

Legal Steps to Build and Keep Your Team

How to Select and Retain Management in a Startup or Early Stage Company

ENET - Boston Entrepreneurs'
Network

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Corporate and Tax Attorney

Robert Adelson has been a corporate and tax attorney since 1977. Beginning as an associate at the major New York City firms, Adelson returned to Boston in 1985, where he's worked ever since. He holds degrees from Boston University, B.A., *summa cum laude* and *Phi Beta Kappa*, Northwestern University (Chicago), J.D. and *Law Review* member, and New York University, LL.M. in Taxation.

Mr. Adelson is a partner at Engel & Schultz LLP, a 6-attorney firm in Boston's financial district.

Mr. Adelson's clients are mainly -

- Smaller and Early Stage companies
- Consultants and service providers
- Executives and key employees
- Family businesses in transition



Engel & Schultz LLP (offices at 265 Franklin St. above) has specialists in other areas useful to business law clients, including litigation, real estate, environmental, estate planning and tax compliance. All six Engel & Schultz attorneys have over 25 years experience in law and business.



Robert A. Adelson, Esq. , Boston, MA

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For Businesses. Adelson designs and implements Business formation; VC and angel finance; Stock, options, vesting plans; Shareholder agreements; Trademarks, trade secrets and IP protection, licensing; Software and product development and distribution; Partnerships, Joint Ventures, M&A

For Service Providers. Adelson negotiates employee terms sheets, employment contracts, NDAs, Noncompetes, Stock, options, Phantom stock; Relocation, Severance, retention, termination agreements; and for consultants, service and subcontracting agreements; Entity choice, liability protection; trade identification, trademark, IP protection.

Publications. Mr. Adelson is a frequent lecturer, with numerous articles in those fields, including articles published in *Boston Business Journal*, *Darwin Magazine*, *Mass High Tech*, *Family Business* magazine, *Genetic Engineering News*, *Small Business Opportunities* magazine and *The Culpepper Letter* (serving the software industry). His work as a prominent Boston business and tax attorney has been recognized in articles in the *Boston Globe* and *Boston Herald* and in a chapter of the book, published in 2000, *The End of Shareholder Value*. A member of the Massachusetts and New York Bars, Mr. Adelson is also Vice-Chair of ENET - Boston Entrepreneurs' Network and Advisory Board member of the 128 Innovation Capital Group.



Team Building on a Shoestring:

Thinking out-of-the-box to Recruit/Retain

In the early stage, the successful entrepreneur must be willing to jump boldly: To use the tools and resources available to recruit the team needed. Without that team, failure is likely, so try ...take the jump to have a chance to succeed.



***“You can’t swim? ...
Hell, the fall will kill
you!”***

**Butch Cassidy to Sundance (1969) –
image of Robert Redford, Paul Newman via art.com**



Team Building on a Shoestring: *Thinking out-of-the-box to Recruit/Retain*

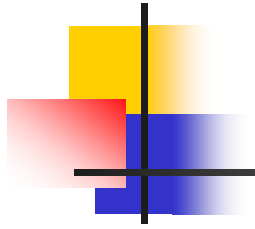


1. Conventional Methods to Recruit and Retain the Team you really need

- Competitive Salary / Benefits
- Established place in the market
- Recognized company and team

2. The Challenge to Recruit in Early Stage

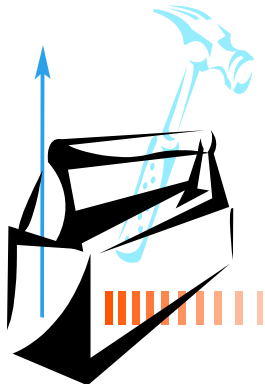
- "Credibility Challenge" with no track record
- Enticing a leap from security to great risk
- Hard to give up day job – live on savings
- Great probability of failure, economic loss



Team Building on a Shoestring: *Thinking out-of-the-box to Recruit/Retain*

3. Using Early-Stage Mode - as Advantage

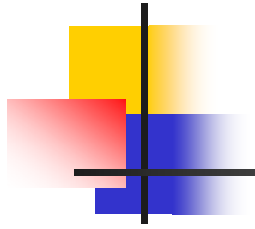
- Selling “the story” – capturing imagination
- Flexibility to build the company “your way”
- Chance to get in on ground floor, strike gold



