

Negotiate Your Compensation Like a **ROCK STAR**

 **MAJOR, LINDSEY & AFRICA**



Negotiate Your Compensation Like a Rock Star: Your Questions Answered

We had an overwhelming response to our compensation negotiation webinar, but unfortunately, we were unable to get to all of your wonderful questions before the end of our hour. We have answered the most popular questions below. We hope this information will better prepare you for your next compensation negotiation.

Q: Typically, the recruiter you're working with is the recruiter engaged by the company. For my in-house placements, I've never had a recruiter advocate. Brings a different dynamic to the negotiation. What about negotiations for the "what if we separate" type scenarios. When does that come into play (e.g., I had a friend negotiate into his contract a severance in case of change of business conditions)?

A: Although a recruiter is indeed hired by the company, we want to see the deal get closed so that entails working with both the candidate and the client to get to the right place. Part of our job is to advocate with our clients 1) if they have not hit the mark with the offer and 2) to work with our client to ensure they get the candidate of their choice. So, we advocate for candidates, but it is true that the company is our client.

A candidate can negotiate the separation piece, but oftentimes, if you are not at the executive level, this will not be included in an offer letter.

Q: How do you negotiate raises and titles (when you've been in the role for a bit)?

A: This is a topic for a phone call, and we would be happy to connect on this. We typically focus on placing people into new roles, but we may have some insights that are helpful. If you would like to schedule a call with one of our search consultants, let us know and we will arrange it.



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YOUR QUESTIONS ANSWERED

Q: Should you provide your compensation when applying for a position? If no, how do you deal with the question in the application?

A: To the extent a candidate can do this comfortably, candidates should focus their responses to compensation questions on their expectations for the new role rather than what they earn in their current role. Your right to do so is protected by law in many jurisdictions, and it has become the practice of reputable recruiters nationwide regardless of jurisdiction. Many candidates will respond by asking, “What is the budgeted range for this role?” or some version of that question. If you have an opportunity to ask, we would suggest doing so. Once a range is shared with you, it does not usually make sense to focus only on the top number; a range is a range and they are not quoting you an offer. Sometimes, the top of that range may reflect the limit you can ever earn with that title, meaning they would never be able to give you a raise. Most corporations, if they have strict ranges like that, would not be willing to make such an offer. Raises are an important retention tool, and it is considered by many to be too risky to bring someone on under these circumstances.

Q: Question for John: As a GC, I have various employment counsel I can consult, likely for free guidance. They may not be as seasoned as John in this realm. Can John speak to his value proposition in view of this and how he charges individuals?

A: I’m a compensation lawyer who negotiates employment agreements rather than an employment lawyer who negotiates compensation. If the comp component is simple, then it’s probably a waste of spend to hire me as my rate is admittedly higher than that of an employment lawyer. (And by all means if someone feels they should rely on free advice for a life-changing comp package, then go for it!!) However, for a complex agreement that will involve equity/NQDC/LTI and STI (and possibly distinctions w/l each category), it’s very helpful to have someone who speaks (or can coach the candidate to speak) the same language as the employer’s total rewards professional and understands the constraints of the CEO, the comp committee and, if applicable, the proxy advisory firms.

I charge by the hour. Some clients use me a ton and others use me as reference point to help shape their arguments.

Q: Many positions now are remote, and many companies have multiple office locations. How can I best determine “market” comp where I am in one state but will directly support office locations in several other states?

A: You are correct to consider the geography in which you live, the industry you are in and the geography of the company. But if you are not going to move, the company is unlikely to take their location into consideration. That is considered a primary benefit to allowing remote work: you do not have to pay cost of living adjustments to entice people into relocating. Unfortunately, we have never seen an online tool that accurately projects market rate for a specific role in a specific location. We do, however, have a compensation report that can give you averages—but with almost 4,000 respondents, it remains unlikely that it will speak specifically to your tenure, industry, city and level. If you want to discuss interpreting the report or your local market, we would be happy to arrange a call with one of our consultants.

Q: John mentioned how crucial it is to do homework about the organization’s compensation culture. There are a number of external resources to use. What resources do you recommend using to determine the internal compensation culture? Is a review of the annual proxy sufficient?

A: For public companies, we definitely recommend the proxy statement, particularly the compensation discussion and analysis. If the GC or CLO is one of the top five compensated executives, her/his compensation will be listed there, and it will also be a sign that the legal department is considered much more than a cost center. That’s always a good sign, and it also comes with higher expectations, of course. The GC compensation is sometimes quickly calculated as 80% of that of the CFO. If it is far above or below that measurement, that tells you something, too. Not all companies



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are public, and if you are dealing directly with Human Resources and/or a member of the Talent Acquisition team, you can ask them how executives are typically compensated. Approaching them to gain insights into the compensation culture shows that you will be a pleasant candidate to “close” with, so you want to make sure you take an approach that demonstrates that intention. Also talk to recruiters or friends you know at the company or who may know the company.

Q: It wasn't clear what total rewards information John suggested be collected. Can you please clarify? How do you address Radford data, which is always very middle of the road and does not address the unique situation of each negotiation?

