Laurent Capital

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Stay Bonus vs Closing Bonus in M&A: Who Pays, When

> Laurent Capital is an independent M&A advisory firm headquartered in San Jose, California. It advises owners of founder-owned, family-owned and sponsor-backed B2B companies on sales, acquisitions and recapitalizations.

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Executive Summary

A closing bonus and a stay bonus are different promises that happen to be discussed together. A **closing (transaction) bonus** rewards an employee for helping the sale reach completion and is typically paid when the deal closes, whether or not the person stays afterward (www.lowenstein.com). A **stay (retention) bonus** is conditioned on continued employment, not on transaction completion alone (blog.promise.legal). Practitioners also note that the two labels are often used interchangeably even though they can have significantly different meanings (pearlmeyer.com). This report treats the label as irrelevant and the trigger, the payer and the leaver terms as decisive.

The central decision tool is an **employee-by-employee trigger and funding matrix** (Table 1). For each critical person it records existing rights, the job the award does (diligence help, completion, continuity or succession), who promises it, who pays, when the obligation arises, what happens if the deal fails and whether the buyer must approve or assume it. Funding is negotiated rather than assumed, and a retention cost the company bears reduces seller proceeds (www.skadden.com). A seller cannot assume it can bind a buyer; a drafted successor-assumption clause is one route (contracts.justia.com).

The hypothetical examples show why structure matters. In Example A, a **$120,000** award payable solely at closing pays the full **$120,000** to an employee who leaves three months later. In Example B, **$60,000** at closing plus **$60,000** after twelve months of defined service pays **$60,000** to the same employee. Example C, a buyer-funded $120,000 future-service award, should not be silently subtracted from seller proceeds. In the reconciliation example, a **$300,000** seller-funded pool plus **$24,000** of assumed employer burden is a **$324,000** gross outflow that belongs in the closing statement once, not twice. The amounts and the 8% burden are illustrative arithmetic only.

Three cautions apply. First, evidence is thin: the sources reviewed are law-firm and consultant guidance and sample contract forms, not a representative lower middle market benchmark, so this report offers no recommended bonus size. Second, existing agreements, equity and severance come first. Third, tax and

employment-law rules such as Section 280G and Section 409A of the Internal Revenue Code (IRC) can change the design (www.bclplaw.com), so owners need their own counsel and certified public accountant (CPA) before any written promise.

Introduction and Background

Owners preparing a sale often want to tell an essential manager "there will be something in it for you." The sentence is easy to say and hard to unwind: it can create an expectation, a disclosure item, a purchase price adjustment and, depending on the words and the jurisdiction, a legal right. This report is an educational decision reference for the owner making the promise. It is not a buyer integration playbook, and it is not executive compensation advice.

The target reader is a founder, family owner or chief financial officer (CFO) of a business-to-business company with roughly $5 million to $150 million of revenue preparing for a sale or recapitalization. The decision has four possible jobs, and an award can do more than one:

- **Diligence help:** extra workload during the sale process, such as data room preparation and management presentations.
- **Completion:** staying engaged until the transaction closes.
- **Continuity:** staying after closing so customers, operations and the buyer's plan are not disrupted.
- **Succession:** a longer handover, often paired with equity or an employment agreement.

Published guidance supports separating these jobs. A podcast transcript describes transaction bonuses as awards for employees who stick around through consummation of the transaction (www.lowenstein.com). None of the sources reviewed supplies a representative lower middle market bonus benchmark, and this report does not invent one.

Closing is one event and post-close service is another obligation. A closing payment can be fully earned the moment the deal closes; a service payment is earned only if the employee satisfies terms that must be written down. Labels do not settle the question: a document called a "retention bonus" that pays in full at closing retains no one afterward, and a 2019 Skadden article notes that most retention bonuses it describes are fully paid at closing, with some split into later installments (www.skadden.com).

