

THE SIMPLIFIED EMPLOYEE PENSION (S.E.P.)

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A) **SEP** stands for Simplified Employee Pension.

B) **Any employer may adopt a SEP** --- and the plan can be adopted as late as the employer's due date for filing its tax return (including extensions), and made retroactive to the beginning of its tax year. (All related employers must establish the SEP arrangement.)

C) **Eligibility** – The plan *must* cover all employees who meet all the following requirements:

- 1) The employee performed service for you in at least 3 of the immediately preceding 5 years;
- 2) The employee is 21 or older (by the last day of the contribution year); and
- 3) The employee made at least \$550 (indexed for the contribution year).

More *liberal* eligibility requirements *may* be adopted. And union employees may be excluded.

Unlike SARSEPS which limits the plan to 25 or fewer employees, a SEP has no employee headcount limitations.

D) **Plan Year** --- can be either a calendar year or the employer's tax year.

E) **Vesting** --- All contributions are 100% vested at all times.

F) **Investment Vehicle** --- All deposits must go into an IRA.

G) **Investment Responsibility** --- Once the money goes into the IRA, the employee must decide how it is to be invested.

H) **In-Service Withdrawals** --- the employee has total control over his IRA account. If he is willing to pay the taxes (and 10% penalty for using retirement funds prior to age 59 ½) he can withdraw money from the IRA at any time, even if he is still an employee of the company making the contributions.

I) **Testing** --- None.

J) **Compensation Cap** --- For all plan purposes, annual pay in excess of \$245,000 or 2009 (\$230,000 for 2008) must be ignored.

K) **Employer contributions** --- Totally discretionary. Contributions are deductible for the fiscal taxable year that includes the last day of the calendar plan year.

L) Allocation method --- Often allocated pro rata pay. However the allocation can use “permitted disparity” (also called integration with Social Security) resulting in an allocation that gives a little higher percent to the highest paid participants than to all others.

M) Maximum Annual Contributions --- The lesser of

- 1) \$49,000 for 2009 (\$46,000 for 2008) or
- 2) 25% of the participant’s pay, ignoring all pay in excess of the Compensation Cap (as indexed).

N) Top-heavy minimum contribution --- If over 60% of the contributions are attributed to key employees, then the contribution to the non-key employees must be at least equal to the lesser of:

- 1) 3% of pay, or
- 2) the highest percent of pay allocated to any key employee.

O) Employee Contributions --- None permitted, for SEPs established after 1996.

P) Form 5500 Filing With the IRS --- Not applicable.

Q) Advantages

- a) Very basic documents.
- b) No annual government filings.
- c) Can require more service than in some qualified plans.
- d) Simple to administer.
- e) No testing.
- f) Funds can be rolled over to any other IRA.

R) Disadvantages

- a) Less flexibility than with some plans.
- b) Must fully vest all contributions.
- c) Employee can withdraw funds and spend the funds even before he terminates employment with the company sponsoring the plan.
- d) Employee contributions are not allowed.
- e) No loan features.