A: By total rewards, I mean every aspect of remuneration: stock, deferred comp, LTI, annual bonus as well as the interplay between the comp elements. As for accumulation of data, in can be difficult in the private company setting, so it's important to see what is available in terms of cash/equity split and that you understand the comp philosophy of the entity so that “the ask” is strong but not unrealistic.

Many lawyers want to negotiate themselves, but it is sometimes a mistake. One mistake we have only rarely seen, that would not apply to you, is asking a lawyer to negotiate on one's behalf when the position sought was not high enough level to warrant such action. Clients can sometimes find it in bad taste. It is very smart for GC candidates to take a look at the proxy and see where their counterparts are paid, but it is typical for a GC to be paid 80% of what the CFO makes.

Q: Is there a difference in the negotiation with a private equity employer? I assume you would focus on the severance benefits more than in an opportunity with a longer life span expectation.

A: Yes, we agree. A candidate would want to know more about the exit strategy and what they are entitled to once that event happens. The candidate may also end up negotiating a change of control clause quite extensively. S/he would want to understand timing and contingencies, especially since executive compensation is likely more about equity than cash, so relying on a big payout that doesn't happen would be severely disappointing. PE employers should be used to negotiating exit packages as part of a compensation negotiation.

Q: Is negotiating severance common practice for positions below GC/DGC? What's the standard amount of time people should be asking for based on level in the company?

A: Companies will rarely give candidates written severance in positions below that of a GC. A candidate should always ask about the company's policy and will typically get an answer about what is common in those circumstances.

Q: If candidate's existing comp is above the communicated range by the company (as here), what should the candidate say to the company during the process? It seems like there was a miscommunication on that issue in this role play that occurred before the offer was communicated.

A: Recruiters expend a lot of energy avoiding what happened in the role play, because it seems to be an otherwise common occurrence. The company stated a range; the candidate stated her current compensation which was higher. The candidate's continued interest was read as acceptance of the lower range, and the company's continued interest was read as acceptance of her higher one. Neither side dealt with the misalignment head on, and both sides flattered themselves into thinking the other would budge. Our perspective is that candidates should walk away from opportunities that do not suit their budget. Some companies will say, “We can come up from there for the right candidate.” That is only sometimes actually the case, and their judgement as to whether you are that candidate can be disappointing. If the employer implies but does not get specific about there being potentially more money than the stated range, the candidate would want to use good judgment of the situation and the players to determine whether pressing for additional details would be appropriate. If there is no wiggle room, the role is not right for the candidate and the candidate should accept that reality and move on. To do otherwise is to potentially burn a bridge.

YOUR QUESTIONS ANSWERED

Q: I don't understand why equity is getting such short shrift here, but maybe that's because I'm coming from a tech startup background. Getting a meaningful chunk of equity, especially in a private company, can far out shadow cash comp. Also, severance and equity acceleration in a change in control scenario are key. When should those enter the dialogue? What about sign-on bonuses?

A: Unfortunately, the role play was written to recreate the very real mistakes we see in the market, and yes, you are correct that the candidate was being rather short sighted (and a little bit dumb). The candidate should have understood that equity was valuable and negotiable. She displayed a strange disinterest in anything not salary-related, which is absolutely more common among junior candidates than senior executives. Severance and change in control clauses can be hotly negotiated in your industry, but in others, it would not be considered appropriate to negotiate on those things unless you are at the executive level. The signing bonus will come up toward the offer stage—at that point, a candidate will be more upfront as to what they are leaving on the table that could be replaced with a signing bonus. Signing bonuses often address some of what a candidate is leaving on the table, but they can be given to address other things as well. The signing bonus, severance and equity acceleration should enter the dialogue as a candidate gets closer to the offer stage and sometimes not until the offer stage. The company, however, is likely thinking of these issues sooner, so they may ask you for equity statements, etc., earlier in the process. Basically, whenever the client seems to want to have that conversation is when you should have it, which means being prepared in advance of a real opportunity.

Q: How much should cost of living differences play into the offer?

A: It should definitely play into the offer, and there are cost of living calculators online to help you know how much of a difference you may be facing. Companies know when they are in geographies that are more expensive and their compensation needs to account for that piece. If you use an online calculator to measure the difference between where you live now and where you are moving to, you can create mental estimates of how much more salary you will need. Most employers will use their own internal calculators and you should expect a difference between their estimates and what you find yourself.

Q: How much of my LTI can I expect a future employer to cover? So, for example, RSUs that vest out three years or PRSUs that are still in the performance period.

A: A candidate can expect an employer to cover the first year in full. After that, they will put the candidate into their equity plan, which often will be equal to or higher than what they are already making, but the candidate just has to wait for the equity depending on the vesting schedule. Most employers will not contemplate making you entirely whole, but they may consider a sign-on bonus in cash or equity to cover some of what would soon vest.

Q: How do you strengthen your negotiation position if you are in-between roles and do not have equity, etc., at risk?