Laurent Capital is an M&A advisory firm that works with owners on sale processes. It is not an employment, legal, tax or accounting firm, and nothing here is legal, tax or accounting advice or a recommendation for a specific transaction. Owners should engage employment and benefits counsel and a CPA before putting any promise in writing. All dollar amounts below are hypothetical and are not recommended bonus levels.

Four Distinctions That Drive the Decision

Distinction 1: Closing bonus versus stay bonus

A **closing bonus** is paid because the deal closed. A single-trigger arrangement pays or vests solely in connection with the closing (www.sullcrom.com). A **stay bonus** is paid because the employee remained for a stated period. Many real arrangements are hybrids: a share is paid at closing and the rest later, and one law-

firm article describes a common split in which about half is paid at closing (www.sullcrom.com). Another firm says a transaction bonus can include a holdback to ensure retention after closing (www.lowenstein.com).

Skadden adds that the deferred portion of split programs often falls due six to twelve months after closing (www.skadden.com). The same headline amount therefore carries different incentives depending on how much is paid on day one. Divestopedia cautions that stay bonuses are a limited incentive for senior management (www.divestopedia.com), and a Deloitte note says financial incentives are temporary in effect because employees may depart once the benefits are realized (www.deloitte.com).

Distinction 2: Who promises and who pays

The seller can promise only what the company or the sellers will actually honor. Funding is a negotiated point. A transaction bonus that is a company obligation at closing usually appears in the purchase agreement as a transaction expense or a deduction from sale proceeds. Kegler Brown notes that in a cash-free, debt-free structure the target for cash, debt and transaction expenses is usually zero for each (www.keglerbrown.com), which means that an unpaid bonus defined as a transaction expense reduces price dollar for dollar. A sample clause published by Law Insider treats the employer payroll taxes on transaction bonuses as part of transaction expenses (lawinsider.com).

A **buyer-funded retention award** is a different instrument. Venable's guidance explains that buyer funding makes the most sense when the deal depends on the continuing efforts of the employees, and that buyers may also require sellers to help defray the cost (www.venable.com). Holland and Knight notes that the question of who pays the cost of retention is where buyers and sellers tend to differ (www.hklaw.com). Sullivan and Cromwell adds that buyers and sellers have diverging interests in which tool to use (www.sullcrom.com), and Taft observes that buyers generally prefer retention bonuses (www.mondaq.com).

A further variant is holder-specific funding: a National Law Review article notes that selling shareholders may not want their proceeds diminished (natlawreview.com), and that the deal documents must then allocate the related payroll taxes borne by the company (natlawreview.com). Fit depends on the cap table and the agreement.

Distinction 3: Existing rights come before new promises

Before promising more, **inventory what employees already have**. Morgan Lewis tells sellers to look for agreements that provide for change in control or transaction bonuses and for retention bonuses (www.morganlewis.com). A sell-side firm in Ohio similarly advises owners to inventory and examine the company's existing agreements with its employees and fix inadequate ones before the sale process starts (bdblaw.com). The inventory should include employment agreements, severance policies, commission plans, deferred compensation, option or profits-interest awards and any informal side letters.

The inventory matters for design because rights interact. BCLP raises the point for equity: if a person will already receive a substantial payout, ask whether an additional payment is necessary or appropriate (www.bclplaw.com). A sample stay bonus agreement handles the overlap by providing that the stay bonus is in lieu of any other sale bonus (contracts.justia.com). Existing equity has its own mechanics: Morgan Lewis notes that participant consent may be required to assume, substitute or cash out awards (www.morganlewis.com).

The structure of the sale determines who the employer is after closing. A Wisconsin firm says existing employment agreements typically do not transfer automatically in an asset purchase, while in a stock purchase or merger the employing entity stays the same (www.heritagelawwi.com). Fisher Phillips describes asset deals as employees technically separating from the target company (www.fisherphillips.com). For a promise made by the selling company, that determines whether the buyer inherits the obligation or must assume it.

