

# HUNTON

## Compensation: Year-End Review of 2025

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**Presentation for:**

Executive Compensation Webinar Series

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**Presentation by:**

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## Housekeeping: Questions

- Questions during this presentation
  - We encourage questions (even though your audio lines are muted)
  - To submit a question, use the Q&A icon on your Zoom tool bar to submit a question
  - If time permits, your questions will be answered at the end of this presentation. And if there is insufficient time, the speaker will respond to you via e-mail after this presentation

## Housekeeping: Recording, CE Credits and Disclaimer

- Recording
  - This presentation is being recorded for internal purposes only
- Continuing education credits
  - A purpose of the webinar series is to provide FREE CE credits
  - To that end, each presentation is intended to provide 1 credit hour in the following areas:
    - CLE: 1 credit hour (CA, FL, GA, NC, NY, TX and VA)
    - CPE: 1 credit hour (Texas)
    - HRCI: This activity has been approved for 1 (HR (General)) recertification credit hours toward California, GPHR, PHRI, SPHRI, PHR, and SPHR recertification through the HR Certification Institute
    - SHRM: This program is valid for 1 PDC for the SHRM-CPSM or SHRM-SCPSM
  - If you have any questions relating to CE credits, please direct them to Anthony Eppert at [AnthonyEppert@HuntonAK.com](mailto:AnthonyEppert@HuntonAK.com) or 713.220.4276
- Disclaimer
  - This presentation is intended for informational and educational purposes only, and cannot be relied upon as legal advice
  - Any assumptions used in this presentation are for illustrative purposes only
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## About Anthony “Tony” Eppert



Anthony Eppert, Partner  
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- Tony practices in the areas of executive compensation and employee benefits
- Before entering private practice, Tony:
  - Served as a judicial clerk to the Hon. Richard F. Suhrheinrich of the United States Court of Appeals for the Sixth Circuit
  - Obtained his LL.M. (Taxation) from New York University
  - Obtained his J.D. (Tax Concentration) from Michigan State University College of Law
    - Editor-in-Chief, Journal of Medicine and Law
    - President, Tax and Estate Planning Society

## Upcoming 2026 Webinars

- 2026 webinars:
  - New Compensatory Thoughts from ISS (an Annual Program) (1/8/26)
  - Compensation Considerations Leading to an IPO (2/12/26)
  - Current 280G Mitigation Techniques (3/12/26)
  - Design Considerations for C-Suite Executive Contracts (4/9/26)
  - Governance: How to Properly Hire and Terminate an Executive Officer (5/14/26)
  - Selling an ESOP-Owned Company: A List of Business and Legal Issues (6/11/26)
  - Designing Employee Stock Purchase Plans (7/9/26)
  - Hot Compensation Topics (8/13/26)
  - Preparing for Proxy Season: Start Now (an Annual Program) (9/10/26)
  - Carrot and the Stick: Delving Into Various Stick-Related Retention Ideas 10/8/26)
  - Form 4 Training Course (11/12/26)
  - Compensation: Year-End Review of 2026 Items (12/10/26)

Sign up here: <https://www.hunton.com/en/insights/executive-compensation-webinar-schedule.html>

## Our Compensation Practice – What Sets Us Apart

- Compensation issues are complex, especially for publicly-traded companies, and involve substantive areas of:
  - Tax,
  - Securities,
  - Accounting,
  - Governance,
  - Surveys, and
  - Human resources
- Historically, compensation issues were addressed using multiple service providers, including:
  - Tax lawyers,
  - Securities/corporate lawyers,
  - Labor & employment lawyers,
  - Accountants, and
  - Survey consultants

## Our Compensation Practice – What Sets Us Apart (cont.)

- The members of our Compensation Practice Group are multi-disciplinary within the various substantive areas of compensation. As multi-disciplinary practitioners, we take a holistic and full-service approach to compensation matters that considers all substantive areas of compensation



## Our Compensation Practice – What Sets Us Apart (cont.)

- Our Compensation Practice Group provides a variety of multi-disciplinary services within the field of compensation, including:

### Traditional Consulting Services

- Surveys
- Peer group analyses/benchmarking
- Assess competitive markets
- Pay-for-performance analyses
- Advise on say-on-pay issues
- Pay ratio
- 280G golden parachute mitigation

### Corporate Governance

- Implement “best practices”
- Advise Compensation Committee
- Risk assessments
- Grant practices & delegations
- Clawback policies
- Stock ownership guidelines
- Dodd-Frank

### Securities/Disclosure

- Section 16 issues & compliance
- 10b5-1 trading plans
- Compliance with listing rules
- CD&A disclosure and related optics
- Sarbanes Oxley compliance
- Perquisite design/related disclosure
- Shareholder advisory services
- Activist shareholders
- Form 4s, S-8s & Form 8-Ks
- Proxy disclosures

### Design/Draft Plan

- Equity incentive plans
- Synthetic equity plans
- Long-term incentive plans
- Partnership profits interests
- Partnership blocker entities
- Executive contracts
- Severance arrangements
- Deferred compensation plans
- Change-in-control plans/bonuses
- Employee stock purchase plans
- Employee stock ownership plans

