

SEPTEMBER 2019 NEWSLETTER

POZZUOLO RODDEN, P.C.
COUNSELORS AT LAW
THE BYE-BENSON HOUSE
2033 WALNUT STREET, PHILADELPHIA, PA 19103
215-977-8200
www.pozzuolo.com



WHAT IS A STAY BONUS AND WHEN/WHY YOUR BUSINESS SHOULD CONSIDER THEM?

FIRM ANNOUNCEMENTS

A. AWARDS:

1. Pozzuolo Rodden, P.C. is pleased to announce that Joseph R. Pozzuolo was awarded The America's Most Honored Professional 2019-Top 1% by the American Registry. The American Registry was selected to be the official and authorized recognition partner for some of America's most trusted professional organizations at identifying business excellence. These organizations rigorously gather up peer review ratings, client reviews, industry analysis to ultimately uncover the best of the best professionals in the business. For 2019 the American Registry proudly announced that Joseph R. Pozzuolo is one of America's Most Honored.
2. Pozzuolo Rodden, P.C. is pleased to announce that Joseph R. Pozzuolo has been named a 2019 Lifetime Achievement Award recipient. Less than 5% of Marquis Who's Who listees are selected for this honor.

B. UPCOMING/PAST SEMINARS:

1. Joseph R. Pozzuolo, Esquire presented the following two continuing education (CLE/CPE) webinar seminars for Clear Law Institute:

A) The Fundamentals of Starting A Business Including Ethics Webinar: Monday, September 16, 2019 at 3pm; and,

B) The Negotiation and Documentation of Commercial Financing Documents Including the Use of Convertible Loans With Put and Call Options Webinar: Tuesday, September 24, 2019 at 3pm.

2. Jeffrey S. Pozzuolo, Esquire will be presenting a CLE/CPE webinar seminar for Clear Law Institute titled "Estate Planning for the Millennial Couple" on October 10, 2019, at 1pm.

Please contact Christine Wainwright at: Chrissy@Pozzuolo.com for details if you would like the online details to attend any of these CLE/CPE seminars.

C. BLOGS:

1. The following are a few of the business, tax, employment, estate planning and business litigation blogs posted on our main website www.pozzuolo.com during the past month:

- a. How Can I Find Out If A Will Exists?;
- b. Guardian Of Person Removed For Self-Dealing And Breach Of Fiduciary Duties; and,
- c. What Is A Probate Lawyer?

Please visit our website www.pozzuolo.com for more information on these and other relevant business, tax, estates, business litigation and employment topics.

2. The following are a few of the family law blogs posted on our family law website www.pozzuolofamilylaw.com during the past month:

- a. Wife's Survivor Benefit Should Have Been Included In The Equitable Distribution Of Marital Property;
- b. Grandparents Petition To Intervene In Child Custody Matter Denied; and,
- c. Court Ordered Equal Parent's Custody Where Older Child Ultimately Expressed Her Interest For Equal Parenting Time.

Please visit our website www.pozzuolofamilylaw.com for more information on these and other relevant family law topics.

WHAT IS A STAY BONUS AND WHEN/WHY YOUR BUSINESS SHOULD CONSIDER THEM?

If a business is transitioning whether by way of a sale, merger, consolidation, reorganization or otherwise, there is a general low morale and uncertainty in the workforce. If a business has a bad senior executive who has destroyed the morale of the workforce, there is a tendency for many employees, including the top talent, to abandon ship and move onto other employment opportunities. Additionally, if a business has a top manager who is integral to the success of the business and if such manager left, there is a possibility a number of key employees would leave with him/her. In any of these common business scenarios, this can create a talent vacuum and cripple the business in the short run and possibly have long term financial implications. Stay bonuses are a great remedy to help

combat the potential talent drain, and keep the business steady during these times of transition, turmoil and uncertainty.

WHAT IS A STAY BONUS?

A stay bonus is what it sounds like, a bonus to encourage an employee to “stay” with the business. Whereas some bonuses are meant to incentivize an employee to meet certain performance goals, a stay bonus provides a bonus amount for staying for a necessary period of time. If the employee stays, he receives a financial reward. If he does not, he forfeits the bonus money.