Distinction 4: Failed deals and leavers

Two scenarios deserve explicit text: the deal does not close, and the employee leaves. For failed deals, sample forms commonly end the arrangement. One merger-related plan filed with the Securities and Exchange Commission (SEC) terminates automatically on termination of the merger agreement (www.sec.gov). A sale-process letter filed by another company states that its terms are null and void if the sale does not close by a deadline (contracts.justia.com). A third terminates if a company sale event is not consummated by a stated date (contracts.justia.com). Lowenstein suggests conditioning payment on the deal occurring by a certain date (www.lowenstein.com). These are drafting examples, not a rule that a failed deal always means no payment; an independently earned milestone or an existing agreement can say otherwise.

For leavers, BCLP asks the owner to decide up front whether an employee who leaves before closing should still be entitled to a transaction payment (www.bclplaw.com). A Wisconsin firm adds that the agreement must specify whether the bonus is forfeited on resignation or termination for cause (www.heritagelawwi.com). Skadden flags whether payment should accelerate for participants terminated without cause by the company or its successor (www.skadden.com). Hunton Andrews Kurth observes that when part of the pay comes after closing it is most common to require accelerated payout on a good-reason or without-cause termination (hunton.com). The terms "cause," "good reason," death and disability need definitions, and one SEC-filed form shows the choice of borrowing an existing severance policy's definitions rather than writing new ones (www.sec.gov).

The Employee Trigger and Funding Matrix

The matrix below is the core decision aid. *Table 1* lists five hypothetical roles. For each, it separates what the person already has, the job a new award would do, who promises it, who pays, the trigger and the buyer's role. The rows illustrate how to fill out the worksheet and are not recommendations that any role receive an award; some may need nothing. "TBD" means the term must be settled with counsel and, where relevant, the buyer, and the agreement-reference column should eventually cite the governing section.

Table 1: Employee trigger and funding matrix (Hypothetical Example)

Employee / function	Existing rights	Award purpose	Promising entity	Amount / form	Payment event	Service period	Leaver treatment to confirm	Failed-deal treatment	Funding source	Buyer approval	Agreement reference
CFO (data room and diligence workload)	Employment agreement; check severance and change-in-control language	Diligence help and completion	Company, authorized by owners	$X cash (placeholder)	Closing	Through closing only	Pre-closing departure; termination without cause before closing	No payout unless an existing agreement or an earned milestone says otherwise	Seller (transaction expense)	Disclose; buyer may negotiate	TBD
Head of sales (top customer relationships)	At-will; commission plan	Continuity	Buyer, in a post-signing letter	$X cash, installments	6 or 12 months after closing	Defined continued service	Without cause, good reason, death, disability	Not applicable; no award before closing	Buyer	Buyer proposes and approves	TBD
Operations lead likely to run the business	Employment agreement; unvested options	Succession and continuity	Company and buyer	Employment agreement plus equity rollover or incentive equity	Per equity terms	Multi-year vesting	Good leaver / bad leaver terms in equity documents	Equity not issued if no closing	Buyer-side equity	Required	TBD
Controller (closing statement support)	At-will; no written agreement	Completion	Company	$X cash	Closing, with possible short holdback	Through closing and any holdback	Voluntary departure before holdback date	No payout unless otherwise stated	Seller	Disclose	TBD
Plant manager with a change-in-control clause	Written change-in-control bonus	None until the existing right is reviewed	Existing agreement	Per existing terms	Per existing terms	Per existing terms	Per existing terms	Per existing terms	Per existing terms	Review; may be a disclosed liability	TBD

Table 1 shows the main point: one dollar figure appears in several columns, but the columns are independent decisions. The head of sales row is a buyer-funded post-closing award, so the seller does not promise it and should not describe it to the employee as assured. The plant manager row is a reminder that a promised new

award may duplicate a right the person already has. The operations lead row shows equity doing the job a cash stay bonus would otherwise do. White and Case notes that senior management in sponsor-backed deals are often expected to roll over some equity (www.whitecase.com).

