

# DANZIGER & MARKHOFF LLP

Attorneys at Law

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Attorney Advertising

## A Succession Planning Success

When York International, a leading independent insurance brokerage firm in the NYC metropolitan area, was considering business succession planning advice it turned to Danziger & Markhoff LLP.

Robert Kestenbaum, CEO of York, considered many options before deciding to implement an ESOP to purchase a portion of the stock owned by Robert and his fellow shareholders in the Company. "After spending considerable time and energy in analyzing the various options, we determined that an ESOP would accomplish our goals,

namely, protecting the jobs of our long standing staff members, maintaining our autonomy as an independent firm, and providing a mechanism for the shareholders to monetize a portion of the value we created in the Company over the last 37 years."

After interviewing several law firms to represent York in establishing the ESOP and to represent it in the transaction, Robert and the rest of the Board of Directors selected Danziger & Markhoff LLP. "We recognized that we needed a firm with deep experience in

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## Don't Forget Your Required Minimum Distributions!

Tax-qualified retirement plans, such as 401(k) plans, profit-sharing plans and pension plans, as well as IRAs, are subject to required minimum distribution (RMD) rules under the Internal Revenue Code which prevent the plan participant or IRA owner from deferring distribution of his or her benefits indefinitely. Very generally, these rules require the plan participant or IRA owner to begin receiving benefit payouts by his or her "required beginning date."

Generally, the required beginning date for an employee participating in

a tax-qualified plan is April 1 of the calendar year following the later of (a) the calendar year in which the employee reaches age 70½, or (b) the calendar year in which the employee retires. So, in general, an employee can defer receipt of benefits from his or her employer's plan until after age 70½ by continuing to work. However, RMDs for employees who are 5% owners, or for IRA owners, must begin no later than April 1 of the calendar year following the calendar year in which individual attains age 70½ whether or not the individual retires.

*(Continued on page 2)*

An individual is a 5% owner (if he or she owns more than 5% of the stock of a corporation (by vote or value) or is a sole proprietor or a more the 5% partner in a partnership. The 5% owner determination is made in the year in which the individual attains age 70½.

Compliance with the RMD requirements is a plan qualification issue. Accordingly, if a plan fails to make proper RMDs to a single plan participant, not only that participant, but also the plan itself, could be in for trouble with the Internal Revenue Service.

Recently, we have seen an uptick in RMD violations. Usually, the reason is simple ignorance of the RMD rules or bad advice.

Here are some pitfalls to look out for:

- As noted above, 5% owners and IRA owners cannot defer RMDs beyond April 1 following attainment of age 70½ under any circumstances.
- Certain ownership attribution rules under the Internal Revenue Code apply to determine whether an individual is a 5% owner.

Example: A company employs the father of the 100% owner of the company. By attribution, the father is a 5% owner. The father's required beginning date is

April 1 of the year following the year he attains age 70½, even if he continues working for the company.

- The 5% owner determination is made by treating a group of related companies as a single employer.

Example: An employee of an employer who maintains a plan has no ownership in that employer. However, the employer is part of a controlled group, and that employee owns more than 5% of another company that is part of the controlled group. That employee is treated as a 5% owner of the employer.

- If an individual is a 5% owner for the year in which the individual attains age 70½, but later is no longer a 5% owner, the individual nevertheless continues to be treated as a 5% owner. Such individual may not discontinue RMDs because, at some point after the individual's required beginning date, the individual is no longer a 5% owner.
- A sole proprietor is always a 5% owner, so his or her required beginning date is always April 1 of the year following the year in which he or she attains age 70½.
- If an IRA includes a rollover

from a qualified plan, that does not change how the required beginning date for that IRA is determined. Once funds are rolled over, they are subject to the RMD rules applicable to the recipient plan or account.

- As noted above, the first RMD must be made by April 1 of the year following the year in which the individual attains age 70½ or retires, as applicable. However, the second and all future RMDs must be made by December 31 of the applicable year. So, if the individual waits until April 1 of the following year to take his or her first RMD, the individual would have to take a second RMD by December 31 of that same following year.

Even if your plan fails to properly make RMDs, the failure can be corrected under the IRS' Employee Plans Compliance Resolution System.

*If you have any questions concerning the RMD rules, or think you may have missed making your RMDs, please feel free to contact our ERISA attorneys, Jay Fenster or Mark Hamilton at 914-948-1556 or by email at [jfenster@dmlawyers.com](mailto:jfenster@dmlawyers.com) or [mhamilton@dmlawyers.com](mailto:mhamilton@dmlawyers.com).*

## CASH BALANCE PLANS: THE SMART WAY TO INCREASE YOUR TAX-DEDUCTIBLE PLAN CONTRIBUTIONS

A "Cash Balance Plan" is an integral component of retirement plan design which allows you to make substantially larger tax-deductible contributions than those permitted under profit-sharing and similar defined contribution plans (DC Plans). Cash Balance Plans use easily understandable individual account balances not available under a traditional defined benefit pension plan. Each plan participant has his or her own account balance that is credited annually with a contribution and a specified rate of return.

