

insights

7 things you should know about sweepstakes and contests in employee incentive programs

Four years ago, I wrote [an article for this blog about creating in-house incentive contests](#). Since that time we have seen a considerable increase in the number of incentive programs that we have been asked to prepare for clients.

While the 2013 article is still relevant, it occurred to me that this would be a good time to revisit incentive programs and offer a few things to keep in mind if you plan to create this type of promotion.

1. **Is it a Contest or a Sweepstakes?** While most incentive programs are contests, it is important to determine if the program may actually be a sweepstakes. A program that begins as a contest (e.g., winner is the entrant who sold the most products) but ultimately determines the winners by a chance (e.g., putting the names of the top 10 salesmen into a hat and drawing the winner) may make it a sweepstakes - and need official sweepstakes rules.
2. **Contests.** If your promotion is a contest, it is important that a clear and complete description of the criteria that will be used to determine the winners is made available to all participants. In addition, the sponsor of the contest should record the extent to which each contestant has met the criteria set forth in the rules. For example, if the contestants in an essay contest are judged on originality, theme, and creativity, the judges must consider all of these factors and record the extent to which each participant has met those items.
3. **Sweepstakes.** If your promotion is a sweepstakes, and the winner is determined by chance, you must treat every entrant exactly the same and not permit anyone to have a better chance of winning than other entrants. While sweepstakes do not require meeting any criteria necessary to win a contest, rules need to have a clear explanation of who is eligible to enter, how the winner will be determined, how many times an eligible person can enter, etc.
4. **Entrants' Eligibility.** In all incentive programs, you need to make sure that all participants meet the necessary eligibility requirements. For example, entrants may be required to be full time employees of the sponsor and in good standing, at the time the winner is chosen - and they must comply with all of the Sponsor's rules and terms and conditions relating to this promotion. Many disputes can arise if a winner appears to be ineligible to other participants or if the requirements are not clearly written and made available to all entrants.
5. **Employees as Entrants.** Simply because all of the participants will be the sponsor's employees, does not mean that you don't have to prepare the promotion like you would for public sweepstakes or contest. It may be unlikely that the employees will sue their employer about an incentive promotion, but proving all pertinent information in the rules will help reduce the amount of misunderstanding by employees. But, keep in mind that the promotion may still be challenged by state attorneys generals if the promotion somehow fails to comply with state laws.
6. **Abbreviated Rules.** Preparing a set of abbreviated rules can often be as important as creating the official rules for incentive programs. Often, the abbreviated rules are the first and only rules that employees see. Typically, the abbreviated rules are included in handouts, emails, announcements, etc. or posted on a bulletin board in the employees' lunchroom. Abbreviated rules need to be complete and clearly written to describe the important terms and conditions of the program.
7. **Prizes.** The prizes won by employees need to be clearly described in both the official and abbreviated rules. The rules also should state the approximate retail value of each prize. If for some reason you are unsure about the value of a prize, you should lean toward using the lower defensible estimate - not an exaggerated value. Winners seldom complain if the prize is worth more than it is advertised. In addition, the sponsor's financial department should be consulted as to whether the value of the prize won should



be included as part of the winner's salary or reported to state or federal tax agencies as part of their income.

Employee incentive programs can have a very positive effect on employees output, efficiency and enthusiasm with respect to their jobs. However, there are a number of aspects of these programs that should be reviewed by lawyers who have experience with incentive programs and the application of state and federal sweepstakes and contest laws.

This post was written by retired Thompson Coburn partner Dale Joerling. If you have any questions about the topics discussed in this post, please contact Thompson Coburn partner [Hap Burke](#).

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