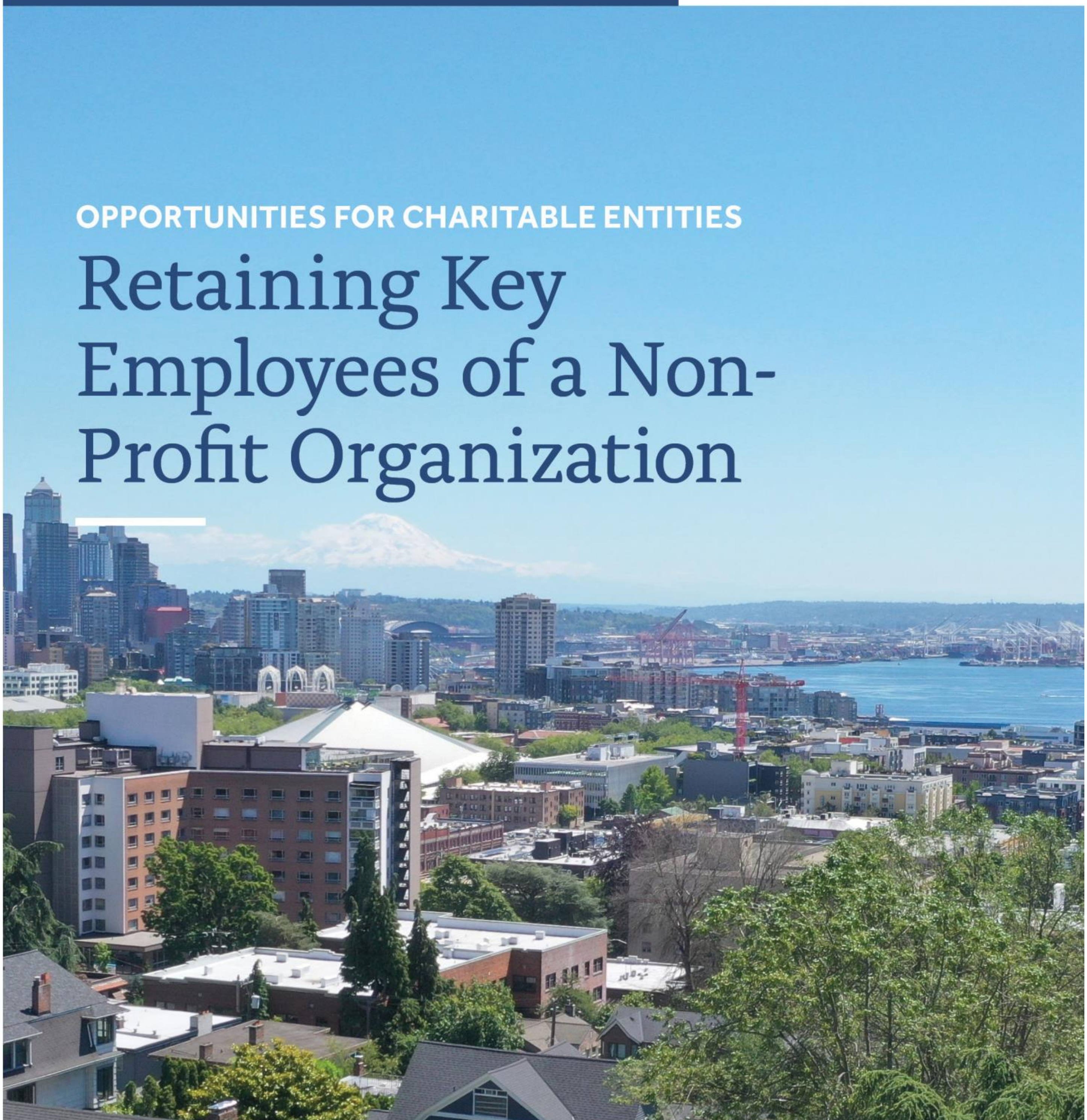
Charitable Corner



OPPORTUNITIES FOR CHARITABLE ENTITIES

Retaining Key Employees of a Non-Profit Organization

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Key employees are duly named not only because they are critical to the operation of a non-profit organization, but also because they are often key to their ability to attract wealthy donors. Thus, it is important to provide compensation plans that not only motivate key employees to perform, but also provide them with incentive to stay with the organization for many years.

Incentive plans

Cash vs. noncash compensation

Virtually all employees receive a compensation package comprised of cash and noncash elements. In most circumstances, noncash elements will primarily include employee fringe benefits such as group health insurance. In particular circumstances, certain elements may be of special value to a given employee, such as an executive who may have a high usage of health benefits due to a medical circumstance. More importantly, however, as a means of executive retention, they are usually of insufficient value on their own to ensure executive loyalty since these benefits must be applied similarly for all employees.

Current vs. deferred compensation

Current compensation plans

A company could provide formula-driven compensation increases or bonuses to select key executives based on individual performance benchmarks as determined appropriate by the non-profit organization, such as fundraising targets met.

These types of plans are often simple and easily understood. They require no accounting for future benefit liabilities, and key executives may perceive them to have more value than a future benefit. The disadvantages of these types of plans are that they provide no real incentive for key executives to remain with the non-profit organization in the event of a competitive offer. There is nothing the key executives would "leave behind" that might make them reconsider employment with a competitor. In addition, the bonus is currently taxable to the key executives (perhaps in a higher tax bracket than will be expected post-retirement) and provides no future financial security.

Deferred compensation plans

Deferred compensation plans promise future pay for current services and can be further subdivided into qualified and nonqualified plans.

- **Qualified Plans**. Qualified plans are of limited value as instruments of selective executive compensation. The primary reason for this is that such plans are explicitly prohibited from disproportionately benefiting highly paid employees.
- **Nonqualified supplemental deferred compensation plans.** Many companies have established nonqualified deferred compensation plans as a method of attracting, rewarding, and retaining key employees. These plans provide an opportunity for an employer to provide significant retirement benefits to its top performers on a selective basis. A nonqualified deferred compensation plan is a customized fringe benefit available only to select members of management and those employees who are "highly compensated." Participation must be limited to this "top hat" group to be exempt from most requirements of ERISA, the general federal pension law.

  The employer and the key employee enter into a contractual unsecured agreement via a formal written document in which the employer promises to pay a future benefit to the key employee. The plan is not subject to many of the requirements of qualified plans. The employer has the freedom to pick and choose which employees will participate as long as the plan is maintained for a "select group of management or highly compensated employees." The plan is flexible, enabling the employer to select a different benefit level for each key employee.

Advantages of non-qualified deferred compensation for the key employee

A nonqualified deferred compensation (NQDC) plan provides an opportunity for supplemental retirement income without current taxation. The plan is flexible enough to allow for customization for the key employee's individual needs. For instance, the plan can be structured to provide survivorship income to the key employee's family without any addition to current taxable compensation. To avoid taxation on the value of the accruing vested benefit, however, the employer must not set aside funds into a fund that the employer's creditors cannot reach.

Because funds deferred by the employee or used to fulfill promises by the employer are subject to claims by the employer's creditors, a non-qualified deferred compensation plan is attractive mainly for key employees of economically stable companies.

Advantages of non-qualified deferred compensation for the non-profit employer

Because of the flexibility afforded to NQDC, an employer is able to cover any circumstance from a single key employee to a group of key employees. The benefit level can be tied to production benchmarks, providing the key employee with a strong economic tie to the company's continued success.

The plan can create an incentive for long term employee loyalty, through a custom-designed forfeiture structure. Thus, when properly designed, the nonqualified deferred compensation plan may be the best method for retaining key employees.

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