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Saul Ewing LLP

COMPENSATION AND BENEFITS FOR NFP EXECUTIVES

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Craig Stevens

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Craig Stevens, CPA, is a partner in Aronson LLC's Nonprofit and Association Industry Services Group. He joined the firm in 1986 and has spent over 20 years in the industry. Craig specializes in accounting, auditing, taxation, internal controls systems, fundraising, and strategic planning for nonprofit organizations.

As an expert in the field, he has made various presentations to the American Society of Association Executives (ASAE), the Virginia Society of Certified Public Accountants and the Maryland Association of Nonprofit Organizations on topics that include investment management, accounting and reporting issues. Craig has also provided over 30 articles on various issues impacting nonprofit organizations and authored The Nonprofit Controller's Manual, published by Warren, Gorham & Lamont and was a co-author, with other members of the firm, of the Financial Management Handbook for Associations and Nonprofits published by ASAE. He is an active member of AICPA, ASAE, and Finance Management Roundtable.

Craig earned his bachelor's degree in business administration degree from Virginia Tech in 1983. Upon earning his CPA, Craig earned the Elijah Watts Sell Award presented to the CPA candidates who attain the highest combined grades when taking all four sections of the Uniform Certified Public Accountant Examination at one administration.

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Mark E. Flanagan

Director, Employee Benefit Plan Services Group

Mark Flanagan is a Director in Aronson's Employee Benefit Plan Services Group. He has over 20 years of experience in the compliance and technical aspects of qualified and non-qualified benefit plans, including plan design, consulting, and technical administration. He is also a key member of the firm's benefit plan audit practice as a compliance resource for the audit teams and plan sponsors.

Mark is a frequent speaker on compensation and benefit plan issues and has authored many related articles. He is responsible for keeping the firm and its clients up-to-date on legislative and regulatory changes. Mark is a technical advisor for many of the firm's clients across all of its industry groups. He earned his Bachelor's Degree in Economics from the University of Maryland, Baltimore County.

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Dan S. Brandenburg, Esquire

Dan Brandenburg has advised clients on numerous aspects of employee benefits matters, including retirement plans, health and welfare plans, issues involving third party administrators, and executive compensation. Prior to joining Saul Ewing, Mr. Brandenburg was the Managing Shareholder of Washington, DC-based Sanders Schnabel & Brandenburg PC, a firm well known for counseling clients nationally and abroad on health and welfare benefits and tax-qualified pension plans and issues involving third party administrators. Mr. Brandenburg has extensive experience in and knowledge of pension and welfare plans, executive compensation (including plans for tax-exempt organizations) and executive employment matters. He represents US and international clients regularly before the IRS, the U.S. Department of Labor (DOL) and the Pension Benefit Guaranty Corporation (PBGC), and helps clients with the IRS and DOL voluntary compliance programs, and to respond to audits and investigations initiated by IRS, DOL and PBGC. Mr. Brandenburg is admitted to practice law in the District of Columbia. He is Charter Fellow of the American College of Employee Benefits Counsel. Mr. Brandenburg has been listed in the 2001 to present editions of The Best Lawyers in America, Employee Benefits Law and the 2007 to 2014 editions of Super Lawyers, Employee Benefits Attorneys (Washington, DC).

CEO/Executive perspective…

What are they looking for in today's environment?

Hard Stop and or Evergreen

Most initial Contracts that I see for new CEOs provide for a “Hard Stop”

- It provides the Board for an easy out if the Executive is marginal or ineffective
- What is key to the Executive is, whether or not, the contract provides for a Notice Period and/or Severance
- I have referred to the Greater Washington 2014-2015 Edition, Greater Washington Area Association Compensation and Benefits Study published by the ASAE Association Management Press (“Survey”)
- The Survey provides that only a limited number of Hard Stop Contracts provide for Severance after the termination of the Contract

Hard Stop and or Evergreen

Most renewal Contracts that I see are “Evergreen”

- Main benefit is that the contract does not need to be negotiated each time
- Some evergreen contracts renew for one year at a time others are for the contract period with 3 years seemingly the most popular.
- Evergreen contracts usually provide for a notice period and a severance period
- Evergreen contracts sometimes provide for a due process procedure before non-renewal