4. Using Equity- Team Building “Toolbox”

- Restricted shares
- Stock options- tax qualified (ISOs)
- Stock options -Non-qualified (NQSOs)
- Phantom stock
- Member units in LLCs





Team Building on a Shoestring: *Thinking out-of-the-box to Recruit/Retain*

5. Using Tax laws as Your Friend

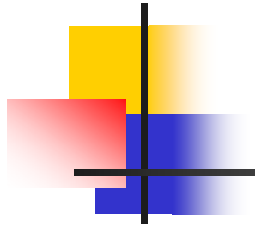
- Capital Gains
- Tax Deferral of Accumulated Income
- Stock Appreciation Rights
- Protection of Phantom Gains



6. Leveraging the Future- "to strike gold"

- Fair market valuation for tax purposes
- ROI valuation- for market
- Strategic entity growth
- Payback in non-cash equivalence





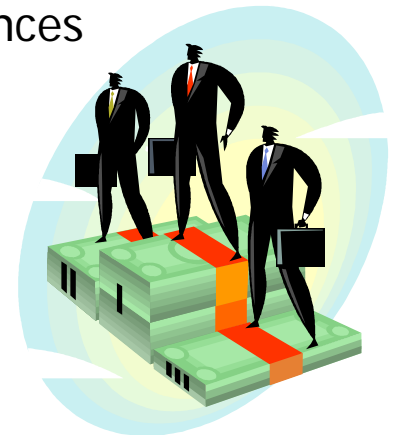
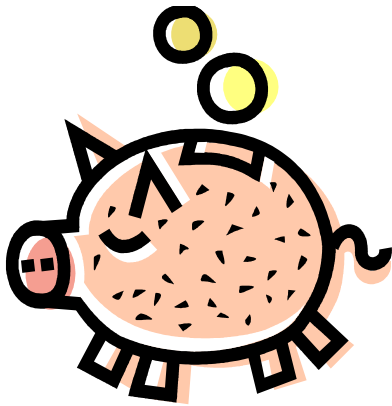
Team Building on a Shoestring: *Thinking out-of-the-box to Recruit/Retain*

7. Comp terms used for maximum mileage

- Signing bonus- equity, returnable arrangements
- Base salary- deferral options
- Performance bonus- payment vs. payback

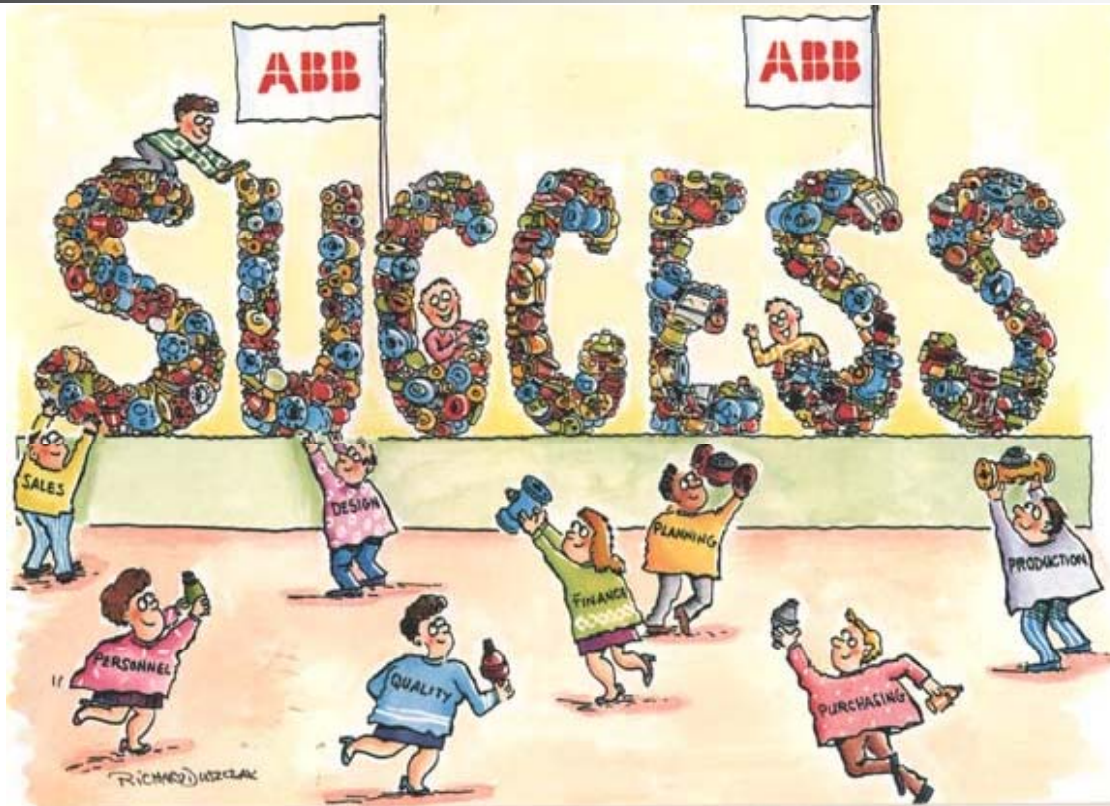
8. Employment terms - “Good Vibrations”

