1. **457(b) plan**

A 457(b) plan or an eligible 457 plan is a nonqualified deferred compensation arrangement for employees of tax-exempt and government employers that is described in section 457(b) of the Internal Revenue Code of 1986, as amended (the “Code”). Deferrals made under this type of plan are generally includible in gross income for Federal income tax purposes, when paid or otherwise made available, in the case of a tax-exempt employer, and when paid, in the case of a government employer. Note that deferrals may be includible in income for purposes of Social Security, Medicare and other employment taxes before they are paid or made available. A 457(b) plan is subject to certain contribution and distribution restrictions as described in section 457(b) of the Code. This type of plan presents limited negotiation opportunities.

2. **457(f) plan**

A 457(f) plan or an ineligible 457 plan is a nonqualified deferred compensation arrangement for employees of tax-exempt and government organizations that is described in section 457(f) of the Code. Deferrals made under this type of plan are includible in gross income for Federal income tax purposes when there is no substantial risk of forfeiture. Note that deferrals may be includible in income for purposes of Social Security, Medicare and other employment taxes before they are paid or made available. A 457(f) plan is typically designed for an individual executive and presents greater negotiation opportunities than a 457(b) plan.

3. **Account balance plan**

An account balance plan is, for Federal employment tax purposes, a nonqualified deferred compensation plan under which principal amounts are credited to an individual account for an employee, the income attributable to each principal amount is credited (or debited) to the individual account, and the benefits payable to the employee are based solely on the balance credited to the individual account. Conversely, a nonaccount balance plan is a plan that is not an account balance plan. This distinction is relevant for purposes of determining the income on the amount deferred for Federal employment taxes and for determining “like” plans under section 409A of the Code.

4. **Annual bonus plan**

An annual bonus plan provides for an annual bonus in addition to salary or commissions. The annual bonus may be conditioned on meeting certain performance goals. Typical conditions include requiring the individual remain employed through the end of the year or the time of payment. Negotiation opportunities include the amount of the bonus and, if the bonus is paid upon meeting performance targets, the performance targets. Consider asking for the bonus to be paid if you are involuntarily terminated or if you resign for certain good reasons during the year.
5. **Appreciation right**

An appreciation right or stock appreciation right (an “SAR”) generally entitles the employee to receive an amount equal to the appreciation in the company’s stock from the grant date through the exercise date, provided certain conditions are met (such as being employed for a certain period of time or achieving certain performance targets). The appreciation may be paid in cash (a “cash-settled SAR”), in stock (a “stock-settled SAR”) or in some combination of both. The price of the underlying stock on the grant date is typically referred to as the base price. Negotiation points include length of service vesting period, if performance targets are required to be met, the performance targets, exercise periods (the longer the better), and accelerated vesting on change of control, death, disability, involuntary termination or resignation for certain good reasons.

6. **Balanced scorecard evaluation**

A balanced scorecard evaluation is a multiple perspective performance evaluation first advocated by authors Robert Kaplan and David Norton. The scorecard balances financial perspective and nonfinancial perspective measures. The nonfinancial measures often include improvement in customer relations, learning and growth, and internal operating processes. The balanced scorecard evaluation is commonly used as a performance measure in long-term incentive plans.

7. **Bonus**

A bonus is typically paid in addition to salary or commissions for service over a specified period, typically annual, or under a long-term incentive plan and may be at the discretion of an employer and/or based upon performance vesting and/or service vesting conditions. A typical condition includes requiring the individual to remain employed through the end of the performance period or the time of payment. Negotiation opportunities include the amount of the bonus and, if the bonus is paid on meeting performance targets, the performance targets. Consider asking for the bonus to be paid if you are involuntarily terminated or if you resign for certain good reasons during the performance period.

8. **Cash balance plan**

A cash balance plan is a qualified plan that is a type of defined benefit pension plan. Typically, the employee is credited with an annual pay credit equal to a percentage of her compensation, plus an annual interest credit based on total credits to date. There is a hypothetical accounting of the credits, and the benefit to the employee is typically the value of her account balance. As with other defined benefit pension plans, the employer bears the investment risk under this type of plan. This type of plan presents limited negotiation opportunities – although sometimes a SERP can be included within a cash balance plan.

