

ATTRACTING AND RETAINING EMPLOYEES WITH EQUITY INCENTIVES

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INTRODUCTION

- Ice Miller = 350 + lawyers in 7 offices
 - Full – service business law firm

- Sleepy topic that has become hot lately – why?
 - Employees are hard to find and hard to keep
 - Everyone is looking for strategies to be a desirable employer

- Hope to give you another tool for your employer “tool kit”

GOALS

- Tricky subject matter
 - Learn how to navigate key issues
 - Outline key themes to these plans
- Leave here with “issue-spotting” skills/tools
- “Wack-A-Mole”
 - One solution results in a new problem

REASONS TO AVOID EQUITY

- Loss of control
- Fiduciary Duties
- Access to Books and Records
- Slippery Slope
 - Or no good deed goes unpunished

REASONS TO AVOID EQUITY

- Short-lived morale boost
- Dilute boss-employee relationship
- S Corporation restrictions
- Tax Implications for employee

PLAN OPTIONS-EQUITY

- Restricted Stock Plan
 - “Real” equity
 - Deferred tax hit
 - But taxable income upon vesting

PLAN OPTIONS-EQUITY

- Non-qualified stock options
 - Right to acquire equity
 - No tax hit on grant
 - On exercise-FMV over exercise price
 - Cashless exercise

PLAN OPTIONS-EQUITY

➤ Profits Interests

- No tax hit
 - Capital gains on proceeds
- Only available in LLC's
- Sometimes just too complicated

Plan Options : Non-Equity

➤ Phantom Stock

- Contract right that mimics equity
- Avoids the negatives of equity
- Defers tax implications
- “Fake”

PLAN OPTIONS : NON-EQUITY

- Stock appreciation rights (“SARS”)
 - Contract right tied to increase in equity value
 - No tax hit on grant
 - More appealing than “phantom” equity

PLAN OPTIONS : NON-EQUITY

➤ Bonus Payments

- Simple cash bonus plan
- Tax hit but have \$\$ in the pocket
- Too common – least like equity

KEY ISSUES / TERMS

- Buy-sell provisions
 - Incredibly important
- Restrictive covenants
 - Non-compete/non-solicitation/confidentiality/Assignment of Inventions
- Document
 - Before, not after

KEY ISSUES / TERMS

- Communication is key
- Skewed Incentives
- Legal compliance is Key
 - 409A
 - Variety of other tax and statutory hurdles

SUMMARY

- Tight labor market = need to be creative
 - Incentive plans are that creative tool
- Many options
 - All have pros and cons
- Plan ahead
 - Lots of variables; lots of risks

➤ **THANK YOU!**

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