

NEGOTIATING GOLDEN PARACHUTES IN THE TECHNOLOGY INDUSTRY



Golden parachutes, those famous tools that help CEOs and CFOs land softly when they're pushed out of their job, are expanding to include a new type of "C" manager: the CIO. According to lawyers and career advisors who specialize in executive compensation, high demand for upper-level technology executives has allowed more information officers to insist on – and get – golden parachute provisions written into their contracts.

There's good news for other hot technology specialists too. Experienced software programmers and developer group managers are increasingly being offered similar severance arrangements, dubbed tin parachutes; they may not glitter like gold, but they still provide a cushion.

Nevertheless, benefits experts warn that any parachute is a carefully negotiated agreement, not an entitlement, and technology workers must be savvy about getting the benefits they need without incurring devastating tax consequences.

In legal terms, parachutes – golden or tin – are known as change-of-control agreements. Their role is to attract talent and protect key employees in volatile industries against forced severance that is unrelated to job performance. The most common change-of-control triggers for technology companies are IPOs, acquisitions, and large, majority-share stock purchases by outside parties.

If one of those events causes an employee and employer to part ways, the employee may receive a cash payout of 1.5 to 2 times his or her annual earnings, plus company stock, health benefits, and continued participation in a retirement plan. Those benefits constitute a golden package; tin parachutes mirror their golden cousins, but may include only 6 to 12 months of salary.

Even with this year's turbulence in the Dow and NASDAQ, high-level technology workers commonly receive stock equity packages.

No matter what compensation carrots technology workers negotiate, they should be mindful of the IRS, experts say. Executives are subject to a substantial excise tax – 20 percent of the severance value – if the package is more than triple their salary.

An employee's negotiation chores aren't over once a basic agreement is reached on cash payments, benefits, and stock options. If you're in danger of qualifying for the excise tax, see if your prospective employer will pay the tax penalties. It may sound like an extravagant request but employers regularly agree to this to attract all-star talent. Companies 'gross the guy up' with an additional amount of money to cover the excise tax, so that when all is said and done, he gets what was promised. It's an expensive way for the company to go, but it's the most prevalent.

If that doesn't work, try to get compensated at 2.99 times your base salary to get the highest severance benefit possible while still avoiding the tax trigger.

Some push for equity agreements that let his clients exercise their stock options as of the termination date, regardless of the normal vesting period, which may be five years or longer.

While severance perks may attract a hot talent and assuage fears of instability, employees shouldn't let the allure of cash and stocks become the driving factor when hammering out change-of-control agreements. Instead, evaluate the value of the job and the effect of an early departure on their career. Ask yourself, "Will I learn more and experience new things so when the next opportunity comes – and it will come soon in this environment – will I be more marketable?" he said.

Wells concedes that employees usually need an attorney's help to ensure that change-of-control agreements clearly define trigger events and guard against tax consequences. But he also cautions employees to keep lawyers from "mucking up the deal."

If you've established a great rapport with a company during the interviews and then come in with some eight-page legal document you want them to sign, it can change the total complexion of the negotiation process. You force them to get their attorneys involved, and things can get nasty.

Instead, handle the negotiations yourself and use outside counsel to dot the I's. Once you do so, your new job will be more comfortable and the potential severance landing will be softer, no matter what your parachute is made of.