9. **Change in control payments**

A change in control payment or a golden parachute payment is a payment or benefit (e.g., accelerated vesting of options) that is contingent upon a change in control. These payments (or benefits) may be single-trigger (paid upon a change in control of the company) or double-trigger (paid upon termination of employment after a change in control of the company) and may be part of the employment agreement or a separate change in control agreement. Change in
control payments (or benefits) that in the aggregate are equal to or in excess of three times a "disqualified individual’s" “base amount” are considered parachute payments. A disqualified individual who receives parachute payments may be subject to a 20% excise tax on the excess of the aggregate parachute payments over the individual’s base amount (and the paying company may be denied a deduction for this amount). Employment or change in control agreements may address this issue by (i) providing for a cut-back of benefits so that this threshold is not triggered, (ii) providing for a gross-up to the executive, or (iii) providing for the payment of the higher of (x) the net amount after payment of the excise tax or (y) the net amount after a cut-back. A privately-held company may avoid the excise tax (and denial of deduction) by obtaining shareholder approval for these payments in accordance with section 280G of the Code. A change in control payment is likely to be viewed as deferred compensation and should be reviewed for compliance with section 409A of the Code.

10. Code or Internal Revenue Code

Code in this context generally refers to the Internal Revenue Code of 1986, as amended. The Code governs the taxation of the various items of compensation. A qualified plan is subject to various contribution, vesting, distribution, fiduciary and administration provisions described in the Code and in ERISA. All forms of compensation described in an employment agreement (e.g., bonus, severance, deferred compensation) should be reviewed for compliance with section 409A of the Code. Penalties for noncompliance with section 409A of the Code fall principally on the employee. Statutory options are required to meet certain requirements described in sections 422 and 423 and 424 of the Code.

11. Compensation

Compensation refers all forms of cash and noncash payments or benefits provided in exchange for services, including salary and wages, bonuses, severance payments, payments of deferred compensation, retirement benefits, fringe benefits, and other financial arrangements or transactions involving the company, such as personal vehicles, meals, housing, personal and family educational benefits, below-market loans, payment of personal or family travel, entertainment, and personal use of the company’s property.

12. Deferred compensation

Deferred compensation, for Federal income tax purposes, generally occurs when an individual has a legally binding right during a taxable year to compensation that is or may be payable to the individual in a later taxable year. Compensation may be deferred under a qualified plan (such as a 401(k) plan, or a cash balance or other defined benefit pension plan), an eligible plan (a section 457(b) plan), an ineligible plan (a section 457(f) plan) or other nonqualified plan (such as a SERP, or a plan that provides for salary deferral credits and employer credits to be paid at a later date). In general, deferred compensation (other than compensation that is deferred under a qualified plan) is required to meet the time and form of payment restrictions described in section 409A of the Code.

13. Defined benefit pension plan

A defined benefit pension plan defines the benefit payable to the participant as either a fixed dollar amount or, more frequently, as an amount based upon an employee’s compensation or a combination of compensation and years of
service. The employer bears the investment risk for benefits provided under this type of plan. A defined benefit pension plan may be a qualified plan or a nonqualified deferred compensation plan. A cash balance plan is a special type of defined benefit pension plan. This type of plan presents limited negotiation opportunities – although sometimes a SERP can be included within a qualified defined benefit pension plan.

14. Defined contribution plan
A defined contribution plan provides for (i) an individual account for each participant and (ii) benefits based solely on the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account. More practically, it is a plan for which the employee or participant bears the investment risk. A 401(k) plan is a type of defined contribution plan that is a qualified plan. This type of plan presents limited negotiation opportunities.

15. Employee
An employee is an individual who, under the common law rules applicable in determining the employer-employee relationship, has the status of an employee. For Federal income tax purposes, an employee is any individual who is treated as an employee for federal employment tax purposes under section 3121 of the Code.