Termination Provisions

According to the Survey, the average severance period is 12 weeks

- My experience shows that six months is more common, with some severance periods lasting up to a year
- I have seen some periods being longer than a year
- A common provision provides for elimination of severance if the person gets another job – often does not provide an incentive to finding another position because the person waits until the period is over to get another job
- Employment Contracts usually provide for a notice period and a severance period

Termination Provisions

- Employment contracts sometimes provide for a due process procedure before non-renewal
- Non-Compete Provisions – I rarely see them unless, the Association has a natural competitor or the Association sponsors a major trade show with Key Vendors

Goals

Organization

- Determine goals before entertaining marketers
- Understand the overall acceptable cost of the package
- Aware of various compliance requirements given other employees
- Understand tax impact to executive
- There is no magic package
- Don’t over complicate unnecessarily

Types of Benefits

- Qualified Retirement Plans
- Non-Qualified Deferred Compensation Plans
- Healthcare Arrangements
- Disability Insurance
- Other Insurance Arrangements
- Leave Arrangements
- Work/Life Balance
- Ancillary

Qualified Retirement Plans

401(k) or 403(b) and 401(a) Plans

- Employee pre-tax or Roth contributions up to maximum of $18,000 plus $6,000 if age 50 or older during the plan year.
- Possible organization matching contribution
  - Many allowable formulae as long as compliance testing is passed
- Possible non-elective contribution allocation
  - Can be costly to the organization because all eligible employees receive
  - Various allowable allocation formulae, specifically “class based allocation” that may allow to get a larger contribution as a percentage of compensation
- Maximum allowable contribution from all sources is $53,000 or $59,000 if age 50 or older during the plan year.

**Limits are indexed by IRS based on inflation

Qualified Retirement Plans

401(k) or 403(b) and 401(a) Plans

- Maximum considered compensation for benefit purposes is $265,000
- Distributions are taxed as ordinary income unless rolled over into an IRA or other organization's qualified plan

Defined Benefit Pension

- Very rare for new executives and costly for organizations
- $210,000 is maximum allowable benefit
- Distributions can be taken in the form of an annuity or as a lump-sum which can be taken in cash or rolled over

**Limits are indexed by IRS based on inflation

Qualified Retirement Plans

Most plans are 401k plans

- 501(c)(3) organizations, particularly in the educational area provide for 403(b) Plans instead of 401(k) Plans
- Only a small percentage of the surveyed organizations still have defined benefit pension plans
- The median maximum available employer contribution according to the ASAE Survey is 7%

Non-Qualified Deferred Compensation

457(b) and 457(f) Plans

- Plans are named after Internal Revenue Code provisions in which the basic rules are contained
- Are limited to highly compensated individuals - There is no statutory definition of highly compensated individuals

457(b) Plans

- 457 (b) Plan contribution limits are the lesser of $18,000 or 100% of compensation
- Contributions to a 457(b) plan are tax-deferred
- Earnings on the in the 457(b) are tax-deferred

Non-Qualified Deferred Compensation

- 457(b) Plans can be entirely employee deferrals; entirely employer deferrals; or a mixture of the two
- Section 409A does not apply to 457(b) Plans
- Distributions can be deferred until the participant reaches age 70 ½ and be paid over the participant's remaining life expectancy
- However, unlike a qualified plan, the assets are subject to the general creditors of the organization
- I often recommend that the deferral period under a 457(b) Plan not be longer than 10 years to limit the credit risk

Non-Qualified Deferred Compensation

457(f) Plans are also non-qualified deferred compensation plans for tax-exempt organizations

- Unlike 457(b) plans, the deferred amounts are immediately taxable upon vesting, whether or not received or even payable; are subject to Section 409A and, according to IRS Notice 2007-62, may not be used for voluntary deferral of compensation
- According to the IRS Notice, a 457(f) arrangement does not defer taxation if the deferral is voluntary
- Section 457(f)(3)(B) provides that the rights of a person to compensation are subject to a substantial risk of forfeiture if such person's rights to such compensation are conditioned upon the future performance of substantial services by any individual. IRC Notice 2007-62

Non-Qualified Deferred Compensation

- There are no dollar limits on the amount that can be deferred under a 457(f) Plan
- The Internal Revenue Service has said to expect formal guidance for 457(b) Plans soon
  - I suggest that an executive not use a 457(f) Plan until that person has exhausted the possibilities under a qualified plan and the 457(b) Plan

Healthcare Arrangements

Medical Insurance

- Typically nothing more than organization sponsored group plans
- Health – most universal benefit except for the smallest of associations
- Dental
- Visions
- Specialty Policies

