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5 Things Executive Pay Attys Should Keep An Eye On In 2025

By **Kellie Mejdrich**

Law360 (January 9, 2025, 6:17 PM EST) -- Tesla chief executive Elon Musk will be seeking a green light for a $56 billion pay package while a new administration in the White House may scuttle proposed incentive pay regulations and a ban on noncompete agreements.

Here are five things executive compensation lawyers will be following in the new year.

Del. High Court Takes Up Musk's $56B Pay Package

Attorneys took heed of Elon Musk's move this week to appeal a Delaware chancellor's rejection of his massive pay package to the state supreme court, despite shareholders explicitly voting to reapprove the deal in June.

Musk **docketed an appeal** to the Delaware State Supreme Court on Wednesday, seeking to overturn a series of orders by Chancellor Kathaleen St. J. McCormick in the derivative investor suit, which included a sprawling **200-page post-trial opinion from January 2024** that voided his compensation package as unfair.

Musk has also appealed a 2019 order denying dismissal of the case and an order approving $345 million in fees to a shareholder's counsel in the yearslong derivative dispute.

The Wagner Law Group's Andrew Oringer, partner and counsel at the firm, said he's been paying attention to recent legal developments regarding the pay package.

"I think the trending toward questioning the shareholders' own views of expensive compensation practices is potentially troubling," Oringer said.

Oringer said the court's role in monitoring compensation should focus on "protecting abusive practices that are intended to get compensation packages past shareholders." Oringer took note of how the pay package dispute also spurred Tesla to move incorporation from Delaware to Texas in June.

In the appeal, Oringer said he's anticipating "there'll be a lot of focus on process."

"And if, in fact, the community views the Delaware courts as hostile to executive pay packages, then it really is an open question as to whether or not you're going to start to see companies seriously considering re-homing," Oringer said.

Veronica Wissel, an executive compensation partner at Davis Polk & Wardwell LLP, said she's also been watching the Musk pay fight, calling the compensation arrangement "probably the most extreme example" of a recent trend in executive pay packages taking the form of large multiyear grants.

She added that the dispute serves as a "good reminder to make sure that the processes being used in setting executive compensation and a compensation committee [are] really clean, to protect against potential litigation."

Incentive Compensation Proposal on Thin Ice

Attorneys are predicting that a multi-agency regulation describing standards for incentive compensation could fall by the wayside under the second Trump administration, given business interests' resistance to finalizing so-called banker bonus rules.

The Federal Deposit Insurance Corp. and Office of the Comptroller of the Currency in **unveiled a new proposal** in May reviving restrictions on incentive-based pay, which was first proposed during the Obama administration. Congress called for the rule in the 2010 Dodd-Frank financial overhaul, which, if implemented, would prohibit compensation structures that encourage inappropriate risks at financial institutions including banks, credit unions and broker dealers.

But the rule requires cooperation between the FDIC, the OCC, the Federal Reserve, the National Credit Union Administration, the Federal Housing Finance Agency and the U.S. Securities and Exchange Commission. The proposal in May only came from the FDIC and the OCC.

Wissel of Davis Polk said the multi-agency rule would have amounted to "probably the most prescriptive" federal rules on executive compensation, but its fate had been "up in the air" before the election.

The rule "would have required companies to actually change the structure of their compensation programs," Wissel said, but attorneys hadn't seen the necessary coordination across all the agencies that must be involved with the proposal for it to advance.

"I would not be surprised if it's delayed further," Wissel said.

Rollback Expected for FTC Noncompete Ban

Attorneys also widely expect that a sweeping final rule from the Federal Trade Commission banning noncompete language in employment contracts is on the outs once Trump is in the White House.

The FTC rule banning the use of noncompetes was **finalized in April** but was quickly blocked by federal courts in Florida and Texas. Appeals are currently pending from the FTC at the **Fifth** and **Eleventh** Circuits.

"I think it's dead," said Jon Lewis, chair of Debevoise & Plimpton LLP's employee benefits and executive compensation group, of the FTC rule in the new administration.

"I think state law is now the focus because that's where the issues are going to be," Lewis added, pointing to New York's recent push to adopt a noncompete ban — which Democratic Gov. Kathy Hochul vetoed in 2023.