16. Employee Stock Purchase Plan
An employee stock purchase plan or an ESPP permits an employee to purchase shares of the employer at a discounted price (typically at a 15% discount). The employee usually pays for the shares through payroll deductions. ESPPs are subject to various requirements described in section 423 of the Code, including requirements that the plan be approved by shareholders, that the plan be broadly available (subject to certain limited exceptions) and annual limits on the number of options that may be granted to each employee. Because of these requirements, this type of plan presents limited negotiation opportunities.

17. Equity compensation plan
An equity compensation plan is a plan that provides for grants of equity and equity-based awards such as stock options, stock appreciation rights, restricted stock and phantom stock. These awards are typically subject to service vesting and/or a performance vesting schedule. Equity compensation plans of publicly traded companies are subject to shareholder-approval requirements under the applicable stock exchange listing requirements. A publicly traded company is also required to file form award agreements with the Securities and Exchange Commission. Accordingly, there may be somewhat limited flexibility with varying the terms of an equity plan award granted by a publicly traded company, especially for mid-level executives. If your employer is not publicly traded or is closely-held (and prefers not to offer equity awards), consider asking for equity-based awards that mimic equity such as a stock (or, in the case of a limited liability company, a unit) appreciation right that is settled in cash, or phantom stock (or, in the case of a limited liability company, a phantom unit) award that is settled in cash.
18. **ERISA**

*ERISA* refers to the Employee Retirement Income Security Act of 1974, as amended. In general, *ERISA* applies to all pension plans (i.e., plans that provide retirement income to employees or that permit deferral of income for periods extending to termination of employment or beyond) and welfare plans (generally plans that provide for medical, accident, disability, death, unemployment or vacation benefits). An *ERISA*-covered pension plan is subject to its reporting and disclosure, participation and vesting, funding, fiduciary responsibility, and administration requirements. As a result, an *ERISA*-covered pension plan (with the exception of a top-hat plan) may present limited negotiation opportunities. A top-hat plan, on the other hand, is limited to certain management or highly compensated employees of the employer and may provide opportunities for negotiation. With regard to welfare plans, health benefits may be subject to nondiscrimination requirements and may present limited negotiation opportunities.

19. **ESOP**

An **ESOP** or employee stock ownership plan is a qualified plan that is designed to invest primarily in employer securities.

20. **Excess benefit plan**

An excess benefit plan is, for purposes of *ERISA*, a retirement or other deferred compensation arrangement that provides nonqualified deferred compensation to higher-paid employees to restore qualified plan benefits to which highly paid employees are not entitled because of limitations on contributions and benefits imposed by section 415 of the *Code*.

21. **Exercise price**

**Exercise price** means the price per share that must be paid to exercise an option to purchase an employer security. Options are typically granted with an exercise price that is equal to or higher than the fair market value of the underlying security on the date of grant. A discounted option (or an option with an exercise price that is less than the fair market value of the underlying security on the grant date) will likely be subject to the time and form of payment restrictions of section 409A of the *Code* and is only granted in very unusual circumstances.

22. **Good Reason Resignations**

A **good reason resignation** occurs when an employee resigns because the terms of her employment have changed for the worse. Good reasons typically include a material reduction in salary, a material change in work location, and a material change in the position’s responsibilities.

23. **Incentive compensation**

**Incentive compensation** is compensation provided, in addition to base compensation, as an incentive for satisfying or exceeding pre-established length-of-service or performance measures. The performance measures can be based upon the performance of the employee, a group including the employee, or a business segment for which the employee provides services (which may include the entire organization).
24. **Individual account plan**

An individual account plan is another term for a defined contribution plan.

25. **Involuntary termination**

An involuntary termination is a separation from service initiated by the employer. Severance pay, if negotiated for, is typically payable upon an involuntary termination or for certain good reason resignations (such as a material reduction in pay or position). If your employment agreement provides for severance upon an involuntary termination, you may want to consider asking for severance upon certain good reason resignations as well.