Stay bonuses can vary from industry to industry, company to company, and from objective to objective. Sometimes they are extremely short term such as incentivizing a temporary tax accountant to stay through the end of April for the tax season, or incentivizing certain key managerial employees to stay employed for a finite period of time before and after a sale of the business to ensure continuity of management and stability, and allowing a buyer the opportunity to negotiate new longer term deals with key management employees.

Sometimes stay bonuses are long term. For example the stay bonus could be an incentive for a senior management employee(s) to remain employed for two, three, or even five years after a sale of the business or death of the senior owner. This is no different than a sports team incentivizing a franchise quarterback, a franchise hockey goalie, a franchise pitcher, or a franchise center to remain under contract so the team can be built around him/her for the next 3, 5 or 8 years. Businesses need to seriously consider doing the same. By keeping the core managers and executives, the business can similarly build a winning, profitable, experienced team around them including, employees and customers/clients to remain profitable or to be sold, merged or consolidated in the finite future. If he/she leaves, other valuable employees and customers/clients may leave with him/her. Some employees remain employed or customers may remain with the business because they enjoy the company of, working with and learning from that manager. An important, but often overlooked, consideration to retain star managers!

There are various ways to define what the stay bonus payout should be. It can be as simple as a flat amount or as complex or variable as the stay bonus is based off of hours worked, hours billed, sales brought in or net profits generated.

A simple flat amount is simple and easy; however, a more complex stay bonus may help to further incentivize other business goals. For example, a sale representative may receive a 15% commission based on net sales, but a stay bonus may give him an additional 10% for remaining employed and payable two calendar years later. This helps incentivize retention, but also incentivize sales because the sale representative knows he can potentially make 25% of net sales vs. 15% if he stays employed for an additional two years.

Another variation to the flat rate is providing a graduating stay bonus over five years so each additional year of employment is more valuable. There could be a stay bonus schedule of \$10,000 the first year, \$15,000 the second, \$20,000 the third, \$30,000 the fourth,

and \$40,000 the fifth year, instead of a stay bonus of \$20,000 a year for five consecutive years. This creates an incentive to remain employed to enjoy the larger payments.

In summary, there are a number of ways a stay bonus can be structured, but it is a stay bonus as long as it encourages the employee, manager, officer or executive to stay for the desired period.

WHY USE STAY BONUSES?

As mentioned above, there are a number of times or instances when a stay bonus is appropriate both in a transition/turbulent times and outside of a transition.

Traditionally they are used in turbulent times to ensure continuity of labor so the business does not fall apart during the transition. This can be anything from a sale of a business, a reorganization or consolidation, or addressing the aftermath of a malignant/poisonous manager. In these situations, for example, if a company has 30 sales representatives and three sales managers, one for every 10 sales personnel, one manager may decide to leave and some or all of the sales personnel loyal to him/her may follow the manager. For example, suddenly the business has two-third of the workforce to take care of the same set of customers, and even if the 5 to 8 sale representatives who followed the manager are replaced, a new manager is necessary to guide them to retain or regenerate the goodwill of the departed manager's customers. In other words, it could take months or even years to replace a quality manager.

More importantly, in a business sale, a sudden exodus and/or cherry picking by a competitor of the sales or manufacturing force could possibly lead to: 1) a discount in the purchase price or last minute re-trade; or, 2) possibly lead to a failed deal. Clearly, short term results will take a hit and make the business less attractive to the buyer. At the very least, a stay bonus is mandatory for the aforementioned three sales managers to stay on board not only during the transition, but possibly for a finite post-closing period such as year or two. This is mandatory to maximize the purchase price.

Another situation that may require a stay bonus is when there is a ruthless, inhuman condescending senior manager who completely kills or destroys the moral of the employees. In this situation, you may lose 5 to 8 of the abovementioned sales representatives because they hate or despise working for this manager. A problem arises in that the remaining sales reps will have the extra stress of picking up the slack of those who left. Instead of risking losing some of the remaining reps and there being chaos due to the sudden turnover of a major part of the sales division, it may be wise to reward the remaining sales force for their extra diligence and loyalty with a stay bonus to stay through the rebuild or transition. This allows a core of veterans who can provide guidance to the new employees as they are replacing the departed employees.