Oringer of Wagner said he's also watching how the rule evolves and pointed out how a ban on noncompetes also surfaced in New York City with the introduction of a City Council initiative in February, though the legislation didn't gain traction.

"You saw New York City talking about whether or not it would want to establish a ban on noncompetes, which could have a real impact on companies' willingness to stay in New York City," Oringer said.

Executive Security in the Spotlight

Attorneys say the killing of UnitedHealthcare CEO Brian Thompson has increased focus on executive security, which has **already been on practitioners' radar** in recent years because the U.S. Securities and Exchange Commission has been cracking down on executive perks.

The SEC has taken enforcement action against several public companies, most **recently in December 2024**, for failing to disclose perks, which the agency under President Joe Biden has been clear includes executive security and use of corporate jets.

The enforcement focus has spurred some companies to issue fairly significant disclosures on security perks for their executives in proxy statements, with Meta's perquisite disclosures in recent years including information on personal security for CEO Mark Zuckerberg.

In addition to Meta's disclosures this past proxy season, attorneys took note of a Lockheed Martin Corp. disclosure that described personal use of corporate aircraft as a security-related perquisite for CEO Jim Taiclet — in addition to personal and home security. The company disclosed more than $1 million's worth of personal use of corporate aircraft by Taiclet in 2023, "$394,406 related to flights exclusively personal in nature."

Joe Adams, co-chair of Winston and Strawn LLP's employee benefits and executive compensation practice, said executive security is a hot topic for attorneys in 2025, "which was hot already" because of SEC action.

Adams added that with companies disclosing security and increased threats more, many "might start to disclose a pretty significant, discrete expenditure for security."

Since the healthcare CEO's attack, Adams said some clients have been surprised to learn that a CEO's personal security details must be included on a proxy disclosure. He said he's also looking out for the SEC to potentially release future guidance on the issue.

"Lots of companies now might start to disclose a pretty significant discrete expenditure for security," Adams said.

Lewis, with Debevoise, said he wouldn't be surprised if perks — including airplane usage tied to personal security — starts to become a subject in proxy season.

"Shareholders hate perks, you know what I mean? And whether they choose to pick their fight over this one or over use of planes or something else, who knows?" Lewis said. "But I do think you will all see a lot more about personal security in the new year."

Shareholder Battles Loom

Attorneys say they're bracing for a particularly combative proxy season overall, including the potential for more public company shareholder proposals focused on compensation and new disclosures expected on clawbacks of executive pay.

In addition to pressure from proxy advisory firms, companies may face shareholder proposals and even stockholder suits over the details of their annual disclosures that are subject to proxy voting at annual meetings.

The SEC's long-awaited clawback rule went into effect in January 2023, which was required under the 2010 Dodd-Frank financial overhaul and requires executives at publicly traded companies to return bonuses in the event of a later-discovered accounting error, even if the executive was not responsible for the error.

Companies were on the hook to adopt new clawback policies by the end of 2023, and then updated descriptions of those policies in their 2024 proxy statements.

Wissel of Davis Polk said she's watching in particular for restatements from public companies' clawback disclosures, with the first such filings expected this year under companies' policies adopted in 2024.

"This will be the first year when, if there is a financial restatement, companies will be required to implement the clawback, and there will be disclosure on that for any restatements that happen," Wissel said.

A recent report from top shareholder advisory firm Institutional Shareholder Services Inc. also presents new issues for clawback disclosures that are drawing attorneys' attention.

ISS in an October report made clear it would only consider public companies' clawback policies to be "robust" if they went beyond the minimum requirements under Dodd-Frank and instead covered all time-vesting equity awards.

That's important for public companies because recommendations from proxy advisory firms can affect large numbers of shareholder votes. The SEC's clawback rules also didn't cover exclusively time-vesting equity awards.

Adams of Winston & Strawn said the criticisms of clawback disclosures by shareholder groups including ISS was "frustrating."

He said the pressure from shareholder groups presents a question for company leaders: "Do we define our own compensation system, or do we allow other people to tell us what has to be in there?"

--Editing by Amy Rowe and Emma Brauer.