



PilieroMazza Webinar

Managing and Incentivizing Employees

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About PilieroMazza

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- Government Contracts Law
- Intellectual Property & Technology Rights
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Overview

- Discuss strategies to attract, retain, reward and motivate employees
- Implementing incentive plans (bonus, stock, synthetic equity, etc.) that incentivize high performance
- Reviewing essential components of an employment agreement
- Best practices for non-compete and non-solicitation agreements

Determining the Appropriate Starting Point

- Not one size fits all
- Relevant and useful no matter the stage of a company's life cycle
- Evaluate company culture, talent pool and current employee retention and motivation programs
- Alignment of the following:
 - Company and shareholder goals
 - Employee capabilities and commitment
 - Tasks and objectives, and confidence it can be done

Employee Incentive Packages

- Purposes of incentive plans
- Fundamental questions
- Overview of incentive compensation plan types

Purposes of Incentive Plans

- **Recruit:** All forms of incentive plans are helpful in recruiting employees
- **Retain:** Incentive plans can reward employees who remain at the company
- **Motivate:** Incentive plans can reward employees for a company's appreciating value and can align their interests with the shareholders

Fundamental Questions Regarding Sharing in the Upside

- Does the company want to share real equity? If so, how much? Set a “pool”.
- Which employees will be eligible to participate (executive officers versus “rank and file”)? Will consultants be included as well?
- What are you rewarding for? Value since inception, future growth, company wide, division...?
- How and when will payment occur? Will the company have liquidity to make payment?
- How is the award earned and will it be subject to forfeiture? Under what circumstances?
- What if a vested participant terminates employment?

Types of Incentive Compensation

■ **Cash Bonus Plans**

- Spot, sign on, commission, holiday, and other bonuses
- Discretionary; can be tied to key metrics (e.g., revenue, profitability)

■ **Broad-Based Qualified Plans**

- Builds ownership culture throughout the company
- Employee Stock Ownership Plans (ESOP); Employee Stock Purchase Plan; Retirement Plans (401k); Qualified Incentive Stock Option Plan

■ **Equity Plans**

- Sharing equity with key employees

■ **Synthetic Equity (Equity Linked)**

- Provides compensation that is linked to appreciation in the company's equity without providing actual equity

Equity Plans vs. Synthetic Equity Plans

Equity Plans

- Holder receives equity in the company (triggers fiduciary duties to minority owners and voting, dividend, etc. rights)
- Typically, some capital investment is required
- Benefit typically not tied to specific date/event in the future
- Monetizing event often taxed at capital gains tax rates
- Securities laws compliance (federal and state)

Synthetic Equity Plans

- Holder does not receive equity in the company; instead plan compensation is tied to company performance
- Typically, no capital investment requirement
- Benefit typically tied to specific date/event in the future (Internal Revenue Code § 409A limits discretionary exercise)
- Monetizing event taxed at ordinary income tax rates
- Typically, no trigger for compliance with securities laws (if awards are in cash only)

Employment Agreements

- Employer interests in:
 - Retention
 - Termination with minimal adverse impact financially and legally
 - Post-employment protection

- Employee interests in:
 - Compensation
 - Employment security
 - Rights and flexibility post-employment termination

Employment Agreements: Initial Considerations

- Level of employee(s)
 - Executive Officers versus Rank and File
- Type of industry
- Exposure to sensitive information like trade secrets, client contacts, etc.
- Form of the agreement
 - Simple letter or formal agreement

Employment Agreements: What Terms to Include?

- Scope of Employment
- Salary
- Bonus Structure
- Benefits
- Term and Termination – “at will” v. “term”
- Liability Protection
- Other Incentive Plans
- Confidentiality
- Invention Assignment
- Restrictive Covenants
- Breach
- Dispute Resolution
- Change of Control

Employment Agreements: What Terms to Include?

- Structuring the **term of employment** (job description and incentives)
- Determination of **competitive compensation agreements**
- Consequences of **change of control**
- **Intellectual property** protection
- Structuring **exit arrangements** (basis of termination, economic consequences, dispute resolution)

Employment Agreements: At Will versus Term

| At Will | Term |
|--|--|
| No Term | A definite term |
| Grounds for termination can be for any legitimate, non-discriminatory reason | Grounds for termination dictated by the agreement (e.g. “for cause”) |
| No Cause compensation? | How long is too long? |
| | Bonus plans, other incentives |
| | |

Employment Agreements: Restrictive Covenants

- Ways to restrict employees post-employment:
 - Confidentiality
 - Non-Disparagement
 - Non-Competition and Non-Solicitation
 - Invention Protection and Assignment

- Language Matters

- Jurisdiction is Key

Final Considerations

Recruit, Retain,
Motivate- how does
your plan accomplish
these objectives?

Do I want to have
additional share/unit
holders?

What are your thoughts
on repurchase rights?

Do I have the liquidity to
fund the cash needs of
my plan?

Are you keeping it
simple so that the
company and the
recipients easily
understand the plan?

Questions?

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