

*Incentivizing Employees and
Protecting Corporate Assets*
Legal Considerations

XPX DC Metro

Exit Planning Exchange

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Casestudy: Telecom Partners, Inc.

Assets:

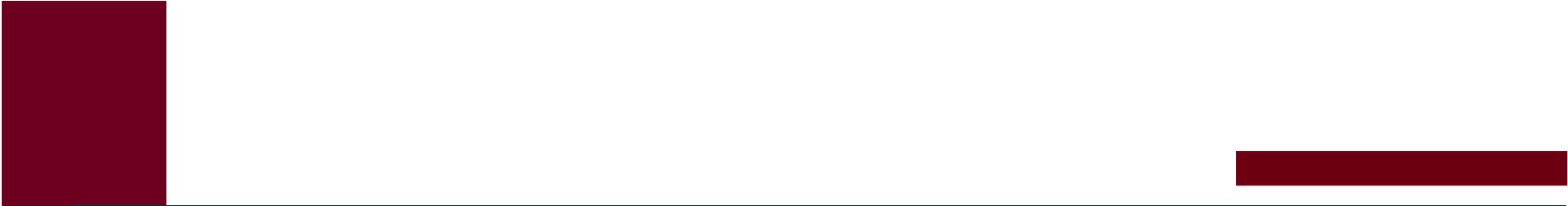
- Intellectual Property
- People
 - 105 Employees
 - Two Key Employees

⇒ **Protect IP**

∅ **Incentivize and Retain**

Handbooks and Employment Contracts





Incentivize Employees

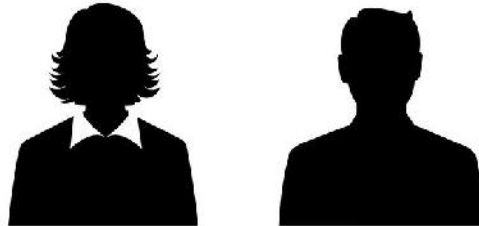
Increase Retention

Augment Value



Two Key Employees:

Katrina and Patrick



- Loyal, knowledgeable and dependable
- Completely free agents
- How to retain?
- How to incentivize?
- How to protect from their taking IP?

Retention and Incentives

Employment Contract Benefits



Deferred compensation
Bonus plan

457 Plan

Deferred Compensation



- Individuals and/or positions
- Flexibility as add more individuals to executive team
- Identify % of compensation
- Employer contribution
- Vests immediately
- Can withdraw after number of years
- Eg, 3-year plan

BONUS PLAN



- Executive positions
- % of base salary
- Based on Overall Business Performance
- Eg, 75% of bonus for higher executives and 40% for lower
- And Individual Performance (25-60%)

Patrick and Katrina: Intellectual Property

VP of Sales

- Brings in most of new major contracts
- Knows client base; customer & vendor list
- Client contract terms
- All players

VP for Technology and Development

- Knows all processes and data collection
- Brain trust of technology options
- Work product on systems and scripting
- Product training & technical support



Define *Confidential Information*

- Not just trade secrets, patents, & copyrights
- Financial and accounting information
- Customer and vendor information
- Marketing and advertising information
- Pricing information
- Processes, operations, work flow

Unique Executive Services

“The Executive understands that the nature of the Executive’s position gives him/her access to and knowledge of Confidential Information and that the intellectual services s/he provides to the Company are *unique, special or extraordinary*.

The Executive further acknowledges that the Company’s ability to reserve such Confidential Information and Unique Executive Services is of *great competitive importance and commercial value* to the Company.”



Employment agreement includes . . .

Protection of intellectual property through restrictive covenants:

- Noncompete
- Nonsolicitation
- Nondisclosure

Standard: Reasonableness

Noncompete

Nonsolicitation

Nondisclosure

- duration
- geographic restrictions
- scope of restricted activity
- consideration

Can be dictated by industry

Can correspond to a severance period





Employee Handbook

Benefits

- Paid time off
- Family and Medical Leave (FMLA)
- Disability accommodations (ADA)

Reality CHECK

- 105 employees!
- subject to *all* applicable employment laws.
 - Family Medical Leave Act (FMLA)
 - Fair Labor Standards Act (FLSA)
 - Americans with Disabilities Act (ADA)
 - Age Discrimination Employment Act (ADEA)
 - Title VII

Basic policies and procedures

- What's their procedure for harassment claims?
- How to make a complaint in general?
- What protections for whistle-blowers?
- How give accommodations to employees with disabilities?
- What training on harassment and discrimination?
- What's their electronic communications and social media policy?

Basic policies and procedures

- Policy on employee conduct
- Procedure on corrective action/discipline
- Lines of supervision and authority;
“decisionmakers” are very important to
discrimination claims
- Policies on Confidential Information
- Employees vs Independent Contractors

Company Health

Potential Problem:

personnel crumbling just before exit
or just *after* the exit



Company Health

- Compensation study
- Performance management plan

Merit increase

Bonus program

- Performance reviews:

CONSISTENCY WITH TRUTH!



COUNSELOR ON CALL™

- Recommend attorney on call
- Direct that legal budget
- Fixed fee based on operating budget
- Provide benefits of GC with counsel of entire firm



Talent management

Strengthen management team

Organizational chart

Role identification

Mentoring

Training to assume more responsibility

Give people authority

Hiring *and* Firing



Charitable inclinations . . .

High impact philanthropy

- DAF: Donor Advised Funds
- DST/1031: Delaware Statutory Trusts



Protect & Augment Tanya's Assets

Intellectual Property

Employment contracts

Employee Handbooks

- Restrictive covenants
- Standardized policies

Employees

Employment contracts

Employee Handbooks

- Bonus plans
- Deferred compensation
- Standardized policies
- Talent management



RETIREMENT