Ideal candidates for Cash Balance Plans are successful businesses with two or more owners. In a Cash Balance Plan, similar or varying contributions can be made on behalf of each owner, and each owner will know the exact amount of the contribution attributable to him. Naturally, Cash Balance Plans can be

successfully implemented for a sole proprietorship that produces substantial profits.

When a Cash Balance Plan is combined with a DC Plan, the combination of the two plans gives the business both an increased tax deduction and substantial flexibility for each year's contributions.

The Table below illustrates how you can make an additional tax-deductible plan contribution to a Cash Balance Plan (see Row D) even after contributing the maximum \$54,000 to a DC Plan (Row A plus Row B equals the maximum \$54,000).

The Table shows one example of an allocation maximized for the owner; the assumption is that the staff contribution will be as low as IRS rules permit, and the owner's compensation is at least \$270,000.

The most important factor is to

ensure that the cost for covering the staff does not outweigh the benefit of the plan to the business owners. A thorough analysis of employee data, combined with creative planning concepts, often result in a successful outcome for the business owners. Obviously, it would be imprudent for a business owner to think of proceeding without the benefit of such an in-depth analysis.

If you want to make a plan contribution for yourself in excess of \$54,000, a Cash Balance Plan is the answer.

*To learn more about Cash Balance Plans, please contact Andrew E. Roth, Esq. at 914-948-1556 ext. 8033 or by email at [aroth@dmlawyers.com](mailto:aroth@dmlawyers.com)*

Type of Plan or Plan Feature		Contribution Amount for Owner
A.	Profit-Sharing Plan – Employer Discretionary Contribution	\$ 36,000.
B.	401 (k) Salary Reduction Plan - Employee Discretionary Contribution	\$ 18,000.
C.	Additional "Catch-Up": Owner Age 50 or older	\$ 6,000.
D.	Cash Balance "Add-on" Plan [On top of Employer's DC Plan]	\$ 47,700.*
E.	Total Contribution: Owner under Age 50 [A+B+D]	\$ 101,700.
F.	Total Contribution: Owner Age 50 or older [A+B+C+D]	\$ 107,700.

\*Note also that depending upon the level of staff compensation, and the age of the owner, the amount that can be contributed for the owner may be substantially larger.

ESOPs, and we wanted a firm with expertise in pension law, corporate law and estate planning. Not only does Danziger have these areas covered, but the firm also has a Third Party Administration department that administers over 25 ESOPs. This combination made the choice to use Danziger an easy one."

Danziger & Markhoff, along with the other professionals involved in the transaction, designed a plan for Robert and his fellow shareholders to sell 49% of their stock to a newly formed ESOP. The shareholders received a significant amount of cash at closing, effectively diversifying their financial portfolios. Importantly, by retaining 51% of their stock in the Company the shareholders have options in the future to sell more shares to the ESOP which will

continue to have significant tax advantages or, if desired, to a 3<sup>rd</sup> party buyer.

The result of the transaction achieved all of the above goals and more: due to the tax advantages afforded by ESOPs, the shareholders received fair market value for their shares which was in line with the private equity firms and other buyers that had approached the Company. Furthermore, Robert and the other shareholders have the option of not paying tax on the sales proceeds if they elect to invest in Qualified Replacement Property under Section 1042 of the Internal Revenue Code.

*Please contact Robert B. Danziger if you would like to explore whether an ESOP is right for your company at 914-948-1556 or by email at [bdanziger@dmlawyers.com](mailto:bdanziger@dmlawyers.com)*

## IN OUR FIRM

We want to share with you that our firm has recently received the following honors. We thank our clients and colleagues for their continued loyalty and for helping us achieve these honors.

### ***Best Law Firm:***

Danziger & Markhoff LLP has been included in the 2018 *U.S. News – Best Lawyers*® "Best Law Firms" list for the **seventh** consecutive year. The firm received a Metropolitan Tier 1 ranking in the area of Trusts & Estates Law.

### ***The Best Lawyers in America:***

Michael Markhoff was named the *Best Lawyers*® 2018 Trusts & Estates "Lawyer of the Year" in White Plains. Michael also received this distinction in 2016 and his father, Harris Markhoff, received it in 2013.

Harris Markhoff and Joshua S. Levine have been selected for inclusion in *The Best Lawyers in America 2018*. Harris was selected in the areas of Corporate Law and Trusts & Estates and Josh was selected in the area of Health Care Law for the **fifth** year in a row.

### ***New York Super Lawyers:***

Michael Markhoff has been selected for inclusion in 2017 New York Metro *Super Lawyers*. Michael was selected in the area of Estate Planning and Probate. Each year, only 5% of the attorneys practicing in New York received this honor.

### ***In other news:***

Danziger & Markhoff LLP Advises Dometic Group AB on ERISA and Executive Compensation Matters In Its \$875 Million Acquisition of SeaStar Solutions.