- Position, platform, and launching pad
- Authority, support, reciprocal commitment
- Outside affiliations- showing trust and growth
- Expense reimbursement, employee advances
- Benefits- outside group plans
- Reciprocal termination provisions
- Targeted restricted covenants

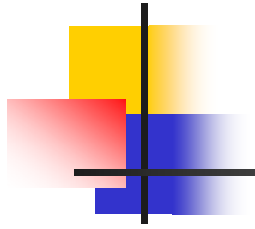


Building Value on firm Foundation

Appear Generous but Demand Value SM



In the early stage, the successful entrepreneur wants to be fair. To offer real equity and real opportunity to those willing to share the risks in early stage. Yet, nothing is "given". All must be earned. Seeking value imperative - to build for long term.



Building Value on firm Foundation

Appear Generous but Demand Value SM

1. Vesting Arrangements- firm hand on tap

- Vesting based on service and loyalty
- Vesting on individual performance, achieving targets
- Vesting based on company performance

2. Getting Equity Back – even after vesting

- Protection for the company when needed
- Employment termination – need for replacement
- Bad boy provisions – penalty for breaching
- Death, disability vs. divorce or bankruptcy
- Allowing employee to retain equity when earned



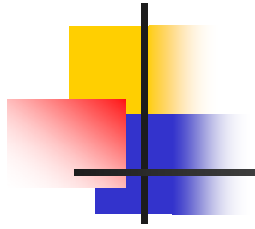
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"You mean all those part time, temporary, no-benefits employees quit??? Where's that old fashioned company loyalty?"



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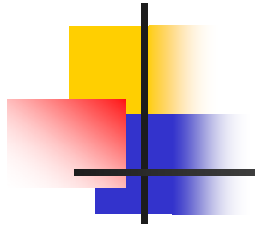
3. Calibrating Vesting with Stock Rights

- Rights in stock
- Rights in options
- Liquidity rights and cash exit
- Durability of stock and options
- Built in value in stock and options



4. “Success Events” - Giving a stake in the future

- Acceleration of vesting
- Incentivizing employees with company success
- Making employee feel a part of company success



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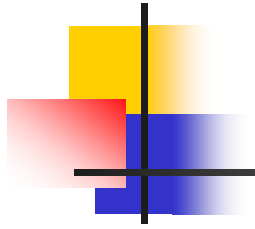
5. Asset Transfers – Real Company ownership

- Assignment of Inventions
- Employee licenses of technology
- Equipment transfers
- Company ownership rights



6. Restricted Covenants- Real Company Rights

- Non Competition Agreements
- Non-solicitation of clients, suppliers, employees
- Non-disclosure-confidentiality agreements
- Trade secret protections, internal protections



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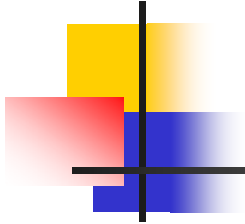
7. Allocating Equity- Discipline of Dividing the Pie

- Setting aside equity for future players
- Limiting yourself to 100% company
- Using and scheduling all resources at hand

8. Good Dilution and Bad- “Stand and Deliver”

- Value added, good dilution: to feed growing company
- Downward Spiral- watch out
- Vigilance over investment terms
- Participating preferred, full ratchet, VC nightmares
- Minority control by venture backers





Thank You!

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