

Negotiating at Work to Get More: Higher Salaries, Performance Bonuses, and Incentive Equity

A Practical Guidance® Article by Stephen Zweig, Esq.



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This article discusses how an employee can negotiate for a higher salary, a performance bonus, and incentive equity compensation by focusing on their company's interests and options, rather than their own, and framing the issues in the way the employee wants them heard.

If you want to negotiate a higher salary, a performance bonus, or incentive equity, you must learn how to ask for more in words acceptable to anyone's ear and how to push back without fear of making a mistake, saying the wrong thing, or damaging relationships within the company. Though you may believe you have no bargaining strengths, in fact, you have far more than you realize. Your bargaining strengths comes from what your company and its decision-makers value and hold dear. This article explains, with practical examples, how to harness these strengths and convert them to leverage.

Who Will Negotiate?

If you are honest with yourself about your bargaining strengths and weaknesses, temperament, and negotiating style, you can be your own negotiator. Although you cannot easily change your natural negotiation style – avoider, accommodator, compromiser, cooperator, or competitor – you can learn to be assertive and even confrontational for the brief time it may be needed for you to show conviction, determination and resolve.

You will direct your request for more compensation to the person who has the power to grant it, whether it be your manager or a higher-level executive. If that person likes you and trusts you, they will listen to what you have to say. If

you have also cultivated a personal relationship with that person, you can use this to test the outer boundary of their discretion and decide whether they will be an ally if you need to elevate your negotiations to a higher level.

If you desire assistance with your negotiations, it is worth engaging an attorney experienced in compensation negotiations. The attorney can develop your overall strategy and your tactical step-by-step moves, teach you how to say things in words acceptable to anyone's ear, and, if you desire, represent you if you want a buffer between you and your company during negotiations.

How Do You Negotiate?

Most companies take a power-based approach to negotiations with an employee. They seek to dominate and control. They frame the issues as they want them to be heard, decide whose interests and opinions matter, what options they will consider, and when the negotiations will end. To counter this, you must reframe the negotiations to focus on the issues you want heard and the interests and options you want considered.

The art of negotiations is to align the company's and its decision-makers' interests with your own. You do this by putting the company's interests first, the decision-makers' second, and yours, only third. To illustrate:

- *You can interest decision-makers in your commitment and dedication to your work, but it must be because your commitment and dedication as a member of the decision-*

maker's team enables and validates their own successes and the company's.

- *You can interest decision-makers in your loyalty and devotion to them and the company, but it must be because loyalty and devotion are virtues and values they hold dear, and they want to encourage your faithful service and connection to them and the company.*
- *You can interest decision-makers in your economic value and worth to them and the company based on your knowledge, particular expertise, and experience, but it must be because your economic value and worth increases their own and the company's.*
- *You can interest decision-makers in your alignment with their priorities and those of the company for its growth, profitability, and long-term success, but it must be because your alignment strengthens their own alignment and the company's ability to reach its goals.*
- *You can interest decision-makers in fearing that you will leave the company's employment, but it must be because they and the company need and desire you to stay.*

First, Diagnose the Situation

You begin your negotiations by considering your bargaining strengths compared with the decision-makers and the company's.

- *Do the decision-makers and the company need you to stay with the company more than you need to stay?*
- *Do they desire you to stay more than you desire to stay?*
- *Do you have more or fewer options and alternatives than the decision-makers and the company if you are not given what you want?*
- *Does the passage of time work in your favor or the decision-makers and the company's?*

You then take a hard look at yourself as the decision-makers and the company see you. Compensation negotiations is not about your past value to the company or about the company being fair or doing the right thing, or about your life circumstances or personal financial situation. It is all about your future value to the company and the decision-makers. They will not be asking themselves: "What have you done for us lately?" Rather, they will be asking themselves: "What are you going to do for us tomorrow?" Only your future value will motivate them to do anything for you.

Companies like to believe their compensation decisions are fair-minded and just. But often they will not be transparent with you about their thinking and will justify their deferral

of your request or an equivocal response with reasons they will not share with you. They may want to conserve cash, bonuses and incentive equity for other existing employees or new employees they will hire. They may misunderstand or minimize your value and worth to them. They may believe that giving you more compensation will set a precedent and others will learn about it and demand the same thing. Or they may feign disinterest in your request to challenge you and test your conviction, determination, and resolve.

