Moving Beyond Money Companies Get Creative About Employee Benefits

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NJBIZ

03.11.2019

In today’s tight labor market —as evidenced by a four percent national unemployment rate in January, according to government data — employees increasingly have a choice about where to work; and salary alone isn’t always enough to attract and retain talent.

Startup companies and others that use heavy-duty stock options and other non-cash incentives, like cryptocurrency, have to be careful of securities and IRS regulations, according to Joel E. Horowitz, a partner with the law firm McCarter & English LLP whose focus includes employee benefits and executive compensation. “We recently represented a New Jersey company in connection with its initial public offering,” he said. “The SEC commonly reviews IPOs to make sure that any transactions involving stock, including equity grants, leading up to the IPO were at a fair price.”

Equity awards issued to employees at less than fair value may be considered grants of “cheap stock,” he added, which could complicate valuation, reporting and other issues for the company and, potentially, the employee. “The SEC focuses on this during an IPO to ensure that companies are accurately reflecting compensation charges in their earnings,” Horowitz added. “One way to establish fair value is to engage an independent valuation expert, but it also makes sense to revisit that valuation for purposes of new awards as the company gets closer to the IPO date.”