



Executive Compensation

You have a reason to grow your business, to make more money. You also have a reason to stick around, to reap the rewards of your investments. But what about your executive employees? You should consider giving them the same incentives.

Foster Swift's executive compensation attorneys can help you design an executive compensation program customized to fit your executives, your business and your industry. We regularly work with business owners, boards of directors and compensation committees to help develop compensation strategies that align with business goals. We evaluate current executive compensation packages, redesign and customize benefit structures, draft and implement new executive compensation programs and help administer those programs.

We help clients design their bonus programs to align their executives' incentives with their short-term and long-term goals. Short-term incentives are often provided through an annual bonus program. The bonuses may be discretionary, profit-sharing or earned based on annual performance targets. Long-term incentives are often provided through bonuses that are earned over a number of years based on executives meeting long-term performance targets, typically designed to fit the client's strategic plan, and other goals.

Additionally, our experts help clients design "top hat" deferred compensation programs that are structured to encourage their executives to work hard over the long-term. Plans can be designed to provide added retirement benefits in exchange for the executive remaining employed through retirement or helping to meet other goals, such as successfully growing a division or selling a business.

We also regularly design equity-based plans that provide benefits in the form of stock, stock options, and "phantom stock" or other "synthetic equity." These are particularly popular for start-up, early-stage and growing businesses. Examples of such plans include: restricted stock plans, stock option plans, phantom stock plans, stock appreciation rights plans and "omnibus" plans.

A properly designed executive compensation program is essential to the success of every growing business, though the area of executive compensation is not without its pitfalls. Complicated tax rules,

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including Section 409A of the Internal Revenue Code, impose strict rules on executive benefits and penalties for violating those rules can be severe. All compensation arrangements, including arrangements with non-executive employees, should be reviewed by qualified counsel to ensure compliance with applicable tax rules and other legal requirements.

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