Hot Topics:
Executive Compensation

Presentation for:
Hunton's Executive Compensation Webinar Series
August 13, 2026

HUNTON

Housekeeping: Questions

- Questions during this presentation
  - We encourage questions (even though your audio lines are muted)
  - To submit a question, use the Q&A icon on your Zoom tool bar to submit a question
  - If time permits, your questions will be answered at the end of this presentation. And if there is insufficient time, the speaker will respond to you via e-mail after this presentation

Housekeeping: Recording, CE Credits and Disclaimer

- Recording
  - This presentation is being recorded for internal purposes only
- Continuing education credits
  - A purpose of the webinar series is to provide FREE CE credits
  - To that end, each presentation is intended to provide 1 credit hour in the following areas:
    - CLE: 1 credit hour (CA, FL, GA, NC, NY, TX and VA)
    - CPE: 1 credit hour (Texas)
    - HRCI: This activity has been approved for 1 (HR (General)) recertification credit hours toward California, GPHR, PHRi, SPHRI, PHR, and SPHR recertification through the HR Certification Institute
    - SHRM: This program is valid for 1 PDC for the SHRM-CPSM or SHRM-SCPSM
  - If you have any questions relating to CE credits, please direct them to Anthony Eppert at AnthonyEppert@HuntonAK.com or 713.220.4276
- Disclaimer
  - This presentation is intended for informational and educational purposes only, and cannot be relied upon as legal advice
  - Any assumptions used in this presentation are for illustrative purposes only
  - No attorney-client relationship is created due to your attending this presentation or due to your receipt of program materials

About Anthony “Tony” Eppert

Anthony Eppert, Partner
Hunton Andrews Kurth LLP
Tel: +1.512.542.5013
Email: AnthonyEppert@Hunton.com

- Tony practices in the areas of executive compensation and employee benefits

- Before entering private practice, Tony:
  - Served as a judicial clerk to the Hon. Richard F. Suhrheinrich of the United States Court of Appeals for the Sixth Circuit
  - Obtained his LL.M. (Taxation) from New York University
  - Obtained his J.D. (Tax Concentration) from Michigan State University College of Law
    - Editor-in-Chief, Journal of Medicine and Law
    - President, Tax and Estate Planning Society

HUNTON

Upcoming 2026 Webinars

- 2026 webinars:
  - Preparing for Proxy Season: Start Now (an Annual Program) (9/10/26)
  - Carrot and the Stick: Delving Into Various Stick-Related Retention Ideas 10/8/26)
  - Form 4 Training Course (11/12/26)
  - Compensation: Year-End Review of 2026 Items (12/10/26)

Sign up here: https://www.hunton.com/en/insights/executive-compensation-webinar-schedule.html

Our Compensation Practice – What Sets Us Apart

- Compensation issues are complex, especially for publicly-traded companies, and involve substantive areas of:
  - Tax,
  - Securities,
  - Accounting,
  - Governance,
  - Surveys, and
  - Human resources

- Historically, compensation issues were addressed using multiple service providers, including:
  - Tax lawyers,
  - Securities/corporate lawyers,
  - Labor & employment lawyers,
  - Accountants, and
  - Survey consultants

Our Compensation Practice – What Sets Us Apart (cont.)

- The members of our Compensation Practice Group are multi-disciplinary within the various substantive areas of compensation. As multi-disciplinary practitioners, we take a holistic and full-service approach to compensation matters that considers all substantive areas of compensation

HUNTON

Our Compensation Practice – What Sets Us Apart (cont.)

- Our Compensation Practice Group provides a variety of multi-disciplinary services within the field of compensation, including:

Traditional Consulting Services

- Surveys
- Peer group analyses/benchmarking
- Assess competitive markets
- Pay-for-performance analyses
- Advise on say-on-pay issues
- Pay ratio
- 280G golden parachute mitigation

Corporate Governance

- Implement "best practices"
- Advise Compensation Committee
- Risk assessments
- Grant practices & delegations
- Clawback policies
- Stock ownership guidelines
- Dodd-Frank

Securities/Disclosure

- Section 16 issues & compliance
- 10b5-1 trading plans
- Compliance with listing rules
- CD&A disclosure and related optics
- Sarbanes Oxley compliance
- Perquisite design/related disclosure
- Shareholder advisory services
- Activist shareholders
- Form 4s, S-8s & Form 8-Ks
- Proxy disclosures

Design/Draft Plan

- Equity incentive plans
- Synthetic equity plans
- Long-term incentive plans
- Partnership profits interests
- Partnership blocker entities
- Executive contracts
- Severance arrangements
- Deferred compensation plans
- Change-in-control plans/bonuses
- Employee stock purchase plans
- Employee stock ownership plans

