Done Deal

Facilitating employee compensation with term sheets

by Pamela V. Rothenberg

In counseling clients through the negotiation of a business deal, responsible lawyers recommend clients begin with a "term sheet." The use of a term sheet enables the property management company to stay clearly focused not only on the actual terms of an executive's compensation package, but also on the way a package will further the company's overall business strategy.

At a minimum, a term sheet will usually include:

Base Salary: To remain competitive, the company should set base salaries for all its executive employees at levels more attractive than similar positions at other comparable companies. The company should establish base salaries at a range competitive within the company's employee market.

Benefits: The executive's benefits package will typically include the same employee benefits offered to non-executive employees (life, health and disability insurance and 401(k) plans), plus additional benefits reserved solely for executive-level employees. These can include supplemental retirement benefits; supplemental health benefits, and split dollar insurance arrangements.

Benefits packages can be designed to address the particular needs of individual executives. Junior executives may place greater value on benefits contributing to their career growth, offsetting their current living expenses, and allowing time off to be with family and friends. Senior executives tend to favor benefits emphasizing long-term financial security.

Potential legislative changes may regulate employer-matching contributions to employee 401(k) plans when the matches are given in the form of company stock.

> A term sheet helps a company focus on the terms of compensation and the way a package will further the company's business strategy.

Incentive Compensation: Incentive compensation should align the interests of the executive with the company's owners and is generally focused on the satisfaction of predetermined company and/or individual executive goals tied to the company's overall business objectives. Short-term incentives are typically paid in the form of annual bonuses. Long-term incentives are designed around the company's long-term performance objectives and usually take the form of stock options or other "equity" programs.

Severance Benefits: A company may agree to pay severance benefits under specified circumstances. Care should be taken in the drafting of these clauses, as they can be costly to a company if not written correctly.

New Economy Considerations: Consider offering non-traditional forms of compensation for senior-level employees. Examples of "new economy" benefits include subsidies for day care expenses, eldercare benefit programs, long-term care benefits and telecommuting programs. Each of these options comes with its own host of legal issues and should be implemented only after a company completes a detailed plan.

Company compensation programs must provide sufficiently motivating rewards to executive-level employees. Rewards should be tied both to individual performance and to how well the company performs financially to ensure compensation packages are linked with the achievement of company business objectives. A "term sheet" will ensure these objectives are being accomplished. □

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