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Not All Employment-Related Bonuses Are Created Equal

By Paul J. Welk, PT, JD

The job section of a recently published physical therapy industry journal listed a number of bonuses: sign-on, referral, retention, incentive, tuition repayment, loan forgiveness, and other creative bonus programs. Bonus programs go by many different names and share a common goal—to attract and retain quality physical therapists and physical therapist assistants. They are not all created equal. It is important for both employers and employees to understand the terms of a bonus program and to include these terms in a signed agreement so that both parties are aware of the commitments that each has agreed to honor.

Once a practice decides on the amount to offer, it is important to determine over what period of time the bonus will be paid. For example, should a $5,000 bonus be paid in full up front, or should $2,500 be paid upon the start of employment and the remaining $2,500 be paid upon the completion of one year of satisfactory work performance? Paying a bonus over time provides increased leverage to the employer and an added incentive for employee retention by dividing the bonus into a sign-on and a retention component. The employer should also consider what level of employment commitment is required in exchange for the bonus. One- to three-year employment commitments are relatively common.

The written bonus agreement should set forth what will happen if an employee violates the contract terms. The most common violation is failing to complete the agreed period of employment. In such situations, the employer has not received the benefit that it bargained for with the employee, and it is reasonable that the benefit received by the employee should be returned, at least in part, to the employer. This is an area of significant variability among bonus programs and one to which the employer and employee should pay particular attention. As one option, the agreement may require a repayment of the entire bonus if employment is terminated at any time prior to the end of the agreed-upon period. Other agreements may require that the employee repay only a prorated portion of the bonus based on the period actually worked, thus reducing the potential financial burden on the employee. Other agreements may include a set dollar value (often referred to as "liquidated damages") that the parties agree will be paid to the employer in the event of a default by the employee. Liquidated damage amounts may be greater than the bonus amount under the rationale that the employer is investing time and resources in a new employee and should be compensated for this investment. The best option for an employer depends on the local employment market and the employer's preference as to the level of appropriate repayment.

As a practical matter, an employer must collect monies due from the employee in the event of a breach of a bonus agreement. A bonus agreement should expressly allow the employer to withhold money due to the employee, to the maximum extent permitted by applicable law, in the event that money is owed to the employer following a breach by the employee. The employer can then look directly to the employee for the repayment of any amount still due.

An additional consideration from the employer perspective is whether to include a restrictive covenant within a bonus agreement. Depending on state law, the payment of a bonus to an employee may provide sufficient consideration for a restrictive covenant. For more information on restrictive covenants in the employment setting, read "Utilizing Employment Contracts to Protect a Practice's Investment in Its Employees" in the June 2008 issue of *Impact* magazine.

Although this article is not intended to provide tax advice, it is helpful if the employer and employee understand the tax consequences of the bonus payment. An employee, especially a new graduate, may elect to use a bonus payment to pay off part of a student loan. The employee may not consider whether some of the bonus payment should have been retained to pay his or her tax obligations. This can create tax issues for the employee. From the author's experience, this situation is more common than one might imagine. ■

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