26. **Incentive stock option**

An incentive stock option is a type of statutory option to purchase a share of stock under a plan that meets the requirements of section 422 of the Code. The benefit of an incentive stock option is that the option is not included in income at the time of grant and any spread (the difference between the exercise price and the fair market value of the underlying stock on the exercise date) is generally not included in income for Federal income tax purposes at the time of exercise. Instead, the employee has taxable income or deductible loss when she sells the stock received upon exercising the option. Note, however, that the spread is included in income for purposes of determining the alternative minimum tax and, as a result, incentive stock options have become a somewhat less attractive option.

27. **Legally binding right**

A legally binding right to compensation is a contractual right that is enforceable under applicable law. However, there is no legally binding right to the extent that compensation may be unilaterally reduced or eliminated by the employer.

28. **Long-term incentive plan**

A long-term incentive plan or LTIP is an arrangement providing incentive pay to an individual for satisfying or exceeding pre-established performance measures over a performance period of two or more years. Performance measures frequently include measures of non-financial perspectives included in a balanced scorecard evaluation.

29. **Money-purchase pension plan**

A money-purchase pension plan is an arrangement, typically in the form of a defined contribution plan that is a qualified plan, to which contributions are required to be made by the employer for each period of service completed by the participant.

30. **Nonqualified deferred compensation**

Nonqualified deferred compensation is generally deferred compensation received under an arrangement other than a qualified plan. In general, for Federal income taxes, the benefit is not includible in the employee’s gross income until it is paid or made available to the employee except that for employees of tax-exempt or governmental organizations, the benefit is includible in income when and as it vests or there is no substantial risk of forfeiture. For Social Security,
Medicare, FICA and FUTA employment taxes, the benefits are includible in income when and as the services are performed or there is no substantial risk of forfeiture.

31. Nonqualified stock option

A nonqualified stock option is an option to purchase a share of stock of an entity and that does not qualify as an incentive stock option and is not offered under an employee stock purchase plan. A nonqualified stock option is typically governed by section 83 of the Code. The exercise price of the option is usually equal to the fair market value of the underlying stock at the option grant date. The option may be subject to a service vesting and/or a performance vesting schedule. Negotiation points include length of service vesting period, if performance targets are required to be met, the performance targets, exercise periods (longer the better), and accelerated vesting on change of control, death, disability, involuntary termination or resignation for certain good reasons.

32. Option

An option is a right to purchase a share of stock or a unit of a security or ownership interest of an entity. The exercise of the option, or the right to retain the share acquired upon exercise, may be subject to a service vesting schedule, performance vesting schedule, or other restrictions. An option may be either a nonqualified stock option or a statutory option.

33. Performance vesting

Performance vesting or performance vesting schedule refers to the vesting of the employee’s right to receive a benefit that is conditioned on the attainment of certain pre-established performance criteria. The performance criteria may be performance of the employer, of a group including the employee, or of a business segment for which the employee provides services.

34. Phantom stock plan

A phantom stock plan, phantom equity plan, shadow equity plan or a restricted stock unit plan provides for grants of phantom stock (also known as restricted stock units) where the award is based upon, or measured by, the value of underlying stock (or other equity) and does not involving a transfer of property (the underlying equity) at the time of grant. The award may be subject to a service vesting and/or performance vesting schedule and may be settled in cash or stock (or a combination of both) once these conditions are met. This type of award is included in income for Federal income tax purposes upon payment.

35. Profit-sharing plan

A profit-sharing plan is a type of qualified plan that is also a defined contribution plan, to which contributions for any period may be contingent upon profits of the employer or an affiliated entity with the employer for the period. In contrast, a money purchase pension plan requires contributions without regard to the profits or results of operation of the employer. This type of plan presents limited negotiation opportunities.
36. Qualified plan
A qualified plan is a plan that is intended to be qualified for favorable tax treatment under section 401(a) of the Code. Participants in a qualified plan are afforded various protections under the Code and ERISA such as maximum vesting periods and prohibitions on retroactive reductions in benefits. The plan is required to incorporate various requirements with respect to nondiscriminatory provision of benefits, trust requirements, and restrictions on distributions. An employer has limited flexibility in varying the terms of a qualified plan, and qualified plan benefits are generally not items of negotiation. If the benefit under a qualified plan is not satisfactory to the employee, the employee may of course choose to negotiate for additional nonqualified deferred compensation. This type of plan presents limited negotiation opportunities – although sometimes a SERP can be included within a qualified defined benefit pension plan.

