

# United States

## Employment

### Labor Concerns

A claim for breach of contract could arise where an equity incentive 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 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 stock incentive 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-month 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. 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 continue to apply to non-reporting companies. In addition, blue sky laws vary widely from state to state.

This summary is intended to reflect local law and practice as at 1 May 2013. Please note, however, that recent amendments and legal interpretations of the local law may not be included in these summaries. In addition, corporate governance, administration, and plan design facts that are specific to your company may impact how the local laws affect the company’s equity based compensation plans.

With these matters in mind, companies should not rely on the information provided in this summary when implementing their stock plans.

# United States (cont.)

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

The US has no omnibus data protection law that reaches all personal data. Rather, it has a patchwork of sector-specific state and federal laws that regulate only certain classes of data. Outside the health care and background-check contexts, much employee information falls beyond the reach of these sector-specific laws. Nevertheless, a best practice in administering equity/benefit plans is to build into Plan enrolment forms a written consent; Plan participants should expressly authorize the use and disclosure of their data for all Plan purposes. Also, Plan administrators must comply with any privacy policy of a sponsor employer, and with document-retention laws that mandate retaining tax-related information for certain periods.

---

## Tax

### Employee Tax Treatment

An employee will not recognize any taxable income upon the award of restricted stock which is not transferable and is subject to a substantial risk of forfeiture, unless the employee makes the election described below. Dividends paid with respect to restricted stock prior to the lapse of restrictions applicable to that restricted stock will be taxable as compensation income to the employee. Generally, the employee will recognize taxable ordinary income at the first time that Stock becomes transferable or is no longer subject to a substantial risk of forfeiture, in an amount equal to the fair market value of that Stock when the restrictions lapse. However, an employee may elect to recognize the fair market value of the restricted stock on the award date as taxable ordinary income upon the award date. If an employee makes this election, any dividends paid with respect to that restricted stock will not be treated as compensation income, but rather as dividend income, and the employee will not recognize additional taxable income when the restrictions applicable to his or her restricted stock award lapse. When the employee disposes of the Stock after it has vested, any amount received in excess of the fair market value of the Stock at the time the restrictions previously lapsed (or the fair market value of the Stock on the award date if the employee has made the election described above) will be taxed as capital gains.

The granting of RSUs does not result in taxable income to the employee who receives the RSUs. The amount of cash paid or the then-current fair market value of the Stock received upon settlement of the RSUs is taxable to the employee as ordinary income. When the employee disposes of any Stock so received, any amounts received in excess of the fair market value of that Stock at the time of receipt will be taxed as capital gains.

### Social Insurance Contributions

Amounts taxable upon the lapse of restrictions applicable to restricted stock awards, or taxable earlier if the employee elects to be taxed on the award date, are subject to social security contributions to the extent the employee has not exceeded the applicable wage base. Upon vesting of RSUs, the then-current fair market value of the Stock subject to the vested RSUs is subject to social security contributions to the extent the employee has not exceeded the applicable wage base.

The employer is required to withhold the employee's portion of the social security taxes. The employer must then pay the employee's withholdings and the employer's contributions at the time the employee receives the earnings.

### Tax-Favored Program

None.

### Withholding and Reporting

Amounts taxable upon the lapse of restrictions applicable to restricted stock awards, or taxable earlier if the employee elects to be taxed on the award date, are subject to income tax withholding and reporting by the employer. Also, the amount of dividends received with respect to non-vested restricted stock, unless the employee elected to be taxed on the value of the Stock on the award date, is subject to income tax withholding and reporting by the employer.

Amounts taxable upon the settlement of RSUs are subject to income tax withholding and reporting by the employer.

This summary is intended to reflect local law and practice as at 1 May 2013. Please note, however, that recent amendments and legal interpretations of the local law may not be included in these summaries. In addition, corporate governance, administration, and plan design facts that are specific to your company may impact how the local laws affect the company's equity based compensation plans.

With these matters in mind, companies should not rely on the information provided in this summary when implementing their stock plans.

## United States (cont.)

### Employer Tax Treatment

Assuming compliance with the applicable income tax withholding and reporting requirements, the employer will be entitled to a tax deduction equal to the amount of ordinary income recognized by an employee in connection with his or her restricted stock award in the employer's taxable year in which that employee recognizes that ordinary income. The employer is also generally entitled to a tax deduction for any dividends that are paid on non-vested restricted stock if the employee has not elected to be taxed on the value of the Stock on the award date.

The granting of RSUs does not result in a tax deduction for the employer. The amount of cash paid or the then-current fair market value of any Stock received upon settlement of the RSUs is deductible by the employer.

This summary is intended to reflect local law and practice as at 1 May 2013. Please note, however, that recent amendments and legal interpretations of the local law may not be included in these summaries. In addition, corporate governance, administration, and plan design facts that are specific to your company may impact how the local laws affect the company's equity based compensation plans.

With these matters in mind, companies should not rely on the information provided in this summary when implementing their stock plans.