Why the buyer approval column exists

A **seller can promise only on behalf of the seller**. Cooley notes that a condition requiring specified employees to be retained is a very common condition imposed on private targets (cooley.com). An ABI Journal article similarly says many buyers make deals contingent on employment agreements with the individuals they need (www.abi.org). If a buyer's plan for a role differs from the owner's, a promise tied to that role may not be honored the way the owner expects.

Lowenstein states that transaction bonuses have to be disclosed to the buyer (www.lowenstein.com), which can lead to purchase price adjustments. Goodwin notes that a letter of intent (LOI) can, where appropriate, address management retention and incentive arrangements (www.goodwinlaw.com), and Taft recommends establishing incentive structures before the sale process begins (www.mondaq.com), since delay gives leverage to management and the buyer (www.mondaq.com).

What the matrix does not decide

The matrix does not decide amounts. BCLP says cash amounts are commonly tied to the purchase price or the perceived value of the individual's contribution (www.bclplaw.com), and CBIZ says change-in-control pools are typically funded as a percentage of net proceeds (www.cbiz.com). These describe how amounts are framed, not how large they should be.

Walking Through Six Scenarios: Closing, Voluntary Exit, Termination, Pre-Closing Departure and Failed Deal

The matrix gives structure; the examples below test it. *Table 2* compares three hypothetical awards across the scenarios an owner should be able to describe in a sentence. The assumptions are stated so that the outcomes can be checked.

Assumptions (Hypothetical Example): Each award has a face value of $120,000. The sale closes on one date. "Month 3" means three months after closing. "Qualifying involuntary termination" is defined for this illustration only as termination by the post-closing employer without cause before month 12, with a release of claims signed and not revoked. Example B pays $60,000 at closing and $60,000 at month 12, conditioned on continued service. Example B also accelerates the unpaid $60,000 on a qualifying involuntary termination as defined here. Example A has no service condition. Example C is a buyer-funded award of $120,000 payable at month 12 subject to continued service, with no payment at closing. These are not recommended structures.

Table 2: Outcomes under three hypothetical awards (Hypothetical Example)

Scenario	Example A: $120,000 at closing, no service condition (seller-funded)	Example B: $60,000 at closing plus $60,000 at month 12, service-conditioned (seller-funded)	Example C: $120,000 at month 12, service-conditioned (buyer-funded)
Deal closes; employee stays 12 months	$120,000 total	$120,000 total	$120,000 total
Employee resigns voluntarily at month 3	$120,000	$60,000	$0
Qualifying involuntary termination at month 3, as defined above	$120,000	$120,000 (unpaid $60,000 accelerates)	$0 unless the buyer's letter provides acceleration
Employee leaves before closing	Depends on drafting; decide in advance	Depends on drafting; decide in advance	Not applicable; no award until closing
Deal fails	No closing payout	No closing payout	No award
Effect on seller proceeds	Reduces proceeds if defined as a transaction expense	Closing portion reduces proceeds; treatment of deferred $60,000 must be agreed	None, unless the purchase agreement says otherwise

Table 2 makes the central contrast: under Example A the employee who leaves at month 3 receives $120,000, under Example B $60,000, and under Example C nothing. The seller pays the full amount in Example A and keeps no lever over the employee after closing. In Example B, the seller still bears the closing portion, and a sample purchase-agreement clause shows one way to handle the deferred portion: the buyer pays the seller a forfeited amount, together with related payroll taxes previously included in transaction expenses, if the employee does not earn the later tranche (lawinsider.com). Whether such a reimbursement exists in a real deal is a negotiated term, and the example is a drafting illustration.

Example C illustrates why the funding row should not be filled in by assumption. A buyer-funded retention award should not be silently subtracted from seller proceeds. If the buyer asks the seller to bear part of it, that request should appear as a defined line in the purchase agreement, which is consistent with the general observation that buyers may ask sellers to help fund a program (www.venable.com).