### Traditional Compensation Planning

- Section 83
- Section 409A
- Section 280G golden parachutes
- Deductibility under Section 162(m)
- ERISA, 401(k), pension plans
- Fringe benefit plans/arrangements
- Deferred compensation & SERPs
- Employment taxes
- Health & welfare plans, 125 plans

### International Tax Planning

- Internationally mobile employees
- Expatriate packages
- Secondment agreements
- Global equity plans
- Analysis of applicable treaties
- Recharge agreements
- Data privacy



## Reminder to Timely File Forms 3921 and 3922

- ISO exercises and ESPP transfers of shares trigger filing requirements under Section 6039 of the Code
  - For ISOs, a reporting obligation is triggered upon exercise, using Form 3921
  - For ESPPs, a reporting obligation is triggered upon the shares transferring, using Form 3922
- For ISO exercises and ESPP stock transfers occurring in 2025, companies must distribute optionee statements by February 2, 2026 (though typically the deadline is January 31<sup>st</sup>, such falls on a Saturday in 2026)
  - Paper returns are due to the IRS by March 2, 2026
  - Electronic returns are due to the IRS by March 31, 2026

## Restrictive Covenant Unenforceable If Equity Forfeited

- *North American Fire Ultimate Holdings, LP v. Alan Doorly*, C.A. No. 2024-0023-KSJM, memo. Op. (Del. Ch. March 7, 2025)
  - Employee received incentive units
  - Such incentive units contained restrictive covenants (e.g., non-competes), and stated within the documents was language reciting that the incentive units were the consideration for the restrictive covenants
  - There was a resignation by the employee, followed by protracted negotiations, and ultimately the company fired the employee for Cause due to his violating the restrictive covenants
  - Being terminated for Cause resulted in a forfeiture of the incentive units
- The Delaware Court of Chancery held that a forfeiture of the consideration supporting the restrictive covenants resulted in the restrictive covenants being unenforceable
- The Delaware Supreme Court is reviewing the case
  - Such will likely clarify whether consideration supporting a restrictive covenant must be retained after entering into the restrictive covenants agreement
- A moral of the story is to provide multiple levels of consideration (e.g., equity, continued access to confidential information, etc.)

## Regulating Proxy Advisory Firms

- In June 2025, Texas Governor Greg Abbott signed into law SB 2337, which imposed some new requirements on proxy advisory firms (e.g., ISS)
  - Intended to be effective September 1, 2025
  - SB 2337 would require proxy advisory firms to make certain disclosures whenever such proxy advisory firm makes recommendations for “non-financial reasons” (e.g., environmental, social, governance, etc.)
  - SB 2337 would also require proxy advisory firms to make certain disclosures when they provide advice to one client that is conflicting with advice provided to another client
  - Foregoing is applicable for issuers headquartered or domiciled in Texas
- ISS and Glass Lewis each filed lawsuits, alleging (combined allegations set forth below):
  - Violation of First Amendment (compelling speech),
  - Unconstitutionally vague,
  - ERISA preemption, and
  - Other Constitutional allegations
- After a hearing, Judge Albright of the U.S. District Court for the Western District of Texas entered preliminary injunctions on August 29, 2025
- Trial is scheduled on or around February 2, 2026

## Disappearing DEI?

- According to a survey from EY, DEI is disappearing as a Compensation Committee responsibility
- According to EY's survey:
  - Prior to 2025, it was common for DEI to be listed among human capital matters overseen by Compensation Committees
  - However, among S&P 500 companies that previously mentioned DEI terms or descriptions within the responsibilities of their Compensation Committees, most of them dropped such references (though approximate 17% of them changed the reference to "inclusion")

## Resurgence of Time-Based Awards?

- In July 2025, ISS released a survey that addressed, among other items, time-based vesting schedules v. performance-based vesting schedules
- Essentially, ISS is polling to determine whether it makes sense to replace all or some of performance-based shares with time-based shares
- To this point, ISS is exploring the following vesting/retention combinations:
  - A 3-year vesting schedule, plus at least 2-year post-vesting retention requirement;
  - A 4-year vesting schedule, plus at least a 1-year post-vesting retention requirement; or
  - A 5-year vesting period with NO retention requirement

## Cost of Living Adjustments for 2026

- Retirement plans
  - 401(k) and 403(b) elective deferral limits increased from \$23,500 to \$24,500
  - Catch-up contributions (for participants age 50 or older) increased from \$7,500 to \$8,000
  - Super catch-up contribution (for participants age 60-63) remained same at \$11,250
  - Annual compensation limit (401(a)(17)) increased from \$350,000 to \$360,000
  - Highly compensated employee threshold remained the same at \$160,000
  - Social Security taxable wage base increased from \$176,100 to \$184,500

## Don't Forget Next Month's Webinar

- Title:
  - New Compensatory Thoughts from ISS (an Annual Program)
- When:
  - 10:00 am to 11:00 am Central
  - Thursday, January 8, 2026