Traditional Compensation Planning

- Section 83
- Section 409A
- Section 280G golden parachutes
- Deductibility under Section 162(m)
- ERISA, 401(k), pension plans
- Fringe benefit plans/arrangements
- Deferred compensation & SERPs
- Employment taxes
- Health & welfare plans, 125 plans

International Tax Planning

- Internationally mobile employees
- Expatriate packages
- Secondment agreements
- Global equity plans
- Analysis of applicable treaties
- Recharge agreements
- Data privacy

Expansion of Covered Employees

- Effective for the taxable year beginning after December 31, 2026, the term "covered employee" is being expanded
  - Prior to such time, the term Covered Employee only included current and former NEOs, and the "once a covered employee, always a covered employee" rule applies
  - Under the revised rule, the term Covered Employee includes the foregoing NEOs, PLUS the next 5 highest compensated employees
    - However, the "once a covered employee, always a covered employee" rule does NOT apply to these new employees
    - Thus, those subject to deductibility limitations (*i.e.*, those outside the NEOs) could change from year to year
    - NEOs are determined with reference to compensation under SEC rules and the next 5 compensated employees would be determined with respect to compensation that gives rise to a compensatory deduction (*i.e.*, Box 1 of W-2)

- Why does this matter and action items to consider?
  - Consider implementing consultancy arrangements in the context of termination of employment of any of the foregoing employees, so as to allow continued vesting throughout the consultancy, thus spreading the compensation expense for accounting purposes but also allowing for more deductibility of compensation (as opposed to accelerated vesting)
  - Consider deferred compensation as a solution to protect the deductibility of compensation paid to the expanded class (*i.e.*, remember this expanded class is not subject to the once/always rule, and therefore, compensation paid when no longer employed would be deductible)

SEC Proposed Rules to Lessen Disclosure Requirements

- On May 19, 2026, the SEC published a proposed rule that, if adopted, would provide non-accelerated filers with scaled disclosure obligations otherwise only applicable to smaller reporting companies and emerging growth companies
  - If adopted, such would significantly reduce the quantity and breadth of executive compensation disclosures

- Quick background:
  - Comments were due to the SEC on or before July 20, 2026
  - The term “public float” is the total market value of an issuer’s common stock
  - The SEC estimates that non-accelerated filers would approximate 81% of public companies that would be able to take advantage of these new rules
  - The SEC estimates that accelerated filers would represent approximately 93% of the public float
  - A large accelerated filer is an issuer who has been public for at least 5 years and has at least $2bb in public float (increased from $750mm) for two consecutive years
    - All other public companies would be considered non-accelerated filers

  - Currently, emerging growth companies and smaller reporting companies are subject to scaled compensation disclosure requirements

SEC Proposed Rules to Lessen Disclosure Requirements (cont.)

- If adopted in current form, the proposed rule would allow non-accelerated filers the following (assuming the non-accelerated filer has a proposed float of less than $2bb):
  - Disclose only 3 NEOs instead of 5 NEOs,
  - Only required to disclose 2 years of compensation data (instead of 3 years),
  - The CD&A would not be required,
  - Say-on-pay vote and the vote with respect to the frequency of say-on-pay would not be required,
  - None of the following tables would be required:
    - Grants of Plan-Based Awards table,
    - Options Exercised and Stock Vested table,
    - Pension Benefits table,
    - Non-qualified deferred compensation table,
  - Non-accelerated filers would be exempt from pay ratio disclosure
  - No pay v. performance disclosure
  - No compensation committee report
- In that SEC disclosure often shapes compensation design, and assuming the foregoing becomes effective, issuers should have enhanced abilities to shape compensation designs that attract and retain key executives

Non-Competition Clauses/Agreements

- The FTC's proposed ban on non-competes was abandoned during the latter part of 2025, however, the FTC continues with targeted enforcement actions

- Some states prohibit non-competes, such as (though even in these states, non-competes are generally permissible in the context of change in control where the obligor under the non-compete is selling the goodwill of the business to which the non-compete relates, and too, some of these states have exemptions for certain executives):
  - California,
  - Minnesota,
  - North Dakota,
  - Oklahoma,
  - Washington (most banned effective June 30, 2027), and
  - Wyoming

Non-Competition Clauses/Agreements

- A number of states have legislation pending that, if enacted, would prohibit or severely restrict non-competes, such as:
  - Illinois,
  - Indiana,
  - Maryland,
  - New York,
  - Ohio,
  - Rhode Island, and
  - Utah

- Employers should continually monitor the geographic footprint of its workers relative to states that ban or are highly dis-favorable to non-competes

