United States

Employment

Labor Concerns

A claim for breach of contract could arise where a Plan is amended or discontinued. It is recommended that Plan provisions be drafted so as to preclude leased and/or temporary employees and independent contractors from claiming entitlements under the Plan (absent a specific intention to include these workers). Plans should be drafted to permit unilateral amendment or termination of the Plan, and employees should be required to acknowledge the discretionary nature of the Plan.

Employers may not deny, directly or indirectly, employees the opportunity to participate in the Plan based on any prohibited grounds of discrimination, including, among others, race, color, religion, sex, national origin, citizenship, age, disability, uniformed service or any other status protected by federal, state or local law.

Communications

Plan documents should be translated into English unless the participant speaks the language in which the documents are written. Most government filings must be made in English (although certain documents may be filed with a summary in English).

Generally, the electronic execution of agreements may be acceptable under certain conditions.

Regulatory

Securities Compliance

Federal and state securities laws govern the grant of securities under employee benefit plans, including employee stock purchase plans. Under the US Securities Act of 1933 (the "**Securities Act**"), unless an exemption is available, any offer or sale of a security must be registered with the US Securities and Exchange Commission (the "**SEC**"). The SEC has created a special exemption and a special registration process for offers and sales of securities in connection with employee benefit plans:

Reporting companies. Companies with a class of securities registered under the Securities Exchange Act of 1934 (the "**Exchange Act**") – which includes, among others, companies listed on a US stock exchange – are allowed to use a streamlined registration statement called a Form S-8. Form S-8 requires less disclosure than other SEC registration forms. To be eligible to use this form, the company must have filed all required reports during the preceding 12 months (or such shorter period as the company was required to file). The Form S-8 is filed with the SEC and is generally no more than ten pages long. Separate from the Form S-8, the company must deliver to employees a prospectus containing a description of the Plan, together with the company's most recent annual report.

Non-reporting companies. Private companies in the United States cannot use Form S-8. However, they are permitted to grant a limited amount of securities under employee benefit plans pursuant to a special exemption contained in Rule 701 under the Securities Act. There are no special information requirements for employees unless the value of securities issued in any 12-months period exceeds $5 million, at which point financial statements and other disclosure must be provided.

Reporting and non-reporting companies can use other exemptions that are available under the Securities Act. For example, the exemption for the issuance of securities to accredited investors under Regulation D may be available for grants to executive officers. Failure to comply with registration or exemption requirements may give employees rescission rights or the right to sue for damages if they no longer own Stock.

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While the SEC is responsible for enforcing of the United States Federal securities laws, each individual state has its own securities laws, referred to as "blue sky laws", and its own regulatory agency which administers the law, typically known as the state Securities Commissioner. Blue sky laws are often superseded by Federal law, particularly with respect to reporting companies, but they do apply to non-reporting companies. In addition, blue sky laws vary widely from state to state. Therefore, while most state blue sky laws have exemptions from registration for stock incentive plans that are exempt from federal registration, some do not, and a few require notice or a streamlined registration procedure. The laws of each state where any Plan participant resides must be checked prior to undertaking any securities offerings or sales in that state.

Foreign Exchange

There are no exchange controls in the US.

Data Protection

In the US there is no all-encompassing data protection law that covers the entire economy. Rather, there are sector-specific federal data protection laws, and each state has its own sector-specific data protection laws. Employers should obtain the employees' express written consent as to the use and disclosure of their personal data. Such consent must be broad enough to cover any use or disclosure that will be made of the data. Further, any use or disclosure of the data should conform to any stated internal policies of the employer regarding the use and disclosure of the personal data of employees.

Tax

Employee Tax Treatment

This section applies to rights granted under an employee stock purchase plan that satisfies the requirements of Section 423 of the Internal Revenue Code (as described under "Tax-Favored Program" below). No tax is payable upon grant of the right. Amounts deducted from the employee's compensation under the Plan during Plan offering periods are included in the employee's taxable ordinary income. When an employee exercises a right to purchase Stock under the Plan, the employee recognizes no immediate taxable income. If, however, the employee does not qualify for this favorable tax treatment (for either of the reasons described below), the employee will recognize taxable compensation income equal to the "spread" – the excess of the value of the Stock received over the purchase price of the Stock when the employee exercises the right.

The employee's favorable tax treatment upon exercise of the purchase right can be lost in the following two circumstances. The first, a "disqualifying disposition", occurs if the employee sells the Stock received upon the exercise of the right within two years after the date the right was granted or within one year after the date the right was exercised. In that circumstance, the employee recognizes the spread as taxable compensation income at the time of the disqualifying disposition. The second occurs if the employee was not employed by the employer at all times during the period beginning on the date the right was granted and ending on the date three months before the right is exercised. In that circumstance, the employee recognizes the spread as taxable compensation income at the time the employee exercises the right.

Generally, when the employee sells Stock purchased upon exercise of a purchase right under the Plan, some or all of the gain is taxed as capital gain. The "gain" equals the excess of the sale price over the purchase price of the Stock, or, in the case of a disqualifying disposition, over the value of the Stock on the purchase date. If the sale of the Stock does not result in a disqualifying disposition, and if the purchase price payable upon exercise of the right is less than 100% of the Stock's fair market value at the time the right was granted, a portion of the gain will be taxed as ordinary income. The ordinary income portion of the gain equals the lesser of (a) the amount, if any, by which the Stock's fair market value when the right was granted exceeds the purchase price, determined as of the grant date, and (b) the amount, if any, by which the Stock's fair market value at the time of sale exceeds the purchase price paid. If the sale of the Stock does result in a disqualifying disposition, the entire amount of the gain is taxed as a capital gain.

Social Insurance Contributions

Neither the exercise of a purchase right under the Plan nor a disposition of Stock (whether or not in a disqualifying disposition) is subject to social security contributions.

United States (cont.)

Tax-Favored Program

Many employee stock purchase programs in the US are structured to comply with the requirements of Section 423 of the Internal Revenue Code, and afforded the tax treatment described above. Qualified employee stock purchase plans must, among other requirements, (1) be maintained only for employees, (2) be approved by shareholders, (3) offer securities with a purchase price not less than the lesser of 85% of the fair market value of the Stock at the beginning of the offering period and the end of the offering period, and (4) not permit an employee to purchase more than $25,000 worth of Stock (determined as of the grant date of the right) for each calendar year in which the offering period is in effect. Employee stock purchase plans that do not comply with Section 423 have the same tax consequences as nonqualified stock options, as described in the "Stock Option Plans" section.

Withholding and Reporting

Neither the exercise of a purchase right under the Plan (as described under "Employee Tax Treatment" above) nor a disposition of Stock (whether or not in a disqualifying disposition) is subject to income tax withholding. However, income taxable upon a disqualifying disposition is reportable by the employer on Form W-2.

Additionally, an employer that in the preceding year recorded the first transfer of legal title of Stock purchased by an employee under the Plan, if the purchase price of the Stock was (a) less than 100% of the fair market value of the Stock on the grant date or (b) not fixed or determinable on the grant date, must furnish the employee with a statement, and file a return with the Internal Revenue Service, that includes certain information concerning the employer, the employee, the purchase right and the Stock.

Employer Tax Treatment

The employer does not receive a tax deduction when an employee exercises a right to purchase Stock under the Plan. However, if the employee does not qualify for the favorable tax treatment described above, the employer receives a tax deduction equal to the "spread" reported as taxable ordinary income by the employee, so long as the employer timely complies with the Form W-2 reporting requirements described above.