A: This is a complex one, and your options may be somewhat limited. If you are the right candidate for the role, then you have something the employer wants: you! If they take the stance that you must be desperate to accept anything, you may not want to work there after all. But if the offer is reasonable and you are attracted to the opportunity, then really what happens next may depend on your own psychological health. Sometimes we begin to undervalue ourselves during a period of unemployment, and employers can tell. You will want to avoid that at all costs. You have options; you are the candidate they want. Sometimes, counterintuitively, because a candidate doesn't need to be "bought out," a company may be willing to increase a base salary or still offer a signing bonus regardless. When sharing expectations and having those initial conversation about compensation, it is important to share thoughts a candidate



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may have around this topic: “I am not leaving anything on the table, so for that reason, I expect to be paid at the highest end of the range.” The reality is the fact that a candidate is not leaving anything on the table may make them more attractive to a company. But in candor, sometimes there is nothing a candidate can do about this piece.

Q: How can a candidate avoid giving an “anchor” (bottom end of the range) that is already considered too high by the CHRO, especially in base salary and with an CHRO who doesn’t want to make the first move?

A: If you can convince yourself that it would be worse to give them a range that is below what they were considering, then you may be able to take our advice that it is okay to state an anchor that is a little high. The client should respond by pointing out that it is too high, and then you can ask what they had in mind. We always find it a little unfair when employers make the candidate go first, but it does happen. It will boost your confidence if you have done what you can to understand the range for the role. But saying something too high won’t shut the door completely for most opportunities. If they tell you they can’t pay your anchor, and you can’t accept less, then part ways amicably rather than letting it drag out.

Q: Can you please advise on joining a U.S. subsidiary of an EU-headquartered company, where the EU parent doesn’t necessarily understand the U.S. “comp culture”?

A: With regard to the U.S. subsidiary, there should be a “culture” of understanding how compensation works in the U.S. within that subsidiary such that the candidate should not be entirely affected by the EU comp culture. Ideally, HR in the U.S. should have an understanding of the differences in the compensation structures and advise their counterparts as to how it will work to bring on a candidate in the U.S. We know this is not always the case, and some companies become convinced about market rate and some do not. Many non-U.S. employers are shocked by how much in-house lawyers make in the U.S., and sometimes an American lawyer can report to someone in Europe who is underpaid by our standards. When that happens, there is frankly little chance that the employer will pay you more.

Q: For those of us that are newer in our careers, is it acceptable to ask for tuition reimbursement (for a current degree in progress) in addition to other perks?

A: That is unlikely to be something that a company will address unless it has offered some kind of additional education to the candidate (MBA, MA, etc.). Tuition reimbursement is not common in-house. The other perks will depend on the company, their “culture” and then the seniority of the position. This is a perk that tends to either be part of a company-wide program anyone can apply to or it is given on request to a particularly good performer. A new hire is not generally considered a candidate for such a request, and you may even provoke mistrust—are you asking because this role is only a stop-gap? Are you serious about the opportunity in front of you? These are not questions you want the employer asking itself.

Q: Every company has their own compensation culture, but how do you recommend dealing with a company that just doesn’t seem to benchmark legal the right way?

A: That is tough. If a recruiter or outside consultant is involved, we often do educate our clients as to appropriate benchmarks, but we aren’t always successful in moving the needle even when we are clearly right. You can share your research, but it simply may not be the right employer.

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Q: During the recruitment process, we are often asked for salary requirements. Are you suggesting you should state up front your total compensation or just stick to salary until you can have a conversation?

A: Hopefully this is happening as part of a discussion, which means you have an opportunity for some fact-finding. When we ask a candidate for their requirements or expectations, we tend to expect an “all in” figure, but will clarify within the conversation. If, for example, you tell us you need \$500,000, we will ask whether that includes bonus and you can clarify. Equity is not often discussed in this way, you can be cagey about equity, but do include it in your expectations. “Meaningful equity” is a popular phrase. At no point, unless a candidate deems it somehow advantageous, should a candidate be sharing existing compensation directly. The discussion should be around expectations.

Q: Does MLA provide compensation consulting services?

A: We don’t provide compensation consulting services to candidates, but we do offer such consultations to employers. We are, however, always happy to speak with candidates about compensation generally and upon request. MLA Transform, the consulting arm of our firm, often is hired to benchmark an entire legal department and in that capacity does provide compensation consulting services.

Q: Does any of this advice change when you are trying to negotiate better compensation at your existing company when you get promoted to a new role?

A: On some level, yes, as the candidate knows the company, understands the compensation culture and has some leverage because they know their value to the company, so they can push the envelope. They have likely already had compensation discussion internally and also understand the internal equity issues. But, going in prepared is still just as critical as that is where the candidate can educate the employer as to how other similar companies compensation for a role like yours.

Q: Can you talk more about negotiating equity comp (e.g. vesting of options, payout if terminated, etc.)? What is the ideal way to negotiate equity?

A: This is about understanding again the compensation culture. Often times, the equity amount is set. It also depends on the candidate’s expectations around equity. If a company cannot make a movement on equity, they might be able to make a movement somewhere else.