

Don't forget your stock options! Stock options and job departures

By Cisco Palao-Ricketts

Leaving your job, whether or not such a departure is voluntary, is a stressful time for employees. However, as you pack your belongings and send out your goodbye emails, you should ensure that you are not forgetting about your stock options. Too often, employees lose out on sizable earnings because they are unaware of the vesting terms and the post-termination exercise period of their stock options.

The post-termination exercise period is the period after the end of your service with your employer during which an option must be exercised before it expires. Often, vested stock options permanently expire if they are not exercised within the specified timeframe after your termination of service.

This article outlines common stock option provisions and key dates that departing employees should keep in mind. After reading this article, you should study your stock option documents in order to confirm the applicable dates of your stock option grants.

You should be aware of your applicable vesting dates.

In general, you have rights only to stock options that have already vested prior to your termination date. For startup companies, many stock option grants are subject to time-based vesting over a period of four years, with 25 percent cliff vesting on the one-year anniversary and the remainder vesting on a monthly basis thereafter.

At the time of your departure, you are generally allowed to exercise the vested portion of your stock option awards, and you will forfeit the unvested portion. If you are planning on leaving your job, you should review the details of your vesting schedule. You may decide to delay your departure to ensure that you do not leave prior to the vesting of a substantial portion of your option grant. For example, if your options are subject to cliff vesting, you forfeit your entire grant if you leave prior to the cliff date and you will not receive a pro-rated portion of the award.

You should be aware of your applicable post-termination exercise period.

Due to certain tax and securities laws, as well accounting rules, it is very common for stock options issued by private companies to have a term of up to ten years from the date of grant.

The post-termination exercise period, however, is almost always shorter than the applicable term of the stock option grant, absent a termination of service. In determining the post-termination exercise period, most companies follow the standard rules set forth in the Internal Revenue Code for incentive stock options (ISOs) by providing a standard three-month period to exercise a vested stock option after termination, which has the effect of shortening the term of the option for those who leave the company before the option's expiration date.¹ If your vested stock options are not exercised prior to the expiration of the post-termination exercise period, they expire and are canceled! The post-termination exercise period generally starts on the date of termination (*ie*, the actual end of your service with your employer, not the date when you give notice).²

Takeaway

Review your stock option documents including your stock option plan, notice of grant, and option agreement so that you know the rules and procedures of vesting and post-termination exercise. Your stock option documents are the only reliable and binding sources that determine your contractual rights, including vesting terms and how long you have to exercise your stock options after your termination of service.

¹ In the case of death or disability, the post-termination exercise period is often 6 or 12 months.

² Generally, an employee's service is not deemed to have terminated merely because of a change in the capacity in which the employee renders service (e.g., change in status from an employee to an independent contractor). However, a change in a service provider's status from an employee to an independent contractor will result in loss of ISO status, if applicable, on the 91st day after such a transition. As always, you should study your equity documents in order to confirm the applicable terms of your stock option grants.

DLA Piper is a global law firm operating through DLA Piper LLP (US) and affiliated entities. For further information please refer to www.dlapiper.com. Note past results are not guarantees of future results. Each matter is individual and will be decided on its own facts. Attorney Advertising. Copyright © 2019 DLA Piper LLP (US). All rights reserved.