

# VENABLE<sup>®</sup><sub>LLP</sub>

Dotting the Is and Crossing the Ts:  
Effectively Negotiating the Head's Contract

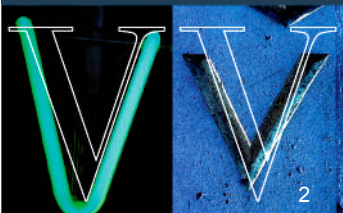
NBOA Annual Symposium 2011

Caryn Pass, presenter



## Overview

- Drafted over 60 Head contracts this season
  - Heads Retiring in Increasing Numbers
  - Baby boomers held on to jobs
  - Fewer applicants; more competition
  
- Contracts different then before
  - New heads are more sophisticated
  - Looking for more benefits
  - Looking for protections should they get terminated



## Search Firm

- Select a firm with similar philosophy
  - Similar philosophy
  - Comfort level
  - Consistent with strategic plan and mission
  
- Have search agreement reviewed
  - Total cost
  - Payment schedule
    - Initial payment
    - after candidates presented
    - upon execution of agreement
  - Agreement if search fails
    - Interim candidate



## Interview

- Train interviewers on what is acceptable and not acceptable
  
- Avoid questions such as
  - Do you have proper child care?
  - Will you be having more children?
  - Will you be taking maternity leave?
  - Are you planning on marrying?
  - What is your financial situation?
  - Do you have any disabilities?
  - How old are you? Do you think you still have the energy to do this job?



## Term

- Sends message to head
- Give security without extending beyond reasonable period
- Newer heads
  - 3 years
- Renewed contracts
  - 3 years
  - 5 years
  - Sometimes 10 years



## Evergreen

- Benefit vs. Detriment
  - Disincentive for negotiating new agreement
  - Allows for continued employment when lack of attention to contract
  
- Allows contract to roll over for additional time following end of “term”
  
- Time options
  - Additional 1 year, 2 years etc.
  - Term of agreement (3 year agreement roll over for additional 3 years)
  
- Notice of decision not to “rollover”
  - Timing
    - Prior to end of last year of contract
    - After 2<sup>nd</sup> or 3<sup>rd</sup> year for period to allow for continued same term



## Compensation

- Salary
  - Amount to be paid in 1<sup>st</sup> year of contract or each year in term
  
- Increase in salary
  - Determined by Board
  - Not less than “X” %
  - Same as faculty
  - Not less than prior year
  
- Bonus
  - Yearly or discretionary
  - Based on performance or result of “special performance”



## Intermediate Sanctions

### ■ Obligations

- Intermediate sanctions impose a 25% excise tax on any “**disqualified person**” who receives an “**excess benefit**” from a tax-exempt organization
- If excess benefit is not repaid or otherwise restored to the school within a certain amount of time, the **disqualified person** is subject to an additional **200% tax**.
- Any **officers, directors, trustees or school managers** who knowingly and willingly approve (or fail to vote against) the excess benefit arrangement will also be taxed up to **10% or \$10,000**, whichever is less.





## Safe harbor

### ■ Components

- Board or committee selected by the board established to review salary
  - No Conflict of interest
    - Decision makers are in compliance with Board Conflict of Interest Policy
- Comparable Data
  - Comparable data is collected by third party or by school
  - Committee reviews information and figures of similarly situated qualified persons taken into consideration
- Recommendation of Committee
  - Based on comparable data committee makes a decision as to salary
- Documentation of Basis of Decision



## Comparable Data

- Factors to consider when selecting comparable schools:
  - Years as Head of the School
  - Total experience as a Head
  - Total Budget of School
  - Grades at School
  - Total Enrollment at School
  - Tuition
  - Faculty numbers
  - Other programs
  - Property
  - Geography
  - New projects or programs; construction, addition of grades



## Evaluation and Duties

- Duties
  - Describe duties of Head
  - Address other activities (writing, speaking, sitting on boards)
    - Address honoraria
  
- Evaluation
  - Set system in detail vs general description
  - Goal setting and review of goal achievement



## Benefits

- Health, Life, Disability
  - As provided to other employees
  - If define bound by details
    - ie: Blue cross Blue Shield
  - Pay higher premiums or additional amounts
  
- 403(b)
  - As provided to other employees
  - Define bound by details
    - ie; 7% match will limit ability to change plan
  
- Sick, Vacation other leave
  - If different from other employees define clearly
    - Mostly vacation



## Supplemental Life or Disability

- Additional life and or disability given to head
- Draft carefully to avoid tax implications
- Life
  - Head owns and pays premiums
  - School reimburses
  - Avoids taxable treatment of benefit
  - GREAT CAUTION PRIOR TO GRANTING
- Disability
  - School owns plan and pays premium to avoid taxable treatment of premium payment



## Deferred Compensation

- 457 (b)
  - Fixed amount of contribution \$16,500.00
  - Either Head or School can contribute
  - Forfeit if bankruptcy of school
  - Can offer to other highly compensated
  
- 457(f)
  - Unlimited amount of contribution
  - Only by school
  - Substantial risk of forfeiture
    - Once met must distribute compensation
  - Can extend if prior to final year of vesting
  - Failure to accurately draft results in taxable treatment in year of contribution



## Housing

- School House
  - Property on or adjacent to campus
  - Condition of Employment
  - Used for entertainment
  
- Allowance
  - Taxable income
  
- Cleaning, maintenance or repairs
  
- Loan
  - Arms length agreement
    - Written document
    - Interest rate, term of payment, collateral
  - Forgiveness of loan issues



## Tuition

- Remission
  - If same as other faculty
  - Greater than additional faculty
    - Full amount taxable
  
- Payment of other institution tuition
  - Independent school or College
  - Amount of tuition of school
  
- Execution of enrollment document





## Termination

- By Head
  - Notice period by Head
  
- Mutual
  - Parties agree as to time and transition
  
- Death or Disability
  - Payment of Salary
  - Cobra
  - House
  
- Expiration of Agreement



## Termination

- Term for Cause
  - Define cause
  - Appearance before Board
  - Ability to cure
  - Notice in writing
  
- Without Cause
  - Get out of jail free
  - Notice period
    - 12/18 months
    - Work out notice period
  - Execution of release
  - COBRA or other benefit continuation defined



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## Extras

- Car
- Blackberry, laptop and cell phone
- Child Care
- Country Club
- Relocation Assistance
  - Moving, house sale, purchase expenses
- Attorney Fees
- Financial Advisor
- Executive Coach



## Other

- Accounts
  - Heads discretionary Account
  - Professional Development
  - Entertainment and travel
  
- Copyright
  
- Use of Pictures, Videos and images
  
- Non compete/Non solicitation
  
- Sabbatical
  
- 409 (a) language



Questions?



## contact information

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