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**Elite Retirement Plans Are Expanding**

By K.C. Swanson  
Staff Reporter

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If you feel as if you've lost out under the 401(k) retirement program, try this on for size: The past decade has seen the rapid growth of a type of retirement benefit reserved just for managers and high-income employees. It's one more way the nation's retirement system is tilting toward the affluent.

Increasingly popular "top-hat" plans, which let participants set aside more money than they could with a 401(k), often feature a fat company match for employee contributions.

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The plans offer a sweet deal if you can get it, though you may feel a little sour if you can't. Consider this: At the same time the plans have expanded to include a greater percentage of high-paid workers, rank-and-file employees have seen their retirement benefits cut.

The net effect: Folks at the bottom continue to get squeezed, while those at the top draw ever more benefits from what's becoming a kind of elite retirement savings system.

**How Top-Hat Plans Work**

Top-hat plans, a type of deferred compensation plan, let high-paid workers get around the \$11,000 limit on 401(k) contributions. If you have money left over for retirement contributions after you've maxed out your 401(k), you

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may be able to invest an unlimited sum in a top-hat plan, depending on the terms of the plan.

You don't owe federal income taxes on the money taken out of your salary, and while it accrues, your employer covers the taxes on the earnings. Some plans don't require you to pay taxes on the sum until you take it out, when it's taxed as ordinary income.

Companies often kick in generous matches on top of employee contributions. A survey of *Fortune* 1000 companies found that 38% matched employee contributions, with matches reaching from 3% to as high as 200% of what an employee put into a plan.

To be sure, the idea behind top-hat plans isn't exactly new. Under the old defined-benefit regime, companies offered a similar kind of benefit to attract and retain top talent.

What is new is that the reach of top-hat plans has extended down the ladder. Though the plans were supposed to benefit only the highest-ranking company officers -- people with incomes in the high six figures -- some companies now make them available to workers earning much less, sometimes with salaries in the \$65,000 to \$85,000 range.

"We have a hidden, shadow pension system," says Pamela Perun, a pension lawyer and consultant on pension policy issues with the Urban Institute. "There are no standardized [government] statistics available that will show you exactly what the growth trend is. That said, everybody in the benefits community would tell you these plans grew like rabbits in the '90s."

The percentage of *Fortune* 1000 companies that offer deferred-compensation plans, or top-hats, surged from about 10% in the 1980s to more than 86% in 2001, says William MacDonald, CEO of Clark/Bardes Consulting-CRG, a benefits consulting group.

To be sure, the spread of top-hat plans represents a fantastic deal for upper-level employees. The problem is that even as the reach of the plans has increased, the people at the bottom are still left out.

Indeed, the expansion of top-hat plans has occurred at the same time companies have cut benefits for the standard retirement accounts available to middle-income and low-wage workers. Employers used to contribute about 8% of their payroll to fund the old-fashioned form of pension coverage known as defined-benefit plans, which were offered to workers at all levels. Today, with 401(k)s, they contribute between 3% of payroll and nothing at all.

Amid the shift to 401(k)s, many rank-and-file workers have [lost ground](#) when it comes to retirement savings. And given their relatively lower rank and incomes, they aren't eligible to participate in top-hat plans.

### **Top-Hat Plans: Leveling the Playing Field -- or Not?**

Top-hat plans work on an entirely different principle than 401(k)s. 401(k)s have to operate under so-called nondiscrimination rules, designed to make sure companies don't lavish all their retirement benefits only on high-ranking workers.

But the very intent of top-hat plans is to benefit the high-paid. "In fact, they must discriminate," says Deene Goodlaw, co-chairman of the global benefits practice for the law firm of Pillsbury Winthrop.

In a sense, that's fair. High-paid employees chafe at the government-mandated limits on 401(k) contributions. "An employee who earned \$1 million could only put \$11,000 in his 401(k)," points out MacDonald of Clark/Bardes Consulting/CRG. Top-hat plans offer a way around that.

Yet they have their drawbacks, too. There's almost no government oversight of the plans, which makes them very different from 401(k)s. That appeals to companies, which need only file a registration statement with the Labor Department to set up a plan. But due to the loose regulations, participants in top-hat plans have less protection than they do with 401(k)s.

Some companies, taking advantage of loose government regulation, don't set aside a reserve of money specifically to fund their plans. By comparison, 401(k) money, which is governed under the strict Employee Retirement Income Security Act of 1974, must be set aside in a fund employers can't touch.

Still, despite the risk, top-hat plans have been expanding at the same time people at the bottom end of the pay scale have been steadily losing benefits. When it comes to retirement security, average workers are falling behind twofold: Not only have they lost out amid the switch to 401(k)s, but they're also shut out of lucrative plans for higher-ups.

That's one more way the pension system is becoming increasingly inequitable.



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