IRF MARKET SURVEY: REGULATORY ENVIRONMENT

Scenario Specific Assessment: Some Legal Comments

The various scenario specific assessments ask the survey participants to determine if (a) regulatory/compliance, (b) tax, or (c) compensation issues would have to be addressed in several scenarios involving incentive, reward, or recognition programs. The IRF survey measured responses across various industries (automotive and manufacturing, financial services, pharmaceutical and healthcare, and technology and telecommunications) and company size as measured by revenues. While responses varied somewhat, overall, respondents too frequently identified legal and regulatory issues where none exist. As a result, this survey may raise some questions and concerns regarding whether there is an adequate understanding of regulatory/compliance, tax, or compensation issues in the incentive marketplace. The various scenarios are set forth in sides 33-46.

Various Scenarios

Slides 33-34 in Deck (Safety Incentives): An opportunity for an end-of-month "jackpot" was added to a safety incentive program if there are no safety incidents during that month. A substantial majority large number of respondents across industries and company size responded that this would raise regulatory/compliance issues, as indeed it would. This type of a safety incentive program that gives out prizes based on group safety behavior and results violates OSHA rules and requirements. An even larger number of respondents believed that tax implications would need to be addressed, which is not necessarily the case. A smaller, but still significant number of respondents also believed that there are compensation (overtime) issues would need to be addressed, which is probably unlikely.

Slides 35-36 in Deck (Safety Program): A company wants to increase the number of eligible employees that receive awards in a safety incentive program from 10% to 20% in a year. About half of respondents across industries and company size believed incorrectly that this would raise regulatory/compliance issues. Most respondents (about six out of ten) correctly identified that such a program would have tax implications that need to be addressed. This type of safety program could also raise compensation (overtime) issues that would need to be addressed. Very few respondents (less than one in six) identified the compensation issue as a potential problem.

Slides 37-38 in Deck (Financial Services Reward Program): Top performers in a financial services company are encouraged to introduce a new financial product to their customers. (This scenario only applied to financial services companies.) While there was some variance, about half of respondents in financial services recognized that this would raise regulatory/compliance issues under the Department of Labor’s fiduciary rule. (The fiduciary rule is no longer in effect.) About four in ten respondents incorrectly believed that such a program would have tax implications that need to be addressed. Most respondents were correct that this type of top performer program would not raise compensation (overtime) issues.

Slides 39-40 in Deck (Merchandise vs Gift Cards): A company wants to include VISA and MasterCard gift cards in a rewards and recognition program. Slightly less than half of the respondents across industries and company size believed incorrectly that this would raise regulatory/compliance issues. About half of respondents believed that such a program would have tax implications that need to be addressed. This is incorrect in that the introduction of gift cards does not raise any tax issues other than those that already existed. The same holds true for compensation (overtime) issues. While there was some fluctuation, most respondents were correct that gift cards do not introduce any additional compensation (overtime) issues that would need to be addressed.

Slides 41-42 in Deck (Service Awards): A company wants to give service awards for each year in the first five years of service in addition to awards every fifth anniversary (after 5, 10, 15, 20 years, and so on). Nearly half of the respondents across industries and company size believed incorrectly that this would raise regulatory/compliance issues. Less than half of respondents identified that such a program would have tax implications that need to be addressed, namely that a nontaxable length-of-service program would become taxable. The same holds true for compensation (overtime) issues. If a service award becomes taxable, it could create compensation (overtime) issues that would need to be addressed. Perhaps because less than half of respondents identified the tax issue, only one fourth of respondents identified the compensation (overtime) issue.

Slides 43-44 in Deck (Employee Incentive): A company operates a call center reward program in which customer service representatives earn rewards based on customer service and operational targets. An executive wants to generate extra excitement by adding a quarterly incentive for the top 5% of its service reps, a $1,000 gift card to Target. Nearly half of the respondents across industries and company size believed incorrectly that this would raise regulatory/compliance issues. About six in ten of the respondents also incorrectly believed that such an incentive would have tax implications that need to be addressed. Only a very small number (about ten percent) believed that there were compensation (overtime) issues, which was a correct assessment. This scenario was included because it did not contain any significant regulatory/compliance issues, tax issues or compensation issues. Nonetheless, this scenario generated a false positive in that too high a number of respondents identified regulatory/compliance and tax issues where none existed.

Slides 45-46 in Deck (Sweepstakes/Lottery): A company wants to add a quarterly raffle for an exceptional prize, such as a flat screen television or a laptop computer to its reward and recognition program. Employees would buy raffle tickets using their award points, and each ticket would be worth one entry into the drawing. While there was some variance across industries and company size, a bit more than half of respondents correctly identified that this would raise regulatory/compliance issues. In effect, requiring the employees to buy raffle tickets would transform a sweepstakes program into an illegal lottery. While there was some variance across industries and company size regarding tax issues, about 45 percent of the respondents incorrectly believed that such a program would have tax implications that need to be addressed. Only a small number (about 20 percent) believed that compensation (overtime) issues also needed to be addressed, which was a correct assessment.