Employee Retention Strategies

Working Together

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By Jonathan Orleans

Pullman & Comley's Labor & Employment practice group recently offered a seminar for clients and friends. Our guest speaker was Peter Gioia, Vice President and Economist for the Connecticut Business and Industry Association, who offered an upbeat assessment of the prospects for Connecticut's economy in 2015, with, as ever, the caveat that the state must address its fiscal situation. Peter suggested that as the economy improves, competition for well-trained, high-performing employees will heat up, and employers would be well-advised to think about their strategies for retaining such employees.

How can you best retain your key employees? Think carrots and sticks. There are 4 essential strategies:

- On the carrot side of the ledger, *cash compensation* is the most obvious approach to keeping your key employees with you. A competitive salary and generous bonuses keep your employees satisfied and make it more expensive for competitors to recruit your people. (Be aware, however, of the difference between *discretionary* and *nondiscretionary* bonuses; you can reduce or eliminate the former if times get tough, but your employees may be legally entitled to the latter even if the company is foundering.) Bonuses can be specifically designed to encourage employees to stay, through payment over time subject to forfeiture if the employee voluntarily departs.
- *Equity plans* are a form of non-cash compensation, and are a powerful employee retention tool. Not only do they provide an incentive for productivity over the long term by giving employees a "piece of the action," they can also be structured to provide a disincentive to leaving by, for example, vesting over time so that an employee who leaves must forfeit some of his or her shares. Equity plans (or phantom equity plans, in which the employee doesn't get actual shares, but receives a right to a payment linked to the value of the company's stock) can be implemented in privately held corporations and in LLCs, as well as in publicly traded companies. But equity plans are subject to extensive regulation, so be sure your plan is vetted by qualified counsel.
- Generous *benefits* also encourage employees to stay with you rather than jumping to a competitor. There are a myriad of insurance benefits – health, dental, vision, disability, life – that an employer may offer on a fully or partially subsidized basis. Similarly, a retirement plan in which the employer matches employee contributions (up to a point) can be a powerful incentive for employees to stay. Benefits like paid time off and various morale-boosters (we've all read about the meals, game rooms, and relaxed atmosphere of many Silicon Valley start-ups) encourage loyalty. And employees consistently rate flexible scheduling, including the ability to work from home, as one of the most highly desired employment benefits. Think

about the type of employee you most want to attract and retain, and what is likely to be most attractive to him or her.

- On the stick side of the ledger, *restrictive covenants* are a useful way to minimize the damage that can be done to your interests by an employee who leaves. These contractual provisions – which must be in writing, and ideally should be part of the initial employment agreement between your company and the employee – may include restrictions on soliciting your customers after leaving, restrictions on recruiting your employees away, and restrictions on working for your competitors in some circumstances. But when it comes to restrictive covenants, it's important not to overreach; they must be reasonable, they must be tailored to protect your legitimate interests, and in general they should be reserved for employees who are relatively highly-placed in your organization, who have important customer relationships, who have access to confidential information, and/or who have technical knowledge that a competitor could use to damage your business.

One approach to employee retention that you absolutely should NOTconsider is an *anti-raiding agreement*; i. e. an agreement with a competitor that neither of you will recruit the other's employees. These agreements are viewed by the courts as illegal restraints on trade, and are not enforceable. Employees who have lost opportunities as a result of such agreements may sue for damages.

In short, to retain your best employees you need to make your company a more desirable place to work than the competition. For key people with knowledge of confidential information or technical knowledge and skill, you can also impose some limited restrictions on joining your competitors or soliciting your customers. Your attorney can help you design and implement appropriate agreements and plans to accomplish these objectives.

For a copy of the Seminar materials, please email: info@pullcom.com.