37. Rabbi trust
A rabbi trust is a grantor trust that is used as a funding mechanism in connection with nonqualified deferred compensation arrangements. In the case of an employer's insolvency, the funds in a rabbi trust (unlike the funds in a trust underlying a qualified plan) will become subject to the claims of the employer's general creditors. In general, if the trustee becomes aware of the employer's insolvency, the trustee is required to discontinue payments to employees or their beneficiaries and is required to hold the assets of the trust for the benefit of employer's general creditors. Because the rabbi trust is a grantor trust, all income of the trust and items of deduction against that income or credit against any taxes on that income are passed through to the employer pursuant to the grantor trust rules.

38. Restricted stock
Restricted stock is grant of stock that is typically subject to service vesting or performance vesting and is considered vested once these conditions are met. This type of award is included in income for Federal income tax purposes upon vesting. Typically, shares granted as restricted stock entitle the record holder to certain rights and incidents of ownership thereof, such as dividend and voting rights, even during the restriction period.

39. Retention Bonus or Retention Plan
A “retention bonus” or “retention plan” is an arrangement providing a recipient with a bonus or other additional compensation for completing a period of service. It is similar to a signing bonus, but is typically structured to retain someone as, rather than to attract someone to become, an employee. The bonus or arrangement may be viewed as deferred compensation under section 409A of the Code unless it is designed to fall within the short-term deferral exception described in that section.

40. Salary
Salary is part of the base compensation that is payable in a fixed, gross amount or rate for the performance of service over a period (other than hourly), typically at regular payroll intervals.
41. Separation pay plan exception from section 409A of the Code

Separation pay plan exception from section 409A of the Code excludes certain types of arrangements from being viewed as deferred compensation under section 409A of the Code. Such an arrangement provides for, among other things, (i) payment only upon an involuntary separation from service or pursuant to a window program; (ii) an amount that does not exceed two times the lesser of (A) the employee's annualized rate of compensation or (B) the maximum amount that may be taken into account under a qualified plan pursuant to section 401(a)(17) of the Code; and (iii) that the amount be paid no later than the last day of the second taxable year of the employee following the taxable year in which the separation occurs.

42. SERP

A supplemental executive retirement plan, supplemental executive retention plan, or SERP is an arrangement providing retirement or retention benefits to supplement the basic compensation and retirement benefits to which the employee is otherwise entitled (e.g. providing for an amount equal to 50% of the employee's annual pay (as of the date of the employee's termination) divided by 12, payable in monthly installments until the employee is age 85). The arrangement is typically a nonqualified deferred compensation plan. Sometimes a SERP can be included within a qualified defined benefit pension plan.

43. Service vesting

Service vesting or service vesting schedule is the vesting of an employee's right to receive a benefit that is conditioned on the length of the employee's service with an employer. The vesting may be cliff vesting, such as 100% vesting after the completion of a designated period of service (100% vesting on the third anniversary of the grant date), or graded vesting, such as a percentage of benefit after each consecutive period of service (25% on each anniversary of the grant date). Employee may wish to consider asking for monthly vesting.

44. Severance plan

A severance plan or agreement is an arrangement providing benefits, including pay, upon an employee's involuntary severance or separation from service. Certain severance arrangements (e.g., under which, among other things, the total amount of the payment(s) does not exceed twice the employee's annual compensation during the year immediately preceding the termination of service, and the payment(s) is (are) completed within 24 months after the termination of service) are not considered pension plans under ERISA, and so they are not afforded certain protections under ERISA. Please note, however, that a severance plan or arrangement should always be reviewed for compliance with section 409A of the Code.

45. Short-term deferral exception from section 409A of the Code

The term short-term deferral exception from section 409A of the Code is a technical term used to describe payments that are generally required to be made or completed within 2-1/2 months after the end of the employee's taxable year in which the right to payment is no longer subject to a substantial risk of forfeiture. These payments are generally not subject to the time and form of payment restrictions under section 409A of the Code.
46. Signing bonus
A **signing bonus** or **signing bonus plan** is an arrangement providing a candidate with a bonus or other additional compensation if she accepts the employment offer. It is similar to a **retention bonus or retention plan**, but is typically structured to attract someone to become, rather than retain someone as, an employee.