Details a paragraph of drafting should settle

Sample forms show what a complete document touches. A form filed with the SEC states that the bonus is not considered earned until the end of the retention period (www.sec.gov), preserves at-will employment (www.sec.gov), conditions accelerated payment on signing a separation and release agreement (www.sec.gov), and provides that the employee or heirs remain eligible on death, still conditioned on closing (www.sec.gov). A different form conditions a closing payment on full-time employment through the closing date (www.sec.gov), and a plan filed with the SEC says a participant whose employment ends before payment is no longer a participant (www.sec.gov).

Two further points. A form should say whether the promise can be amended; one plan bars amendments that adversely affect a participant without written consent (www.sec.gov). And a form can say that continued employment with a buyer satisfies the service condition (contracts.justia.com), or that the unpaid portion is

paid in a lump sum if the buyer terminates without cause (contracts.justia.com). Layering is also possible: another filed letter is without prejudice to an earlier success bonus (www.sec.gov).

Coordinating Seller Commitments With the Buyer and the Purchase Agreement

Business negotiation versus legal entitlement

A buyer discussion of a manager's incentive is a business negotiation until a document creates a right. The line between a hope and an entitlement depends on facts and the governing state law, and this report does not state a general rule. One law-firm explainer says verbal bonus promises may be enforceable if they are clear, definite and relied upon (aaronhall.com), though it is a practitioner source and not a primary authority. A California business association explains that a nondiscretionary bonus, which is a promised extra wage for extra service, must be paid under final-pay requirements if the employee is terminated (p-hrcalifornia.calchamber.com). California's Labor Code defines wages to include all amounts for labor performed by employees of every description (leginfo.legislature.ca.gov). Federal wage regulations add that, for a bonus to be excluded from the overtime regular rate as discretionary, the employer must retain discretion as to the fact and amount of payment (www.law.cornell.edu), and that the bonus must not be paid under a prior promise (www.law.cornell.edu). For owners, the takeaway is practical: a casual promise may be treated as something more than casual, depending on jurisdiction, and a written plan with clear conditions is both safer for the owner and clearer for the employee.

California also regulates repayment terms in some employment contracts. Assembly Bill 692 restricts specified repayment terms in employment contracts, but Assembly Bill 1697, approved by the Governor on September 30, 2026, amended the law so that the prohibitions apply only to contracts entered into on or after January 1, 2027 (leginfo.legislature.ca.gov). The amended statute also contains a conditional exception for a discretionary or unearned monetary payment, including a financial bonus, that is not tied to specific job performance. It no longer limits the exception to payments made at the outset of employment, and it requires, among other conditions, a separate repayment agreement, at least five business days to consult an attorney, a prorated repayment obligation without interest accrual, a retention period of no more than two years from receipt of the payment, and an option to defer receipt of the payment to the end of a fully served retention period without any repayment obligation (leginfo.legislature.ca.gov). The statutory text and current advice from California counsel decide whether any particular bonus qualifies. A 2009 Epstein Becker Green alert says a repayment obligation should be stated clearly in writing and signed by both parties (www.ebglaw.com). A "pay now, claw back if you leave" design can therefore work in one state and be restricted in another, so jurisdiction belongs on the matrix.

Presenting commitments to the buyer

Presenting seller commitments to a buyer is a disclosure exercise. Lowenstein notes that if a deal is already underway, any new incentive arrangement needs to be disclosed to the buyer (www.lowenstein.com), and a Sullivan and Cromwell article says retention programs are rarely communicated to employees before the announcement because doing so would signal a likely sale, with the material terms disclosed to and possibly negotiated with the buyer (www.sullcrom.com).

Communications to employees need the same care as the documents. A sell-side firm in Ohio advises that employees should not learn of the sale from third parties or too early (bdblaw.com), and a Wisconsin firm adds that telling them too late can feel deceptive and damage trust (www.heritagelawwi.com). One filed sale-process letter conditions the bonus on confidentiality, with eligibility forfeited on disclosure (contracts.justia.com).

