

## Phantom Stock Could Ward off Top Talent Poachers

Capital Region employers need to be put on alert: it's poaching season. As the economy slowly recovers from the recession, many managers at rapidly rebounding businesses, particularly those in the technology sector, are preparing to lure away, or "poach," top talent from competitors still trying to regain their footing.

This year, 54 percent of technology industry hiring managers and recruiters expect to be more aggressive in regard to "poaching" tech talent, compared to 2010, according to a recent survey by Dice.com, a leading online job search company for technology professionals. Thirty-three percent of them said their poaching efforts would remain unchanged from last year and only 3 percent said they would be less aggressive.

Capital Region employers are already actively hiring. The region's private sector employed 324,400 last February, up 1.7 percent from a year earlier, according to New York State Department of Labor statistics. Many local employers did everything they could during the recession to hold on to their top talent, and some might currently feel as though they've been stretched too thin to further sweeten these employees' incentives. Maybe company shareholders, still reeling from recent years' losses, are unwilling to issue new shares so top talent can obtain a greater stake in the business.

One tool employers in this situation could use to beat back the advances of employment poachers is a phantom stock plan. With phantom stock, select employees can receive some of the benefits of stock ownership without actually acquiring any equity or voting rights in the company. Phantom stock represents a bonus agreement between the employer and employee, wherein the employee receives hypothetical or "phantom" shares of the company's stock, as opposed to actual stock. The value of the phantom shares moves in tandem with the actual stock price. It is a merit-based approach that rewards the employee when the business performs well and its stock price rises.

Although phantom stock is more common among small, privately held companies and family business, a CNN report last year described it as the "New trend in bonuses." Even large, publicly traded firms, such as Bank of America, issues phantom shares to top talent. Duke Energy, another Fortune 500 company, issues phantom stock that eventually converts into actual stock, according to the report.

Employers interested in establishing phantom stock plans for their best employees should contact a contract agreement attorney.

To schedule a meeting with one of Tully Rinckey PLLC's estate planning attorneys call 518-218-7100.