Your request for additional compensation can be aspirational, but it should also be bounded by reality and what is feasible. This requires research and analysis. You should research your industry's norms and standards for compensation packages and the benchmarks and ranges for salary, performance bonuses, and incentive equity for positions like yours. You should talk with recruiters and colleagues outside your company to learn your current marketability and the market compensation packages for those with skills, abilities, and experience like yours. You should ask what expertise, experience or personal attributes have helped others obtain the highest salary in a salary range and a greater compensation package. You should also investigate your company's own approach to diverse types of compensation packages and learn as much you can about the company's treatment of employees in similar positions to yours and any exceptions to policy, procedure, or practice that it has made.

A company's culture reflects the virtues and values of its highest-level executives, and is revealed in the attitudes, conduct and behavior of these executives.

- *What is your company's culture and how do its compensation decisions reflect its leader's virtues and values?*
- *Does the company's culture limit a decision-maker's discretion in making decisions about your compensation?*
- *If so, can the decision-maker you approach with your request be persuaded to advocate for you, and who at a higher level should be approached?*

You cannot persuade decision-makers by directly challenging their long-held beliefs and opinions. But decision-makers have needs and desires just as you do. You need to expand their thinking so they recognize that their own needs and desires will be thwarted if they do not recognize yours. You look for common ground based on their views of you, enlarging their range of vision so they consider the consequences and outcomes of resisting your request.

Second, Formulate a Strategy

You organize your thinking by formulating a strategy. A strategy is an overall plan to reach your goal. It is more than a vision, but it is not the tactical step-by-step moves you will make to implement your plan. You begin by examining the basic needs of the decision-makers you approach. These will include their need for control, for predictability, for being respected and trusted, for their own job security and advancement in the company, and for not failing. Your words and actions should induce the decision-makers to ask themselves whether any of these needs are at risk if they say “no” to you or defer your request.

In a negotiation you convey, counter, contest and confront and, if you are within an acceptable range for an agreement, you conciliate and close. If you are creative, you can expand the negotiation “pie” to encompass items of value to the decisionmakers and the company that can be traded for items of value to you. Or you can repackage the pie to propose options that show your flexibility and give choices to the decisionmakers and the company in return for what you desire. At the same time, if necessary to show your conviction, determination, and resolve, you can double-down by making moves to increase your bargaining strengths and decrease the decision-makers’ and the company’s or alter the decision-makers’ and the company’s alternatives by actions you take away from the bargaining table.

Third, Develop Your Tactics

You implement your strategy by determining the tactical step-by step moves you will make to convert your bargaining strengths to leverage. Leverage is any advantage you have or can create. You use positive leverage by offering the decision-makers something they want or removing something they do not want. You use normative leverage by applying general norms and standards, market benchmarks and metrics, custom and usage, and precedents. You use negative leverage by pressing, pulling, and pushing on something the decision-makers do not want to happen or taking away something they want to happen.

- *What are your levers and how will you know which lever will motivate a decision-maker?*
- *Does a decision-maker have high morals and ethics so you can appeal to them based on their own virtues and values?*
- *Does a decision-maker have feelings for you of obligation or debt, friendship or good will, or guilt, so you can appeal to them based on their emotional ties and connections to you?*

- *Does a decision-maker think rationally about your economic value to them and the company, so you can appeal to them based on reason and logic?*
- *Or does a decision-maker only react to their own anxieties and fears about whether you will leave them and the company, and pressing, pulling, and pushing on their doubts, discomforts, and insecurities is the only way to reach them?*

In deciding which levers to pull and how to sequence them, you need to consider the predictable consequences and outcomes of applying each lever. You should also examine your commitment to the levers you choose and whether you are willing to see them through to their logical conclusion.

Fourth, Draft Talking Points

Talking points are words prepared in advance that are drafted to be acceptable to anyone’s ear. In compressed form, a talking point frames the issue you want heard, tees the issue up using the decision-maker’s and the company’s interests, and then presses down on your interests by applying the leverage you choose to use. You get what you need and desire by getting the decision-maker and the company to recognize and understand what they need and desire. This approach – frame, tee up, and press down – can be applied to any negotiations, whether at work or outside of work.

Talking points can be short and to the point, as in the examples in this article, or expanded and detailed. The basic form of a talking point for work negotiations is:

- *Respectfully, the issue we need to discuss is X (and not Y, as the decision-maker may be framing it). Because (insert how your request meets the decisionmaker’s and the company’s needs and desires, not your own), I am requesting (insert what you need and desire)*

For every talking point, any facts you decide to include must be understated rather than overstated, and your arguments must be sound. You can heighten the intensity of your talking points to meet the resistance level you encounter. At the same time, you must speak tactfully and respectfully so you do not leave yourself open to accusations that you are overreaching, out-of-line, or self-impressed.

Written talking points ready you to be competitive, even confrontational in negotiations, if needed, to overcome resistance. You should anticipate the resistance you may encounter and prepare the rebuttals you will want to make.