47. Statutory option
A **statutory option** is an **incentive stock option** or an **option** to purchase stock under an **employee stock purchase plan**.

48. Stock bonus plan
A **stock bonus plan** is an arrangement, typically in the form of a **defined contribution plan** that is a **qualified plan**, in which shares of stock or units of a security are allocated to the employee’s account.

49. Stock option plan
A **stock option plan** provides for grants of stock **options**. A stock **option** may be a **statutory option** or a **nonqualified stock option**.

50. Substantial risk of forfeiture
A **substantial risk of forfeiture**, in layman’s terms, means a risk that the individual will lose or forfeit the benefit if certain conditions (such as length of employment or performance targets) are not met. For purposes of the **Code**, this term is defined in sections 83 and 409A of the **Code**. This concept is relevant for purposes of determining when a grant of property (such as stock) is included in income and for purposes of determining whether certain types of compensation are **deferred compensation** for purposes of section 409A of the **Code**. A grant of **restricted stock** is generally included in income upon the lapse of the substantial risk of forfeiture. Certain restrictions (such as a covenant not to compete) are considered a substantial risk of forfeiture for purposes of section 83 (but not for purposes of section 409A) of the **Code**.

51. Target benefit plan
A **target benefit plan** is a type of retirement or other **deferred compensation** arrangement having characteristics of a **defined benefit pension plan** but is a **defined contribution plan**. Typically, the plan defines a target benefit upon reaching retirement age, and then defines a contribution that, using actuarial assumptions (such as interest rates, mortality, employee turnover) determined pursuant to the plan, is projected to result in that target benefit at the payment date. The contributions are credited to an individual account for the employee and the account is also credited or debited with the actual (not the assumed) income, expenses, gains and losses resulting from the investment of the account. As with other **defined contribution plans**, the employee’s benefit is the account value at the date of payment, and the employee bears the investment risk. This type of plan presents limited negotiation opportunities.
52. Tax gross-up

A tax gross-up is an extra payment to an employee to cover Federal, state and/or local income or excise taxes that are due to be paid by the employee on compensation receivable by the employee. A tax gross-up may be negotiated to cover any excise taxes that may be payable by the employee in connection with change in control payments and/or to cover any 409A penalties that may be imposed on the employee. Publicly-held companies are increasingly reluctant to grant tax gross-ups because these types of payments are frowned upon by institutional shareholders.

53. Top-hat plan

A top-hat plan is a nonqualified deferred compensation plan that is (and can only be) made available to certain management or highly compensated employees of the employer. A top-hat plan is excluded from the participation and vesting, funding, and fiduciary responsibility provisions of ERISA. This type of plan is an unfunded plan (i.e., the benefits under the plan are paid from the general assets of the employer or from a rabbi trust).

54. Window program

A window program is a program established by an employer to provide severance pay to an employee who voluntarily accepts an offer to terminate employment during a limited window of time. A typical window program may provide for salary continuance and continuance of medical benefits for a certain period of time.

DISCLAIMER: This Glossary provides a high-level explanation of the various technical terms that you might encounter during the negotiation process. It does not (and is not intended to) provide legal advice. Your employment agreement, any other deferred compensation, equity and/or equity-based arrangements may be subject to, among others, the requirements described in section 409A of the Code and it is recommended that all agreements and arrangements be reviewed for compliance with, as applicable, the Code and ERISA. In addition, you should make sure you understand the income tax and employment tax implications of your awards. The tax implications are not always intuitive and your award may be taxable to you even if it has not been “paid” to you. For example, nonqualified deferred compensation is subject to FICA tax upon vesting and a restricted stock award that has retirement-eligibility vesting provisions may be taxable to you for Federal income tax purposes when the retirement eligibility requirements (e.g., age 55 and 5 years of service) are met even if the award is not “paid” to you until your subsequent termination of employment.