Where equity fits

Rollover equity and a stay bonus solve different problems. A Darrow Everett article says a properly structured rollover can be tax deferred, which would reduce tax at closing (darroweverett.com), whereas a cash bonus is wage income. White and Case describes rolled-over executive equity as often subject to forfeiture or repurchase at less than fair market value on certain terminations of employment (www.whitecase.com). Goodwin defines a good leaver as someone who departs under amicable circumstances (goodwinlaw.com) and a bad leaver as someone terminated for cause or in breach of a restrictive covenant (goodwinlaw.com).

Equity does not suit every employee. Metz Lewis warns that equity plans should not be treated as a last-minute means of executive compensation (webiis08.mondaq.com), and that a poorly structured plan may provide significant compensation at closing and leave little reason to stay (webiis08.mondaq.com). BCLP says that once a buyer is engaged, a non-equity cash award is often simpler and more practical (www.bclplaw.com).

Mapping the Gross Cost Once in the Closing Statement

An award has a cost that appears in more than one place unless the owner decides where it will appear. The funds flow memorandum, the closing statement and the working-capital or debt-like definitions can each pick up the same obligation. McGuireWoods advises sellers to ensure that no items have been double-counted in the initial purchase price adjustment (media.mcguirewoods.com). Compensatory payments also run through payroll: a DealRoom explainer notes that compensatory amounts are treated as W-2 income (dealroom.net), and White and Case notes that cashed-out equity awards are run through payroll (www.whitecase.com).

The reconciliation below uses **hypothetical numbers**. *Table 3* takes a $300,000 seller-funded award pool and adds $24,000 of assumed employer burden (8% of the pool) for a gross outflow of $324,000. The 8% is illustrative arithmetic, not a payroll tax rate. It then shows two presentations of the same facts. Actual purchase price and working-capital definitions control, so this is an illustration of consistent presentation and not a replacement for a working-capital analysis.

Table 3: Gross-cost reconciliation (Hypothetical Example)

Line	Presentation 1: counted once in funds flow	Presentation 2: counted twice (error)
Hypothetical headline purchase price	$20,000,000	$20,000,000
Seller-funded award pool	$300,000	$300,000
Assumed employer burden (8% of pool, illustrative)	$24,000	$24,000
Gross outflow through funds flow	$324,000	$324,000

Line	Presentation 1: counted once in funds flow	Presentation 2: counted twice (error)
Same amount also deducted as an unpaid liability in the closing statement	$0 (already paid through funds flow)	$324,000
Total reduction to seller proceeds from this item	$324,000	$648,000
Hypothetical proceeds before all other adjustments	$19,676,000	$19,352,000

Table 3 shows that the error is a presentation problem, not a change in the award. If the $324,000 is already paid through funds flow, deducting it a second time as an unpaid liability reduces proceeds by an additional $324,000. The arithmetic is simple: $300,000 × 8% equals $24,000, and $300,000 plus $24,000 equals $324,000. A seller reviewing a draft closing statement should be able to point to the one line where this amount appears.

Funding the post-close portion separately

A post-closing tranche needs a separate decision. If the seller bears a deferred payment, the agreement can deduct it at closing, reserve it, or require reimbursement as it is paid. If the buyer funds a service award, the amount should not appear in the seller's closing statement at all unless the parties agree otherwise. The Law Insider sample shows a purchase price reduction for post-closing transaction bonuses as they become due (lawinsider.com), which illustrates a third mechanism. Each approach needs matching definitions so the same dollars are not charged twice. A Wisconsin firm says sellers can fund bonuses from deal proceeds or include them as transaction expenses (www.heritagelawwi.com).

Data Analysis and Evidence

The quantitative record for this topic is thinner than the volume of commentary suggests. The sources opened for this report are law-firm articles, a consultant article, trade explainers, statutes and regulations, and sample contract forms. None presents a representative lower middle market benchmark for bonus size, take-up or retention outcomes. This report therefore does not provide a recommended bonus percentage, and no survey statistic is used to support a conclusion.