Outside of turbulent times or a transition, stay bonuses may be a virtuous part of a general incentive package. If you merely have incentive bonuses, in a bad year, a good manager may have no reason to finish out a year as he knows incentives will not be met

anyway. The stay bonus gives him a reason to stay and rewards him for his/her loyalty. This is especially important as sometimes a bad year has nothing to do with the manager's decisions, and it is greatly possible that without that manager, the year could have been worse.

Another instance where stay bonuses are useful is when it takes a large investment to find a new hire and/or it takes a year or two to train him/her. Imagine spending \$90,000 hiring a new senior executive, and he/she leaves in six months, long before the expenditures reaped any rewards. It may be wise to incentivize a bonus for staying for three to five years where the \$90,000 hiring cost will be more than paid off due to rewards attained by the business from the hire. In some fields, it may require a high salary to attract good talent, but it may take a year before that person is pulling his/her weight and understands the business, sales, customers and manufacturing techniques. Rather than allowing the new hire executive to earn the high salary and use the employer for training the first year, and then have a competitor cherry pick the newly trained senior employee, it is worth providing that employee a stay bonus for three to five years or a rolling stay bonus where he/she is incentivized each year for staying longer. This may help encourage the new employee to stay longer, and minimizing the negative effects of spending a large sum to train a senior employee, just for a competitor to take the employee once trained.

One downside to incentive bonuses is if there is no long term plan, it creates a natural break for employees to move on to the next venture. For instance, if there is a three year stay bonus, if there is no bonus beyond that, the employee may naturally wait the three years and expect to leave after three years and one day. Therefore, it is important to keep the overall goal in mind, and tailor it to that goal. If a five year employee is desired, then incentivize five years. But if a twenty year employee is desired, set up a scheme that rewards that type of tenure.

SUMMARY:

In the end, stay bonuses are great tools to be used on their own or used in conjunction with other incentives or for specific purposes. The specifics of the stay bonus all depends on what the specific purpose is, but in the end, if you want an employee to stay for his/her expertise, for his/her impact on the other employees, or for his/her long standing customer relationships, it is wise to consider stay bonuses for key management to ensure his/her expertise and know how does not move onto a competitor.

PUBLICATIONS

All of the following professional publications and past newsletters written by attorneys of this office are available by clicking here: http://pozzuolo.com/Pubs_Articles.shtml

Corporate/Tax Articles

- Bankruptcy - How To Prevent It And How To Cope With It Should It Happen To Your Business
- Deferred Compensation Rewards And Retains Key Employees

- Design Buy-Sell Agreements For Maximum Utility
- How An S Corporation Avoids The Double Taxation Incurred When Excessive Compensation Is Treated As A Dividend
- How Mortgage Lenders Should Draft Broker Agreements To Avoid RESPA Violations
- How To Look, Act And Sound Like A Professional Corporation
- How to Structure a Suitable Buy-Sell Agreement
- How To Use Non-Qualified Deferred Compensation Arrangements As A Business, Retirement And Tax Planning Tool
- Money Purchase Pension Plan Falls Out Of Favor
- Protecting A Client's Business From Unfair Competition Using Restrictive Covenants
- Structuring Loans From Qualified Plans - How To Handle The Strict Tax Rules
- What Type of Qualified Corporate Retirement Plan Best Serves Your Business, Tax And Retirement Needs
- Why An Employment Contract Is Mandatory

Estate Planning Articles

- Adapt Estate Planning Strategies to Fit the Needs of Same-Sex Couples
- College Funding Tool Offers Estate Planning Advantage
- Diversify Strategies For An Effective Estate Plan
- Divorce and Estate Planning
- Divorce Raises The Need For Performing An Estate Planning Review
- Drafting The Durable Power Of Attorney For Wealth Protection Purposes
- Estate Planning For Pet Owners
- Remarriage Situations Can Raise Special Estate Planning Considerations
- Six Proven Estate Planning Techniques
- Special Needs Trust - An Estate Planning Tool For The Disabled
- The Limited Liability Company -A Sophisticated Tool For Estate Planning
- Using Trusts To Maximize Family Protection And Minimize Estate Tax
- Why Living Wills- Advance Directives Are An Essential Part Of Estate Planning

This newsletter is courtesy of Pozzuolo Rodden, P.C.

To subscribe, unsubscribe, or for any questions, please contact us at INFO@POZZUOLO.COM.

