

Hot Tips: SECURE 2.0 and Negotiating Executive Compensation Arrangements

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Agenda

- SECURE 2.0 Updates
- Tips & Tricks of Executive Contract Negotiation
 - Employment considerations (including FTC rule)
 - Mistakes
 - Preparing for the relationship to end



SECURE 2.0

SECURE 2.0 Act Updates

- Increased involuntary cashout limit
- Matching contributions on student loan payments
- Elect vested employer contributions on Roth basis
- New optional distributions

SECURE 2.0 Act Updates

- Increased catch-up contributions for age 60-63
- Mandatory Roth catch-up for certain HCEs (2026)
- Expanded self-correction/non-recovery of overpayments
- Increase in required minimum distribution age



Tips & Tricks of Executive Contract Negotiation

Pre-Negotiation Tips

- Coordinate with internal decision makers
- Understand and set performance expectations
 - Impacts: fit, evaluations, comp. & “cause”
- Offer/counteroffer process
 - **Mistake:** Allowing employee to prepare initial draft

Understand Pre-Existing Limitations

- Obtain/review *executed* restrictive covenants
 - Can Executive perform job without a breach?
 - When in doubt, get legal review
- Ensure no data/property comes with Executive
- Set Executive's compliance commitment
 - Cool Trick: make compliance an affirmative obligation in contract

Restrictive Covenants

- FTC ban struck down – RCAs okay for now
- Non-negotiable categories, but negotiable terms
 - Non-disclosure, Non-competition, Non-solicitation
 - Work Product/IP ownership/Invention assignment
- Carve outs

Drafting the Agreement

- Main Elements
 - Term – fixed, automatic renewal
 - Duties & Responsibilities
 - Benefits & compensation
 - Termination/severance
 - Dispute resolution

Termination

- “For Cause” & “Good Reason” definitions
- Notice requirements & cure periods
- Severance pay
- Mistake: waivers of good reason must be in writing
 - Similar: forfeiture of benefits -> letter of understanding

Terminating Employment

- Coordinate with internal decision makers
- Know termination reasons and notice requirements
 - Mistake: Not complying with notice/cure
- Business considerations
 - *E.g.*, transferring responsibilities & impact on other employees
- Draft separation documents

Separation and Other Agreements

- Separation Agreements
 - Re-visit restrictive covenants
 - Additional consideration?
 - “Entire Agreement” clauses
- Consulting/Transition Agreements
 - Separate agreements
 - Document *all* expectations & promises

Off-boarding Strategies

- Exit interview
 - Friendly “reminder” letter
 - Inventory & property/data recovery
 - Identify new employer & evaluate risks
- Problem Separations
 - Cut off access to information/IT systems
 - Know your trade secrets and confidential information
 - “Reasonable efforts” to maintain secrecy
- Preserve devices and emails

Involuntary Termination Risks

- Breach of contract/covenants
- Breach of duty
- Trade secrets misappropriation
- Computer Fraud and Abuse Act
- Unreturned property

Market Practices

- Have a plan; HR, business & legal in accord
- Negotiate with “must haves” and be flexible
- Prepare draft agreement and anticipate changes
- Get (timely) legal review
- Have exit strategy
- Evaluate signs of misappropriation
- Be prepared for litigation



QUESTIONS?

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Thank you!

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