

Association CEO Employment Contracts: Proven, Effective Negotiation Strategies for CEOs

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Strategic Issues to Consider

- **Who Is Conducting the Negotiations for Each Party?**
- **Role and Use of Legal Counsel for Each Party**
- **Role and Use of the Executive Recruiter**
- **Who's Form Contract Is Used as the Starting Point?**
- **Use of Term Sheets**
- **Role of Benchmarking**
- **From the Association's Perspective, the Importance of Keeping Options Open with Candidate #1 and Candidate #2 Until a Deal Is Finalized**

Association CEO Employment Contracts

Four Key Elements

- **Term** (including renewal provisions, typical term is 2-5 years)
- **Termination** (including severance pay, definition of “cause”, etc.)
- **Compensation and Benefits** (including annual pay increases and bonuses, to whom does CEO report, who conducts CEO’s annual performance evaluation, and who sets CEO’s salary and bonuses, structuring benefits to be non-taxable or tax-deferred to CEO, more expansive benefits than for other staff (e.g., PTO – both the amount and ability to roll over and get paid out upon departure), deferred comp, additional life insurance, automobile allowance, business or first-class travel, social or health club dues, companion travel expenses), comparability analysis to ensure fair market value, etc.)
- **Authority and Responsibility** (CEO should have sole and exclusive authority for the hiring, firing, supervision, promotion, and compensation of all other association staff, subject to budgetary parameters set by the Board)

Term of the Employment Agreement

- **Termination Mid-Term** – The association and executive should consider the ways the term can end prior to its expiration
 - Termination with cause (definition of “cause” is critical)
 - Termination without cause (usually with severance pay, but not always with the payment of health and other insurance premiums during severance period)
 - Termination by executive (minimum notice period specified)
 - Other (e.g., disability of the executive)
- **End of Term** – All agreements should specify what happens at the end of the initial and/or renewal term, and how the term can end prior to expiration

Term of the Employment Agreement (cont.)

- **Possible Scenarios at the End of the Initial or Renewal Term –**
 - Expiration (with or without severance pay)(possibly followed by a new negotiated contract)
 - Automatic Renewal (unless prior notice of non-renewal is provided, possibly with severance pay)
 - Notice Requirement (both parties usually want such a provision included)
- **Merger or Other Change of Control of Association –** Usually triggers severance obligation (at the option of the executive)

Compensation

- **Salary** – Typically specified with provisions for future upward adjustments
 - Association should be cautious about specifying guaranteed or minimum increases, but executives generally push for them; specify no decrease in annual salary unless both parties agree
 - Critical to spell out the process for the annual performance evaluation, and who will conduct the evaluation (generally preferable for the executive to have the executive committee serve such function)
- **Bonus** – Should be tied to the attainment of mutually agreed-upon and yet-to-be-specified goals
 - The agreement should specify that other factors may be considered
 - The agreement should spell out the process for setting the goals and determining the bonus amount, and who will make the bonus determination (e.g., executive committee)
- **Long-Term Incentive Plan**

Compensation (cont.)

- **Employee Benefits (e.g., Medical and Dental Insurance, Life Insurance, Fringe Benefits, Automobile Allowance)** – Taxable or not? Certain benefits are subject to specific disclosure on the IRS Form 990 (e.g., first-class or charter travel, social or health club dues, companion travel, housing allowance, personal services, tax indemnification, and gross-up payments)
- **Retirement Plans**
- **Deferred Compensation** – Be aware of Internal Revenue Code Section 409A
- **Total Compensation (Must be “Reasonable” Compared to Similarly Situated Organizations)**
 - Cannot exceed fair market value (total compensation)
 - Potential IRS penalties – Risk can be mitigated by using the “rebuttable presumption of reasonableness”
- **Compensation from Affiliated Organizations**

Other Typical Contract Terms

- **Conflicts of interest**
- **Ability to service on nonprofit and/or corporate boards; outside employment**
- **Professional development expenses**
- **Travel and other business expenses**
- **Non-competition**
- **Non-solicitation of employees, sponsors, exhibitors, donors, etc.**

Other Typical Contract Terms (cont.)

- **Paid Time Off (more than other staff; ability to rollover; payout upon departure)**
- **Sabbatical after certain number of years of service**
- **Relocation allowance**
- **Legal fee reimbursement for negotiation of employment agreement (usually subject to a cap)**
- **Indemnification (may be broader than what is in the Bylaws)**
- **Dispute resolution (e.g., arbitration, mediation (e.g., mandatory non-binding mediation for certain types of claims), loser pays legal fees)**

Questions?

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