Fifth, Come to a Tipping Point

If, despite all your efforts, your compensation request has not been resolved to your satisfaction, you have moved your negotiations to a tipping point. If you are hearing “no” or an equivocal response, the decision-maker is likely failing to see how your request meets their needs and desires or they are not yet persuaded. Again, put your mind in theirs, see you as they see you, and ask yourself:

- *If I were the decision-maker, would I give me what I am requesting?*
- *Why not? What is the decision-maker thinking and how are they feeling about my request?*
- *What more should I say or do to persuade the decision-maker to give me what I need and desire?*

Examples of Talking Points

Salary Increases

To introduce a higher salary request, you should begin by using positive leverage:

I want you to know how much I respect you and enjoy working here. I am committed and dedicated to my work for you and the company. Because I know you respect these attributes and my efforts on your behalf and the company's, I believe I am worth more to you than my current salary indicates. Respectfully, I request a salary increase to \$XXX,XXX.

Your issue frame is your commitment and dedication. This is your bargaining strength in this talking point. Your tee up and press down is on reason and logic. Your leverage is unsaid but implied. Because your commitment and dedication to your work as a member of the decision-maker's team enables and validates their own successes and the company's, your salary increase request should be granted.

If your request is phrased respectfully and your reasoning is sound, it should be received as you intended. However, if the decision-maker replies with a non-committal response, you should counter with normative leverage:

- *I know companies in our industry are paying X for my knowledge, particular expertise, and experience. Although I have been earning X-minus while I have been here and have been happy to continue at that level for a time, I believe my economic value and worth to you and the company warrants a salary increase. I see my market salary rate as the fairest measure of my economic value*

and worth. Respectfully, my salary should be increased to that rate.

Your issue frame is your economic value and worth. This is your bargaining strength in this talking point. Your tee up and press down is on reason and logic. Your leverage is unsaid but implied. Because your economic value and worth as a member of the decision-maker's team increases their own and the company's economic value and worth, and can objectively be determined by your market salary rate, your salary increase request to that rate should be granted.

Alternatively, you may wish to change your approach to one that is more emotionally driven:

- *I understand exactly how you feel about my request. I have felt the same way when approached by my direct reports asking for a salary increase. But I also know you value my loyalty and faithfulness to you and the company and our relationship of trust and confidence. Because I believe you want me to maintain these virtues and values, I respectfully ask for a salary increase to \$XXX,XXX.*

Your issue frame is loyalty and faithfulness. This is your bargaining strength in this talking point. Your tee up and press down is on the decision-maker's virtues and values and emotional ties and connections to you. Your leverage is unsaid but implied. Because your loyalty and faithfulness are virtues and values the decision-maker holds dear and your trust and confidence in the decision-maker is an emotional tie and connection the decision-maker wants to maintain, your salary increase request should be granted.

If the decision-maker blocks or deflects your request or is less than transparent with you about when a salary increase will occur, and you have opportunities outside the company you could pursue, you can use negative leverage. You ask the obvious questions left unanswered:

- *Am I a team member you want to make a career with the company?*
- *Am I on track to receive a salary increase soon to the level I am requesting?*
- *What further need I do to obtain this salary increase?*

Your issue frame is your alternative to staying with the company. This is your bargaining strength in this talking point. Your tee up and press down is on the decision-maker's and company's fears. Your leverage is unstated but implied. You leave it to the decision-maker's imagination to consider what they and company would lose if they no longer retained your knowledge, particular expertise, and experience. Because the decision-maker and the company fear you may leave and need and desire you to stay, your salary increase request should be granted.

Whatever responses you receive will be meaningful. At a minimum, honest answers will give you valuable information about how highly you are regarded and whether you are wasting important years with the company. Fortright answers will let you know where you stand, what you need to do to receive the salary increase you are requesting, and when you may expect it.

Performance Bonuses

Bonuses are discretionary or performance based or a mixture of the two. Discretionary bonuses require a leap of faith that the company will do the right thing. They are often based on multiple metrics – the company must do well, the unit you work in must do well, and you must do well. There is no assurance you will receive any bonus; no assurance of any amount; and no assurance when it might be paid. It is all very uncertain and undefined.

Performance bonuses have goals, pre-determined metrics, and performance criteria. They also often have stated threshold, target, and maximum levels. These favor you if constructed so you have a “line of sight,” that is, your individual work determines whether you will meet the criteria, reach the performance goal, and obtain the performance bonus.

