

The Strategic Retention Advantage of Retirement Notice Periods

By Bob Romanchek and Sam Bricker

RETAINING KEY TALENT IS A TOP PRIORITY for boards. Late career movement between companies is increasingly common as executives continue to retire later than ever. Traditionally, noncompete arrangements precluded executives from retiring and then immediately going to work for a competitor. However, as the legality and enforceability of noncompete arrangements continue to shift, this mechanism for protecting against the poaching of executive talent is becoming less dependable. Numerous states—and now the Federal Trade Commission—have prohibited or restricted noncompete arrangements. As a result, companies are finding themselves in need of other means to retain executive leadership. Implementing a notice period tied to the vesting of equity at retirement can enhance employee retention and provide financial and strategic advantages.

Many companies provide for the vesting of outstanding equity at “retirement” if executives meet certain eligibility criteria, such as reaching a specified age or completing a set number of years of service. Upon meeting these criteria, executives may qualify for full or prorated vesting of their equity awards, depending on the terms outlined in their equity award agreements. Most often, meeting the retirement definition would provide continued vesting of options and restricted stock units and prorate treatment for performance stock units. Adding a required notice period for senior executives within an award agreement does not preclude the vesting of equity, but adds another criterion needed to achieve vesting eligibility.

Notice period requirements serve to align the vesting of equity with the genuine intention behind retirement provisions, namely, to reward executives who are truly retiring from active service. In an era where executives often work well beyond the traditional retirement eligibility age (55–65 years old), companies need mechanisms to distinguish those who are truly retiring from those who are transitioning to a new employer. By tying a notice period to the vesting of outstanding equity, companies discourage departures without advance planning. Generally, executives can communicate planned retirements six months to one year in advance. Executives contemplating a move to a different company, however, are unlikely to risk a six-month or one-year waiting period. A simple clause in an award

agreement can be extremely effective in discouraging executives from “cashing out” and commencing employment elsewhere.

Implementing retirement notice period requirements in award agreements also supports effective succession planning by discouraging unplanned departures. In situations without an immediate successor candidate, companies gain crucial time to identify and groom a replacement. The typical six-month or one-year notice period provides boards and management teams time to evaluate internal talent, assess readiness, and provide any necessary development opportunities. For companies unable to promote from within, the notice period also provides a buffer to enhance external recruiting efforts.

In addition, implementing notice periods provides an accounting benefit. Once equity awards no longer have a substantial risk of forfeiture, the accounting expense associated with the award is immediately recognized. If there is no notice period, companies typically recognize this expense as soon as the executive satisfies the retirement eligibility criteria. Companies can delay expense recognition until the retirement-eligible individual provides notice when a notice period is incorporated in the award agreements.

A retirement notice period requirement is a valuable tool for boards looking to mitigate the risks associated with executive mobility. These provisions play a pivotal role in maintaining stability within the executive team by ensuring that the vesting of equity aligns with genuine retirement intentions. These provisions also aid with effective succession planning and provide accounting benefits. In an environment where talent retention is paramount, boards that consider incorporating retirement notice periods in award agreements stand to benefit from enhanced retention and preparedness for executive transitions. **D**



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