One example shows why caution is warranted. A Pearl Meyer study of retention and transaction bonus pools examined disclosures in over 1200 company transaction filings from 2016 to late 2024 (pearlmeyer.com). The study is based on say-on-golden-parachute disclosures in transactions valued up to $100 billion, and the article is written for compensation committee members. It is useful for vocabulary, such as its distinction between deal support and value sharing awards (pearlmeyer.com), but its pool sizes should not be applied to a privately held company with a single owner or family group. WTW's commentary says buyers often view a purchase as not worthwhile if the senior leadership team does not come on board (www.wtwco.com), which supports the buyer's interest in retention but not any particular amount, and the same piece advises considering how severance programs balance retention programs (www.wtwco.com).

What the evidence does support is narrower. Timing is a recurring design variable: closing, six to twelve months after closing (www.skadden.com), or tied to escrow releases or earn-outs, with those awards typically paid 30 to 60 days after the earn-out is calculated or the escrow is released (www.bclplaw.com)). Eligibility is another: Lowenstein says promising retention bonuses too broadly dilutes the impact (www.lowenstein.com). Leaver treatment is a third, on which the sources agree it must be addressed expressly.

Tax and compliance flags for counsel (United States federal)

The following are flags, not an explanation of the tax rules. They are drawn from federal statute and regulation text, and they apply to the United States only. State and local rules differ, and the answers depend on the facts of each company and individual.

- **Section 409A (nonqualified deferred compensation):** the statute adds an additional tax of 20 percent of the compensation required to be included in gross income when a plan fails its requirements (www.law.cornell.edu). A right to compensation is subject to a substantial risk of forfeiture if it is conditioned on future performance of substantial services (www.law.cornell.edu), which is the feature a stay bonus has. The short-term deferral rule in the Treasury regulations says no deferral of compensation occurs for certain payments actually or constructively received within a defined period (www.law.cornell.edu). Whether a given plan fits is a question for benefits counsel.
- **Section 280G (golden parachute payments):** a parachute payment is, among other conditions, a payment contingent on a change in ownership or control (www.law.cornell.edu) whose aggregate present value equals or exceeds three times the base amount (www.law.cornell.edu). The consequence is that no deduction is allowed for an excess parachute payment (www.law.cornell.edu). A regulation treats a payment as contingent on the change if it would not, in fact, have been made had no change occurred (www.law.cornell.edu), and payments under agreements entered into within one year before the change are presumed contingent unless the contrary is shown by clear and convincing evidence (www.law.cornell.edu). A newly added transaction promise is therefore not automatically outside the rule because it is recent.
- **Shareholder approval exception:** the statute provides an exception for certain corporations whose stock is not readily tradeable, conditioned on meeting shareholder approval requirements (www.law.cornell.edu). The regulations require approval by more than 75 percent of the voting power of the outstanding stock (www.law.cornell.edu) after adequate disclosure (www.law.cornell.edu). This report does not state that private companies generally qualify. The conditions are factual and counsel must check them, including the type of entity. Section 280G also separately excludes payments with respect to a corporation that was a small business corporation immediately before the change in control, as defined in section 1361(b) without regard to paragraph (1)(C) (www.law.cornell.edu); counsel should test whether that exemption or the shareholder-approval route applies, because this report states no general rule. A DealRoom explainer notes the 280G analysis must be completed before funds flow locks (dealroom.net).
- **Payroll treatment:** IRS Publication 15 lists bonuses among payments that are wages (www.irs.gov). Employer payroll taxes are part of the gross cost in the reconciliation above.

Implications and Future Directions

The practical implication is a sequence of six steps: define the job, inventory existing rights, fill in the matrix for each critical person before any promise is made, disclose and align with the buyer, map the gross cost in the closing statement once, and take the draft to counsel and the CPA.