If you are only eligible for a discretionary bonus or none, request a performance bonus by stating the limitations of a discretionary bonus, the merits of a performance bonus and how it will motivate you to overperform:

- *I am grateful for any discretionary bonuses you may choose to give me. However, because discretionary bonuses are most often based on multiple metrics – the company must do well, my unit must do well, and I must do well – they do not really motivate me to overperform individually. This is especially true if it becomes obvious that other employees in my unit are not as committed as I am. The better way to motivate me is to give me an individual performance goal and criteria to strive for and achieve by overperforming on my own, regardless of how others perform.*

Your issue frame is a performance bonus you can achieve on your own, regardless of how others perform. This is your bargaining strength in this talking point. Your tee up and press down is on reason and logic. Your leverage is unsaid but implied. Because your earning an individual performance bonus as a member of the decision-maker's team would increase the decision-maker's and the company's economic value and worth, you should be given the opportunity to earn an individual performance bonus.

Equity and Quasi-Equity

Equity comes in many forms, including restricted stock, stock options, stock appreciation rights, restricted stock

units and performance units, and profit interests, each with their own advantages and disadvantages. Companies use these equity and quasi-equity rewards to align the interests of employees with the company's long-term growth and success. Asking for equity or quasi-equity requires a slightly different approach than asking for a salary increase or performance bonus because a share in the company's increasing value or profits is most often limited to its owners. Again, key on the decisionmakers' needs and desires, not your own.

- *I want to align myself more closely with your priorities and those of the company for its growth, profitability, and long-term success. Respectfully, I would like you to consider me for an equity award. How can we go about this?*

Your issue frame is alignment with the decision-maker's priorities and the company's growth, profitability, and long-term success. This is your bargaining strength. Your “tee up” and press down is on reason and logic. Your leverage is unsaid but implied. Because aligning yourself with the decision-maker's priorities and those of the company for its growth, profitability and long-term success would strengthen the decision-maker's own alignment and the company's ability to reach its goals, your request for an equity award should be granted.

If your request is rejected on the basis that the company does not provide equity or quasi-equity awards of any type to employees or you do not warrant an award, acknowledge this, but make it clear you would like to be considered for an award in the future.

- *I know you take many factors into consideration when deciding on what is right for the company, and I will accept whatever you decide is right for me. But, if you want me to believe I am an employee you want to keep with the company long-term, I would like a commitment to provide me with an equity or quasi-equity award.*

Your issue frame is your staying with the company long-term. This is your bargaining strength in this talking point. Your “tee up” and press down is on the decision-maker's and the company's fear that you will leave the company, taking your knowledge, particular knowledge, expertise, and experience with you. Your leverage is unsaid but implied. Because the decision-maker and the company need to retain your knowledge, expertise and experience and they desire you to stay with the company long-term, you should be given a commitment for an equity or quasi-equity award.

Some employees may hesitate to go this far, thinking there is no turning back. But that is not true. The only way to know how far you can go without pushing too far is by going a little farther than is comfortable.

What you say and how you say it, the tone you use, your mannerisms and the expression on your face are all important. You emphasize your desire to remain with the company, not to leave. The sensibilities of decision-makers who desire you to stay with the company are not going to be offended as long as you state your request in a dignified, honorable, and respectful way.

Conclusion

Negotiating a salary increase, a performance bonus or an equity or quasi-equity award without fear of losing what you already have – the decision-maker's good will and confidence in you – is challenging and must be approached with care. Yet anyone can learn how to go about this, saying the right things to the right person at the right time. It is all about the decision-makers and company's interests

– their needs and desires. It is not about what is fair or right, your personal circumstances or your needs or desires. If you can find ways to engage a decision-maker's mind and heart, they will align their own interests with yours.

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Stephen Zweig leads the executive compensation practice of Ford & Harrison LLP, a national labor, employment and benefits law firm, where he was also managing partner of the firm's New York office. He has counseled and negotiated for hundreds of individuals on how to obtain better compensation packages and terms and conditions of employment upon receiving a job offer and while employed, and how to obtain better severance packages and less post-employment restrictions when terminated.

Stephen is an author with Lexis Practical Guidance on executive compensation topics, has authored a chapter in Bloomberg BNA's Executive Compensation treatise, has been published and quoted by many media sources, including Bloomberg and the Wall Street Journal, and speaks regularly to trade and bar associations and professional groups.

In 2019 the Financial Women's Association of New York gave Stephen its first "Male Ally of the Year" Award for his work leading the Association's Men's Alliance and his workshops on "How to Negotiate with Bullies and Win" and "How to Negotiate for Yourself at Work."

Stephen has been an AV Preeminent Rated Lawyer in the LexisNexis Martindale-Hubbell Top Rated Lawyers since 2002.

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