- Additionally, employers should continue to refine:
  - Confidentiality agreements,
  - Non-solicitation agreements,
  - Invention assignment agreements,
  - Use of economic forfeiture agreements, and
  - Choice of law and venue selection provisions

Stay-or-Pay Provisions

- California and New York have enacted statutory rules that prohibit “stay-or-pay” arrangements, such as:
  - Training repayment agreements where the employee must repay the cost of training or education if he/she leaves the employer within a certain period;
  - Sign-on or retention bonus clawbacks; and
  - Recovery of relocation costs the employer incurred in moving the employee to the location

- The following two slides focus only on the impact of such provisions on clawback of sign-on bonus provisions

Stay-or-Pay Provisions: Bonus Clawbacks

- Effective January 1, 2026, a new California law invalidates payments to employees and consultants that are subject to repayment, unless such payments fit within a limited exception
  - Thus, a large cash sign-on bonus that is paid to an executive, and which has to be repaid if the executive leaves within a certain period of time, is invalid

- With respect to the California law, a limited exception applies such that the repayment obligation would remain valid, if:
  - Payment must be provided to the employee at the outset of employment;
  - The repayment obligation is contained in a document that is separate from the employment agreement/offer letter;
  - The employee is provided the right to consult an attorney and such employee is provided at least 5 days to obtain legal counsel;
  - Any obligation to repay is subject to interest and must be pro rated based upon the remaining term of such retention period (which is capped at 2 years);
  - The employee must be provided the opportunity to defer receipt of the payment to the end of the retention period (thus, avoiding any repayment obligation); and
  - Clawback allowed only if the employee voluntarily resigns or is fired for "misconduct"

- Applies to all agreements entered into on or after January 1, 2026, including any pre-existing contracts that are subsequently amended

- Workers can file civil lawsuit (including class action) and minimum penalty is $5,000 per work plus attorneys' fees and costs

Sign-On Bonuses Subject to Clawback – New York

- Effective February 13, 2027, a new New York law has a similar approach as California but different, as follows:
  - Per a later amendment to the statute, this rule only covers employees (not independent contractors)
  - Clawback of the sign-on bonus is NOT allowed if:
    - The employee is terminated for any reason other than misconduct, or
    - The employee's duties or the requirements of the job function were materially misrepresented to the employee

- Different from California, under New York law there is no private right of action to enforce the rule (*i.e.*, only the New York Department of Labor can bring enforcement actions)

- Civil penalties range from $1,000 to $5,000 per violation

- Watch out for other states who have, or are in the process of developing, legislation that constrains certain bonuses (*e.g.*, Connecticut, Colorado, Indiana, Pennsylvania, Washington, Wyoming)
  - These are different from New York and California in that they do not directly ban sign-on bonuses, however, these laws will also have to be navigated

Sign-On Bonuses Subject to Clawback – What To Do

- Employers, especially multi-state employers, should consider:
  - Review employment agreements and offer letters for offending language and requirements;
  - Ensure any requirements to repay a sign-on bonus are contained in a separate agreement; and
  - Review any provisions relating to training programs and related repayment provisions for costs of the same

PE Portfolio Companies and the ESOP Solution

- This is an executive compensation topic only to the extent most of an executive's pay within a PE portfolio company is tied to a liquidity event

- Traditional exit activity of portfolio companies has slowed such that, according to a New York Times article dated August 10, 2026, approximately 33,575 portfolio companies remain unsold due to higher interest rates making it more difficult for debt financing, weakness in the software sector where PE has a heavy concentration, etc., . . . all of which creates a valuation gap between what PE is willing to sell and buyers are willing to pay [See this Bain report for more information: 20260305053251 3699.pdf]

- Selling all or a portion of the portfolio company to an ESOP could be a solution:
  - Banks will typically loan up to 30% of the portfolio company's FMV, thus providing the PE shop with liquid cash to exit a portion of the business;
  - The remaining of the business could be held by the PE shop or sold pursuant to a seller note, thus taking advantage of the higher interest rates on subordinated debt (*i.e*., if PE sold 100% of the portfolio company, 30% could be financed with bank debt and 70% could be financed with seller financing priced using subordinated interest rates of approximately 12% - and too – in lieu of 12%, for example, the PE shop could take a stated interest rate of 5% and receive the remainder in the form of warrants priced immediately after the sale to the ESOP, which typically equates to a low strike price)
  - Capital gains on the sale could be deferred and the sale proceeds can be deployed by the PE shop towards other endeavors

Don’t Forget Next Month’s Webinar

- Title:
  - Preparing for Proxy Season: Start Now (an Annual Program)
- When:
  - 10:00 am to 11:00 am Central
  - September 10, 2026