Healthcare Arrangements

Section 125/Cafeteria Plans

- Pre-tax premiums for healthcare coverage
- Medical and dependent care spending accounts
  - Annual medical account limit of $2,500
  - Annual dependent care account limit of $5,000

Health Savings Accounts

- Only allowed in conjunction with a high deductible health plan
- $3,350 for an individual and $6,650 for a family (HSA holders 55 and older get to save an extra $1,000)
- Employer contributions must be comparable for all participating employees

Disability Insurance

Short-term Disability Insurance

- Usually self-funded
- Larger entities may hire an outside administrator to handle the administration, particularly to handle eligibility provisions

Long Term Disability

- Usually fully insured
- Often there will be a salary continuation provision in an executive's contract for 6-12 months under the executive's employment contract

Disability Insurance

For Executives, the first layer of disability insurance generally will be through the Entity's group insurance policy.

- Because the group policy generally does not cover the Executive's full insurance needs, the entity will often buy a supplemental policy. Executives often pay for disability coverage with after-tax dollars so that the benefits also are after-tax through imputed income. If the premiums are employer paid, the proceeds are taxable.

Other Insurance Arrangements

- Term or permanent(cash value) insurance
- Accidental death & dismemberment
- Long term care insurance
- Business travel insurance
- Personal liability insurance
- Supplemental policies – if offered, generally are fully employee paid

Leave Arrangements

- Basic annual leave
- Sick
- Bereavement
- Paid holidays
- Other special arrangements
  - Some paid/some not
  - Many different types

Work/Life Balance

- Flextime arrangements
- Teleworking policies
- Relaxed office environment

Ancillary Benefits

- Parking/Mass transit
  - $130 per month for combined commuter highway vehicle transportation and transit passes.
  - $250 per month for qualified parking
- Association/Professional dues
  - Generally non-taxable if paid by the organization
- Country club memberships
  - Taxable
  - I rarely see these benefits anymore

Ancillary Benefits

- Other special benefits
  - Most are taxable
  - Another benefit that I rarely see anymore is a request to cover spouse travel – it is taxable unless the spouse has a *bona fide* role at the Meeting.

Plan Documents

- Benefits are often built into the Employment Contract
  - Benefits like 457(b) and 457(f) Plans should be separately documented
    - Failure to do so can subject the employee to significant penalties
    - Inadequate documents is a very common error
  - Improper plan documentation may put tax free nature of benefit at risk

990 Disclosures

- Part VII of Form 990 requires the listing of the Organization's current or former Officers, Directors, Trustees, Key Employees, and highest compensated employees and current independent contractors and reporting of certain compensation information relating to such individuals
- Compensation must be reported for the calendar year ending with or within the Organization's tax year. Therefore compensation information reported in Part VII may differ from amounts reported elsewhere in the Form 990
- Form 990 , Part VII relies on definitions of reportable compensation and other compensation. Reportable compensation generally refers to compensation reported on Form W-2 , box 1 or 5 (whichever is greater) and Form 1099–MISC box 7
- Organizations must also report Other Compensation and amounts paid from related organizations . See charts on types of items included:

990 Disclosures

- Schedule J of the Form 990 requests additional compensation information with additional detail of amounts reported in Part VII but also a series of questions related to compensation practices
- Whether certain benefits were provided to the individuals listed in Part VII; such as first-class airfare, health club dues and other items
- Whether there are written policies regarding payment of above items and substantiation of such expenses
- Methods used to determine CEO/ Executive Director compensation such as a compensation committee or independent compensation consultant, use of compensation survey, proper compensation approvals and so forth

Salary Resources

- CEO Update 2014-2015 Salary Guide for National Associations and NonProfits
  - http://www.ceoupdate.com/salary-guide
- ASAE Association Compensation and Benefits Study
  - https://mystuff.asaecenter.org/ebusiness/publications/publicationproduct?id=107740
- ERI Salary Survey – All Nonprofits Salary Survey
  - https://salary-surveys.erieri.com/?fuseaction=SRSurveys.Salary-Survey&SurveyID=9&CountryId=193
- Guide Star
  - http://www.guidestar.org/?gclid=CKugpeSI4sUCFQMSHwodd0YAaA
- College and University Professional Association for Human Resources
  - http://www.cupahr.org/surveys/index.aspx

Questions and Answers