Another Look at Supplemental Unemployment Benefit (SUB) Programs

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Agenda

• How SUB Plans work
• How SUB Plans are funded
• Eligibility and types of unemployment situations covered
• Legal requirements
• Advantages and disadvantages
• One fund’s story
How SUB Plans Work

- Union and employer negotiation
- Trust administered by joint board of trustees
- Employer contributes specified amount per hour per employee to a tax exempt trust
- At layoff, employee applies for SUB benefits
- SUB benefits administered in connection with state UI compensation
How SUB Plans Work

- Example:
  - Union negotiates with employers to provide terminated employees with full pre-layoff pay
  - Employee is paid $600 per week
  - State UI benefit is $300 per week
  - Employers fund trust according to CBA
  - Employee is involuntarily terminated
  - Employee applies for state UI and SUB
  - Between both sources, employee receives $600 per week
How SUB Plans Work

Employer Contributions—Severance Plan vs. SUB Plan

- Employer's portion of FICA
- State Unemployment Contribution
- Employer's Required Contribution

Traditional Severance Plan vs. SUB Plan

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How SUB Plans Are Funded

- Trust funded by union-negotiated employer contributions
  - Generally each employer contributes a specified percentage of wages per employee per hour worked
Eligibility and Types of Unemployment Situations Covered

• To be eligible, the employee must:
  – Incur an involuntary separation resulting directly from the following unemployment situations:
    • A reduction in work force,
    • The discontinuance of a plant or operation, or
    • Other similar conditions
  – Register for state UI benefits
  – Satisfy prescribed conditions after termination
  – Not have an interest in the SUB fund until qualified to receive benefits
Legal Requirements

• Valid trust
  – Taft-Hartley Act
• Established to provide SUB benefits to eligible employees
• Exclusive benefit of participants
• Objectively determinable benefits
• Filings
Legal Requirements

- ERISA
  - Plan document
  - SPD
  - Annual 5500 filing
  - Plan audit
Legal Requirements

• Nondiscrimination:
  – Eligibility
  – Benefits
    • No discrimination when benefits bear a uniform relationship to total compensation of employees
Legal Requirements

• Requirements to qualify for the wage exclusion:
  – Payments must be tied to state UI benefits
  – No lump sum payments
  – Obtain IRS ruling
  – *U.S. v. Quality Stores*
Advantages and Disadvantages

• Advantages to employers
  – Customizable design
  – Tax savings
  – Reduced impact of severance costs
  – Plan can be used indefinitely for involuntary reductions

• Disadvantages to employers
  – Strict adherence to legal requirements
  – Proper coordination with state UI laws
  – Administrative costs
Advantages and Disadvantages

• Advantages to employees
  – Tax savings
  – Retain state unemployment eligibility
  – Receive up to 100% of pre-layoff wages
  – Steady income

• Disadvantages to employees
  – Must verify unemployment status
  – Capped at 100% of pre-layoff wages
Advantages and Disadvantages

• Example of FICA savings:
  – Union negotiates with employer to pay $3,000 to each employee ($600,000 total) in event of involuntary termination
  – Employer lays off 200 employees in plant shutdown
  – If not a SUB Plan, employer pays $45,900 in FICA
    • $600,000 * 7.65% = $45,900
    • Effective cost of $645,900
  – If a SUB Plan, the severance benefits could be paid to employees in 10 weekly installments of $300
    • Effective cost of $600,000
    • Employees would save a comparable amount
One Fund’s Story

• Local Union SUB Fund
  – Adopted in 2010
  – Prompted by business manager of local union
  – Employers were responsive to the proposal
  – Smooth negotiations
  – Prior to adoption, employees received only state UI compensation upon involuntary termination
One Fund’s Story

• About the plan
  – Self administered
  – Covers 50+ employers and 650 employees
  – Tied to state UI benefits
  – Obtained IRS ruling that trust is tax exempt
  – Employers contribute to the trust fund a specified percentage of wages per the CBA
One Fund’s Story

• Nuts and bolts—eligibility
  – Termination must be involuntary due to layoff or workforce reduction
    • No benefits if unemployment due to a strike or work stoppage
  – Must apply for and receive state UI benefits
  – Must not be receiving Social Security benefits
  – Must have worked 1200+ hours in prior year
  – Must be available to work pursuant to the union’s out of work procedures
One Fund’s Story

• Nuts and bolts—benefits
  – $200 per week
  – Paid weekly for duration of layoff
  – Capped at 13 weeks of payments
  – Payments begin 2 weeks after receipt of first state UI check
  – Employees receive on average $575 per week when combined with state UI
One Fund’s Story

• How is the SUB plan working?
  – Will continue for the indefinite future
  – About 36 participants per year
  – Contributions have been suspended for 2+ years because trust is well funded
  – No issues so far
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Another Look at Supplemental Unemployment Benefit (SUB) Programs

- SUB plans are most effective when designed to supplement state UI compensation
- Payments are FICA/FUTA exempt—a strong point during union negotiations
- SUB plans save a minimum of 7.65% and up to 45% in severance costs
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Las Vegas, Nevada
www.ifebp.org/usannual

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Fraud Prevention Institute for Employee Benefit Plans
July 17-18, 2017
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Construction Industry Benefits Conference
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Santa Monica, California
www.ifebp.org/construction

Collection Procedures Institute
November 15-16, 2017
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