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Employee Benefits: Not All Are Created Equal

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In every instance of employment, a potentially significant difference exists between an employee's take-home pay and the actual cost of employment to the employer. This difference may be greatly increased by the presence of employer-provided "fringe benefits" – non-wage compensation provided to employees in addition to normal wages or salaries. Fringe benefits represent an additional cost to the employer, above and beyond the actual wages, salaries, bonuses and other compensation directly paid to the employee. They may also impose a cost on the employee, reducing the net amount that an employee may receive at the end of each pay period.

Legally mandated contributions to Social Security and Medicare represent the first difference between the cost to the employer and the employee's take-home pay. Employers and employees are legally mandated to contribute to Social Security (up to the maximum Social Security wages) and to Medicare, creating an initial gap between employment cost and employee take-home pay. Other legally mandated contributions, such as state unemployment and disability insurance, usually carried by the employer only, further expand the gap between employment cost and employee take-home pay.

Employers may also offer various fringe benefits to their employees, including the following:

- Paid vacation, paid sick days and paid holidays;
- 401(k) or other retirement savings plans, such as contributions to annuity funds and 403(b) plans, which may or may not include employer matching contributions;
- Pension plans, which may or may not require that the employee contribute to the plan;
- Group health insurance and other health-related benefits, which in most instances requires that the employee pay a portion of the premium and/or co-payments;
- Disability insurance, which in many cases is offered with an option for increased coverage at an additional cost payable by the employee; and
- Life insurance, which typically results in a monetary payment benefit based on a multiple of the employee's annual base salary.

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While some of these potential fringe benefits carry a cost to the employer and sometimes also a cost to the employee, such costs do not necessarily convert into a dollar-to-dollar actual monetary gain (cash) to the employee.

The differentiation between fringe benefits that convert into actual monetary (cash) benefits versus those that do not constitutes a critical point in the analysis of damages in labor and employment disputes, one that may result in a significant difference in the components and value of economic damages.

A damages model designed to estimate the monetary loss resulting from the loss of a set of fringe benefits requires that three initial key steps be conducted.

1. The identification of the set of fringe benefits that could have resulted in monetary income or payments to the employee;
2. The determination of the potential monetary value (cash) to the employee that could have resulted from each specific benefit;
3. The determination of the cost that would have been faced by the employee, if any.

Once these three steps are completed, the net value of the monetary loss associated with the loss of a set of fringe benefits can be determined.

Take, for example, paid vacation, sick time and holidays. The direct financial benefit to the employee of this set of benefits is the fact that he or she may be away from work for a certain amount of time while still continuing to earn wages. In the case of salaried employees in particular, the loss of paid vacation, paid sick days and paid holidays is typically intrinsic to the computation of lost salary; therefore, such benefits may not translate into an additional category of economic damages.

Let's consider the case of retirement savings plans instead. Many employers may offer employees the option of making contributions to retirement savings plans, and the employer may also offer matching contributions to such retirement savings plans. Employer-matching contributions to retirement savings plans result in a direct monetary benefit to the employee: the amounts contributed by the employer and the potential investment gains on such employer-matching contributions could be converted into a dollar-to-dollar monetary value to the employee. The loss of employer contributions and the corresponding potential financial gain may be considered a category of economic damages.

In contrast, take the example of employer-provided disability insurance and/or life insurance. These plans only provide an actual monetary benefit to the employee (or designated beneficiaries) in the event of disability or death, which would have to occur during the individual's employment. These constitute a classic example of fringe benefits that represent a cost to the employer but do not result in an actual monetary gain to the employee unless the individual becomes disabled or deceased. In an economic damages analysis, if the employee is assumed to have continued to work, no monetary benefit would result from employer-provided life or disability insurance.

Health-related insurance carries slightly different characteristics. Most employers may offer policies that require that the employee pays a portion of the premium. When considering the loss of health insurance coverage as a category of economic damages, the cost of the policy to the employer is irrelevant. Rather, the replacement cost for similar coverage is the key.

In comparison to each other, fringe benefits may vary greatly, and each has to be evaluated based on the potential monetary value of its unique structure; the different costs each may pose on the employer and the employee; and the likelihood that monetary gain may actually occur.

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