For the owner, the main risk is making a promise that is vaguer than the owner thinks. A promise that does not say what happens on failure of the deal, on voluntary departure or on termination by the buyer is a promise that the employee will fill in. A casual "you will be taken care of" can create expectations the buyer is not bound to meet. The ABI article observes that sellers sometimes provide managers they deem critical with a retention bonus at closing (www.abi.org), and an advisory-firm article suggests having the buyer set aside retention money for key people while balancing confidentiality against telling key staff early (www.generational.com).

Not every manager needs a bonus. Some already have severance or change-in-control protection, some will receive equity, and some are better retained through the buyer's employment offer. Treating the question as "who needs what, from whom" avoids both over-promising and under-promising. An M&A advisor can help an owner organize the process and the information that goes to buyers, but the drafting and tax design is for employment and benefits counsel and a CPA, and Laurent Capital does not perform those functions.

State law on retention repayment terms is changing, as the California example shows, and tax rules can be amended. The BCLP note was published June 16, 2026, but any specific design should be rechecked against the law in force at signing.

Frequently Asked Questions (FAQs)

What is a management retention bonus in M&A? It is an award paid to a manager for staying with the business for a stated period, often after closing. A practitioner definition says payment is conditioned on continued employment, not on transaction completion alone (blog.promise.legal).

What is the difference between a transaction bonus and a retention bonus? A transaction bonus is a one-time payment on successful completion of a transaction, typically to a select group of employees (natlawreview.com). A retention bonus requires service to a date. The labels are often mixed, so state the trigger.

Is a stay bonus when selling a company paid if the deal fails? Not by default. The sample forms reviewed generally end if the deal does not close, but an existing agreement or a separately earned milestone can say otherwise. State the failed-deal treatment in writing.

How are management incentives structured in lower middle market M&A? Common building blocks are cash at closing, deferred cash tied to service, a pool funded from proceeds, and equity or rollover. No benchmark for the lower middle market was found in the opened sources, so amounts are a negotiated, company-specific matter.

How do I structure management retention in a business sale? Use the matrix: record existing rights, the job of the award, who promises and pays, the payment event, the service period, leaver terms, failed-deal treatment and buyer approval for each person, then get counsel review.

Should owners promise employees a sale bonus before selling? That depends on facts and jurisdiction. A written plan with clear conditions, disclosed to the buyer when a deal is underway, is more controlled than an informal promise. Taft advises setting incentive structures before the process begins (www.mondaq.com).

What is a key employee retention plan in a company sale? It is a plan or set of letters that pays selected employees for staying through closing and, if desired, a transition period. Skadden describes it as a tool to incentivize key employees (www.skadden.com).

Rollover equity or a stay bonus? Rollover equity is ownership subject to leaver terms; a stay bonus is cash for service. Rolled equity can be repurchased on certain terminations (www.whitecase.com).

Who pays a sale bonus for employees? It depends on the agreement. Funding by the company reduces seller proceeds (www.skadden.com), while buyer-funded awards sit on the buyer's side.

Conclusion

The question "stay bonus or closing bonus" is best replaced by four narrower questions: what job should the award do, who promises it, who pays for it, and what happens at each trigger. A closing award rewards completion and does not retain anyone after the check clears. A stay award retains only to the extent that its service conditions, leaver terms and definitions are written clearly and the buyer is willing to honor them. A seller commitment is not a buyer commitment unless the documents make it so.

The employee-by-employee matrix gives owners and CFOs a single place to record those answers and to see where existing rights, equity or buyer-funded awards already cover the need. The hypothetical examples illustrate how identical headline amounts of $120,000 produce $120,000, $60,000 or nothing for a manager who leaves at month 3, and how a $324,000 gross outflow should be counted once in the closing statement. The evidence base is qualitative, with no representative lower middle market benchmark, so amounts and structures must be settled with the buyer and advisors. Before any written promise or disclosure, the owner should consult employment and benefits counsel about the governing law and the tax rules, and a CPA about the accounting and payroll treatment.

Source links

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