

Compensation Matters

Employment and Labor





Compensation is rarely written about. This is notable because, whether you make salary decisions based on need or recognition, compensation is an extremely powerful tool to achieve results. Employees watch the actions of their leaders. There are four actions that leaders take that have the greatest impact on a company's performance and culture: (1) hiring, (2) promoting, (3) rewarding, and (4) terminating employees. I have already covered "Picking Your Team," the subject of my

October 2018 column, which focuses on hiring and promotion. You can give all the verbal recognition you want, but in corporate America, recognition and reward fall in the areas of base salary, bonuses, special rewards, and long-term awards, including options and restricted stock.

You should never be concerned if your team or an attorney wants to discuss pay. In fact, you should encourage these valuable discussions. Be aware, though, that studies show men are more comfortable requesting compensation than women. Be proactive and don't just address those who ask you, but carefully consider every member of your team. Regularly look at the team data to ensure you are not biased in awarding any elements of compensation.

Three themes emerge during compensation discussions. Each relates to potential, performance, and results. First, there is additional information of which you were unaware. Second, unfairness is pointed out. Lastly, if you're satisfied with your approach, you need to be able to explain why you're comfortable with the decision you're making.

Most importantly, you must compensate your team members fairly. Many companies and human resources departments feel they are doing a great job if they save the company money by lowering total compensation expenses. Clearly, you cannot pay everyone for their next job, nor should you, but you need to make sure they are appropriately rewarded based on their potential, performance, and results. For this reason, "fairly" does not mean equally — in fact, it often means the opposite. Don't skimp on compensation if you don't plan to skimp on your expectations of ingenuity, discretionary effort, and results; the benchmark is not fair compensation for someone who is performing at three times the average.

You should expect employees to be astute and aware of compensation information from benchmark data and discussions with other corporate counsel or their fellow team members. You should assume they all possess this data, know where they fit in, and whether you are being fair. For this reason, you need to continuously and proactively benchmark compensation, both internally and externally, and make adjustments as necessary without waiting for an annual process. For example, in the course of one year, I increased one of my direct report's compensation close to 50 percent, as I observed her excellent performance.

If one of your attorneys informs you that they are accepting a higher paying job, this presents an interesting issue. Any managing lawyer who races after such an attorney with higher compensation should really look in the mirror and ask: Why wasn't the attorney compensated earlier? I tell my leaders that I do not want to chase after employees who have told us they are leaving for a higher compensated position. My view is such actions show that their leader has not been fair to their team. And, speaking from experience, when an employee retracts their decision to move to another company and accepts a higher salary from the existing employer, it doesn't always play out well. The manager is left with the impression that they were "held up." Or the manager might second-guess their objectiveness or question the ongoing loyalty of the attorney. When you tell your company you are leaving for higher pay, follow through and leave.

Another thought to keep in mind when folks are complaining about their compensation is that they really may be saying something else. This is especially true if you feel they are being treated fairly. They could be implying, "You can't pay me enough for this job." It is important to try to find out the underlying issue, whether a supervisor issue or a separate engagement factor.

If you treat your team fairly, when a lawyer comes in your office and tells you that they got a job offer with higher compensation, your response is simple: You stand up, shake their hand, and wish them

the best. Then you discuss where you can hold the party to congratulate them. Part of our job is to “train people to leave,” and I am not kidding about holding a party for them. You want your entire team and those you recruit to see that you are developing attorneys to advance and have many opportunities to do well, whether it’s an internal company advancement or otherwise. Success is a reason to celebrate.

With respect to compensation and annual bonuses, I support differentiation, significant differentiation, and the need to pay for it. There is always the debate in human resources circles that the team should be compensated the same to drive results. *I call that communism.* Throughout my career, I have seen both strategies in action. I prefer significant differentiation since *I believe that the top 10 percent of your team produces well over 10 percent of the value, so you need to recognize and reward those results.* However, part of individual performance is how one interacts with, supports, and advances the team. No individual, no matter how talented they are, can be consistently successful working alone. Even if you are a great attorney on specific substantive legal matters, if you do not help our team, you are not going to be in my top 10 percent. And do not treat compensation as electricity to a robot; it is more like an athlete’s diet requiring personal tailoring and constant monitoring for optimal performance.

Make sure any team members who receive any higher bonuses or special bonuses clearly understand why. For any “spot bonus” in my team, I handwrite a card, with a fountain pen, thanking the individual for what they have done. This is for everyone down to administrative staff. I bet I write, on average, 10 cards a week. They are not generic. They reflect the specific reason for the recognition tied to the results and culture we are trying to drive, including teamwork, expense reduction, innovation, diversity, inclusion, and more. Keep in mind that some of the activities that corporate America views as extracurricular are not. Bonus and reward those efforts, too: Your leaders in diversity and inclusion, those with the highest engagement scores, and those who come in under budget.

In terms of long-term compensation, I am very “lumpy.” Make sure you provide for those who will really impact the company over the long term. These are usually your top 10 percenters. Keeping their compensation up will help you retain them by recognizing the long-term value they provide. To distribute it like base compensation does not show the full value they bring to you or the enterprise.

Compensation and bonus decisions for your organization are best made with transparency as a leadership team. Make sure you eradicate any “friends of Mark” noise and value diverse input, with the hope of eliminating unconscious biases. Ensure internal equity and make it clear your organization knows that your entire leadership team is actively involved in these activities. It is one of the most important aspects of their roles.

The bottom line is that compensation matters.

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