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## **Association CEO Employment Contracts: Key Negotiating Tips, Strategies, Pitfalls, and Best Practices**

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# Association CEO Employment Contracts

## Four Key Elements

- **Term** (including renewal provisions, typical term is 2-5 years)
- **Termination** (including severance pay, definition of “cause,” etc.)
- **Compensation and Benefits** (including annual pay increases and bonuses, who does CEO report to, who conducts CEO’s annual performance evaluation, and who sets CEO’s salary and bonuses?, structuring benefits to be non-taxable or tax-deferred to CEO, more expansive benefits than for other staff (e.g., deferred comp, added life insurance, car allowance, certain first-class travel, social or health club dues, companion travel expenses), comparability analysis to ensure fair market value, etc.)
- **Authority and Responsibility** (CEO should have sole and exclusive authority for the hiring, firing, supervision, promotion, and compensation of all other association staff, subject to budgetary parameters set by the Board)

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# Term of the Agreement

- **Initial Term** – The association and executive should consider the ways the term can end prior to its expiration
  - Termination with cause (definition of “cause” is critical)
  - Termination without cause (usually with severance pay)
  - Termination by executive (notice period specified)
  - Other (e.g., disability of the executive)
- **Renewal Term** – All agreements should specify what happens at the end of the initial term, and how the renewal term can end prior to its expiration
- Possible scenarios at the end of the initial or renewal term:
  - Expiration (with or without severance pay)(potentially followed by new negotiated contract)
  - Automatic Renewal
  - Notice (both parties usually want such a provision included)

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# Compensation

- **Salary** – Typically specified with provisions for future upward adjustments
  - Associations should be cautious about specifying guaranteed or minimum increases, but executives generally push for them; specify no decrease in annual salary
  - Critical to spell out the process for the annual performance evaluation, and who will conduct the evaluation (generally preferable to have the executive committee serve such function)
- **Bonus** – Should be tied to the attainment of mutually agreed-upon and yet-to-be specified goals
  - The agreement should specify that other factors may be considered
  - The agreement should spell out the process for setting the goals and determining the bonus amount, and who will serve such function (e.g., executive committee)
- **Long-term incentive plan**

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# Compensation

- **Employee benefits (e.g., medical and dental insurance, life insurance, fringe benefits, car allowance)** – taxable or not? Certain benefits are subject to specific disclosure on the IRS Form 990 (e.g., first-class or charter travel, social or health club dues, companion travel, housing allowance, personal services, tax indemnification and gross-up payments)
- **Retirement plans**
- **Deferred compensation** – Be aware of Internal Revenue Code Section 409A
- **Total compensation (must be “reasonable” compared to similarly situated organizations)**
  - Cannot exceed fair market value
  - Potential IRS penalties – Risk can be mitigated by using the “rebuttable presumption of reasonableness”
- **Compensation from affiliated organizations**

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# Other Typical Contract Terms

- Conflicts of interest
- Ability to serve on nonprofit and/or corporate boards; outside employment
- Professional development
- Travel and other business expenses
- Non-competition
- Non-solicitation of employees, sponsors, exhibitors, donors, etc.
- Paid Time Off (more than other staff; ability to rollover; payout upon departure?)
- Sabbatical after certain number of years of service
- Relocation allowance
- Legal fee reimbursement for negotiation of employment agreement (usually subject to a cap)
- Indemnification
- Dispute resolution (e.g., arbitration, mediation (e.g., mandatory non-binding mediation for certain types of claims), loser pays legal fees)

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## Questions?



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