Hands Off? The Board's Role in Human Resources Management

Participant Q&A

1. **Could you share a bit about the pros and cons of contract versus at-will?**

   In the context of the executive director role, some organizations elect to hire their top executive using an employment agreement, or contract. Other organizations hire their chief executive as an at-will employee. The employment agree specifies the terms and conditions of employment and defines specific terms outlining compensation, benefits, how and why the individual can be terminated. The organization is legally obligated to adhere to the terms of the contract, and if they do not, the executive director may be able to seek damages as a result of the breach of the employment contract. The "at-will" provision means that both the employer and employee can terminate the employment relationship any time for any reason, or no reason at all, with or without notice.

   The pros of an employment agreement or contract for the executive are: he/she understands the conditions under which his/her employment can be terminated and, more often than not, that individual will be entitled to receive compensation for terminations that are not cause related. This provides an advantage to the individual and a measure of protection against unexpected job loss. The con for the organization is that it creates a financial obligation (i.e. most often in the form of severance) at the point that the employment relationship ends.

   The pros of an at-will arrangement is that either party can end the relationship at any time. The con to the employer is that the executive could leave the organization with no notice, which has the potential to interrupt the organization's productivity and perhaps even its sustainability. The con to the executive is that he/she operates without any protections (primarily financially) from unexpected termination of employment.

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2. **Should the whole board, just the executive committee or the HR committee be involved with the CEO agreement?**

   When working with clients, Nonprofit HR almost always recommends that drafting and approving the employment agreement happens in partnership with the executive committee, the HR committee (where one exists) and internal HR. At the very minimum, the executive committee and HR should work together to prepare a document acceptable to both parties (the organization and the executive). In all cases, employment agreement should be reviewed by qualified legal counsel to ensure the agreement complies with applicable federal and state law.

3. **Who should staff refer to if they have an issue with their direct report or chief executive if there is no HR in place?**

   The first step, of course, should be for the employee and his/her supervisor to attempt to resolve the matter with each other directly. If that's not possible, we recommend that the staff speak with the chief executive if they are experiencing unresolved issues with their direct supervisor. If the matter involves the chief executive, the Board should have a mechanism in place for staff to raise their concerns with the board chair or with the chair of the HR committee. It is critical for any party responsible for addressing staff concerns to do so in a way that is timely, responsive and maintains the confidentiality of all parties, wherever possible.

4. **Is there a recommended survey for comp and benefits?**

   Nonprofit HR does an extensive amount of compensation analysis work for our clients. As a rule of thumb, we use no less than three reliable and valid sources when benchmarking salaries and benefits. It is also important to use a source that is relevant in terms of scope of role comparability, organization budget size, type and location. There are multiple compensation sources available to nonprofits based on their locations. Be sure to check the age of the data and make adjustments to "level" positions to the same date when attempting to benchmark.

5. **Should the board be allowed to review individual staff salaries when approving annual budgets?**

   That depends entirely on the organization, its practices and the preferences of the board. We recommend that organizations seek the approval of their board for the overall salary budget and not individual salaries, as compensation management is just that, a management issue. That said, smaller organizations might be inclined to involve their boards in the approval of individual salaries. We don't necessarily recommend this approach but know that this is a common practice. What board members should do is ensure that their organization's compensation practices are fair, equitable and free of discriminatory practices. That is their fiduciary responsibility.

6. **What is the best website to obtain 990 information?**

   We recommend GuideStar.com.

7. **What is the appropriate role of the HR Director in assisting with the board's performance and compensation review of the President given s/he will typically report to the President?**

   We believe that HR's role is to facilitate the performance and compensation review process of the chief executive in partnership with either the executive committee or the board chair. Facilitation, in this context means: ensuring a review timeline, ensuring all parties provide the necessary feedback to ensure a fair and meaningful review, ensuring that compensation decisions are made in keeping with organizational values and resources and that those decisions are reasonable.

8. **Is it appropriate to have board review of employee (non-CEO) annual reviews? Otherwise, who should have that review?**

   We don't recommend board member participation in non-CEO annual reviews. Performance management is a management function and not the role of the board. We recommend against board members participating in employee reviews unless the organization engages in a 360-review process where external feedback is sought consistently across the organization in which case board member feedback is both appropriate and reasonable.

9. **In a small nonprofit, with a less reliable executive director, what would be the vehicle to address staff concerns about the executive director when there isn't an HR person in place?**

   See question #3.

10. **How often should executive compensation be reviewed?**

    Best practice says that executive compensation is reviewed annually as part of the annual performance review process. In the absence of that, it is important that the board understand and review its pay position with respect to the executive director no less than once every three years. The biggest drawback of failing to review compensation on a regular basis is the challenge that it creates for the organization if the executive needs to be replaced and there is a significant gap between what the market demands and the budget allocation for the executive's salary. We have seen situations where organizations have failed to monitor compensation and have fallen significantly behind only to be faced with a significant financial challenge when seeking a new executive.

11. **Any recommendation for language to convince boards to step back out? For example, if a board feels it should be advising on specifics of an employee's maternity leave. Is it best to change focus to reviewing organizational policies?**

    This is a really good example of the difference between management vs. governance. The handling of an employee benefits matter is a management issue and should not involve the board of directors. The board should be responsible for approving policies, recommended by the management staff, but should not make decisions or be involved in individual benefits related matters. That is the role of the executive director, consistent with approved policy and applicable law.

12. **How would you recommend creating a succession plan with an executive director who has not been performing well and would be threatened by creating that document?**

    That's a tough one. The decision to create a succession plan is the Board's, not the executive director's. The board has a responsibility to the organization to ensure its sustainability programmatically, financially and from a talent/leadership perspective. This is an important board task. That said, having the executive director's participation and cooperation is essential to the creation of a succession plan. If the executive director is unwilling to participate in that process, that should be treated as a performance issue and managed by the board accordingly.

13. **If the employee handbook is new for a small nonprofit, are you suggesting the board review the handbook before it is distributed?**

    Yes, we do recommend that the Board review the handbook prior to distribution. We also strongly recommend that the employee handbook be reviewed by a qualified employment attorney to ensure compliance with applicable local, state and federal law. Having an HR professional review the handbook can also be helpful from a best-practice standpoint. Ultimately, the board will want to mitigate unnecessary risk and exposure for the organization (which is appropriate) and reviewing and approving the handbook is an important risk management responsibility. (Note: employee handbooks should focus on broad policies and not include detailed processes and procedures related to policies. We recommend that procedures be held separately from policies and be a part of operational documents governing the internal workings of an organization.)