How to Plan Ahead with Employment Agreements

Sarah Sawyer: Welcome to this week's OK at Work with myself, Sarah Sawyer, my colleague Russell Berger, both attorneys at Offit Kurman, and today we are talking about executive level compensation agreements and employment agreements. And we've talked about this in a couple different contexts, but today I wanna talk about it a little bit in the context of marketability of the business and why it might be a good thing to have.

Both from the executive's perspective, but also from the company's perspective and that they might be aligned in the sense that, obviously these agreements include a lot of things other than I think we've talked about, like the compensation pieces and some of that, transitioning of executives and trying to have some stability there.

But there's a lot of other things that go into these agreements, that can be important, if you're going to sell the business or you're getting investors or there's some type of change happening in that regard. So what are some clauses or [00:01:00] some considerations that might make those types of agreements important in those contexts, Russell?

Russell Berger: Yeah, I think there are a number. At a high level, there are things that we would probably recommend anyway because, they're valuable to the business, whether you're selling or not. So these are things we would want to have in place, restrictive covenants, non-competes, non-solicitation confidentiality, intellectual property protection, that sort of thing. But it might also include terms of employment. Now, almost all the time we say, oh, you should have an at will employee, an at will employment is the right way to go.

But for a certain executive level folks, and depending on your organization, it might be worthwhile to have term employment and have people set up and locked in for a certain amount of time and not be able to just go off on their own, whether they're competing or not, they might be very valuable to keep in the business, or at least keep in the business through a transition period if need be.

So having those sorts of things in place can be really valuable. Either, sell or not could be really valuable to you. [00:02:00]

Sarah Sawyer: We see this a lot with founders and folks who are maybe they've been running the business themselves and then these things don't really seem necessary.

But then, I think at any juncture when you're starting to include other people or based on growth, when things are starting to grow and take off, and there might be a longer term plan, as you said, the founders are staying involved, but maybe they're not. Maybe there's some hybrid approach there where there's like some time that they wanna stay involved and then transition.

So it's a good thing to just be thinking about. I think the triggering things are, selling, raising funds adding investors or people to the company and looking for some type of transition. It's always good to have these in place, but I think those things, if you're, just bopping along without them in place could be triggering to say, maybe this is the time we should think about this.

Russell Berger: Yeah. I know we've said it here before, don't wait till you're three months out from a sale to start planning for the sale. So you start to get that inkling that, hey, I might be moving in this direction. Whether it's a full sale or a partial, I'm gonna take on somebody who's going to value [00:03:00] stability, is going to value having this management team in place or might value this anyway.

I wanna make sure, my people are protected, my customers are protected, my intellectual property, my business plans. I wanna make sure all these things are protected.

Sarah Sawyer: Well, and on the protection front, it takes some time to the point about not waiting until the last minute.

If some of those things aren't protected the way that maybe you thought they were or that they should be it's usually not an overnight fix. Obviously we work very diligently for our clients, but there's even things we can't control as it relates to timing.

Russell Berger: Well, yeah. And sometimes that might mean different things. We've had transactions, I'm sure you've worked on too, Sarah, where the buyer coming in wants the executive team sign new employment agreements and is going to change it. That can still happen.

So you can either wait til the moment of closing to lock those folks in. But it means those folks have leverage and they're part of the closing conversation and they've gotta be incorporated and included.

Sarah Sawyer: Yeah. Well, good advice. We'll see you next time, [00:04:00] Russell. Thanks.

Russell Berger: Thanks Sarah.