health condition or that of a family member. Whenever medically necessary, an eligible employee has a right to take leave that results in a reduced weekly or daily work schedule. Employees must attempt to schedule their intermittent or reduced leave so not to disrupt their employer's operations. The employer may require the employee to transfer temporarily to an available position for which the employee is qualified and which better accommodates recurring periods of leave. The alternative position must have equivalent pay and benefits.

Watch Out for State Family Leave Laws

Most every state has its own set of family leave-related laws. They will differ from federal law. As an employer, you need to comply with both the state and federal laws. Find details at the Department of Labor of your state, or contact an attorney that specializes in employment law within your state.

Risk of Non-Compliance

If your company is not exempt and you fail to provide leave as validly requested by a qualifying employee, both you (individually as an officer of your company) and your business may be held liable. In fact, all officers and managers of your business may be held personally liable for failure to provide FMLA prescribed benefits to an employee. Damages may include wages lost by the employee, attorney's fees and costs incurred by the employee, and punitive damages equal to two or three times actual damages. □

Michael J. Lissau contributed his expertise to this article. He is an attorney with Hall Estill and specializes in Labor/Employment. He can be reached at mlissau@hallestill.com.

Non-compliance could result in liability to officers and managers, individually.

Succession Leap Can't Be Made Alone

"Remember," I advised my friend Marcus, "The most dangerous thing in the world is to try to leap a chasm in two jumps. That's a quote from David Lloyd George."

"Isn't he some whackadoodle singer with an identity crisis?" Marcus asked. He was listening with half an ear while he scribbled notes on a Carolina Moon Café napkin.

"No, you're thinking of Boy George," I said. "Lloyd George was prime minister of England during the First World War."

"Yeah, well, I have a little trouble seeing how that's relevant to my problem," he muttered. "Now if the history lessons over, can we go back to work on this strategy for getting my sons ready to take over the marina?"

Marcus and I had been meeting at the Carolina Moon every other week for nearly three months, trying to hammer out a succession-planning framework. He refused to meet at his office because he didn't want his senior managers to know he was planning to retire.

He refused to have his sons and other key people attend our meetings because he didn't want to dilute his control of the process.

"We're working," I said, "but we're not making much progress because you're not willing to make commitments." "What are you talking about? I'm committed to retiring, and I'm committed to putting my sons in charge of the business. I just want to take it slow and easy, that's all."

"Marcus, you define 'slow and easy' as not telling anyone what you want to do, but expecting other people to commit to a plan sight unseen while leaving you the option of pulling the plug whenever it strikes your fancy." He stared thoughtfully at the ceiling for a moment.

"Look," I said, "planning for succession in a family business isn't a one-person show. In the first place, the plan is going to be a lot stronger if you have several people with informed perspectives contributing to it. Your sons, presumably the next owners and managers of the business, should certainly be in on the planning."

"I don't need to hear from them because I already know how they think about things," Marcus snorted. "Besides, they're the type who want to talk everything to death."

"But don't you expect them to make firm commitments to running the marina profitably so you can retire in fine style? Wouldn't you be disappointed if they came to you in five years to say you can have the business back because they've decided to move to Tahiti?"

"Disappointed?" His eyes widened and his nostrils flared. "Why, I'd ..."

"Calm down," I said. "My point is that you want all the commitment to continued family ownership and management of the business to flow in one direction. You expect your sons, your employees and other people to make promises and stand by them. But you want the luxury of making half a promise yourself and then deciding whether to go the rest of the way. That won't work, Marcus."

He stared at me, and I could see some human arithmetic being worked out behind his eyes. "You mean, it's like leaping a chasm in two jumps?"

"The most dangerous thing in the world," I nodded. "Keeping that business of yours in the family, for your sake as well as your sons', has got to be a cooperative effort. You can't expect to succeed if you try to do it all by yourself, just for your own reasons and benefit, or if you try to do it halfway. It's time to get serious about this planning framework, Marcus, and the first serious thing to do is agree that commitments to start and complete the succession process have to bind everyone equally."

"OK," he said, "I can go along with that." He crumpled his notes and reached for a clean napkin. "Y'know, for a World War I singer, old George what's-his-name had a pretty good head on his shoulders." □

James Lea is a professor at the University of North Carolina at Chapel Hill and a nationally known family business speaker, author and advisor. You can send comments or questions to him at james.lea@yourfamilybusiness.net.



James W. Lea

THE BUSINESS OWNER
7010 S. Yale, Suite 120
Tulsa, OK 74136

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