



NEGOTIATING EMPLOYMENT & SEVERANCE AGREEMENTS

Identifying and
Understanding the Top Ten
Non-Monetary Terms

WHAT ARE EMPLOYMENT AND SEVERANCE AGREEMENTS?



- Are offer letters employment contracts?
- Is an offer of employment a contract?
- Is severance required?
- Are the terms of these agreements standard?
- Are these agreements really negotiable?

THE TOP 10 TERMS

(Not in Order of Importance)

No.	Term	Employment, Severance or Both
1.	Non-Compete Provisions	Both
2.	Non-Solicitation Provisions	Both
3.	Confidentiality Restrictions	Both
4.	Duty to Notify	Both
5.	Attorneys' Fees	Severance
6.	Release	Severance
7.	Non-Disparagement	Severance
8.	Separation Pay	Employment
9.	Benefits	Employment
10.	Job Title and Responsibilities	Employment

Non-Competition

1. How broad is it?
 - a. Does it put you out of the industry?
 - b. How long does it last?
 - c. What is the geographic territory?
2. What do you get in exchange for not competing?
 - a. The job.
 - b. A signing bonus.
 - c. Severance pay.





Non-Solicitation

1. Clients, employees or everyone?
 - a. Did you bring clients or employees with you to the job and are those parties excluded?
 - b. How broad are the terms?
 - i. Are prospective clients included?
 - ii. For how long are you restricted?
2. What do you get in exchange for not soliciting?
 - a. The job.
 - b. A signing bonus.
 - c. Severance pay.

Confidentiality Restrictions



1. What is confidential information?
 - a. Is it to protect confidential trade secrets or is everything confidential?
 - b. Does the employer takes steps to keep the information private?
 - c. Are client lists confidential information?
 - i. Is the provision really a non-solicitation?
 - ii. Is the information publicly available?
2. Do you understand what would be considered a breach?

Duty to Notify

1. Does the Agreement include a duty to notify a new employer about the restrictive covenants?
 - a. At what point are you required to notify?
 - b. Is there a penalty for breaching this provision?
 - c. Will your new employer be liable for a perceived breach?
2. Do you have a duty to notify your former employer before accepting a new position?



SEVERANCE AGREEMENTS

1. Attorneys' Fees
2. Scope of Release
3. Non-Disparagement





Attorneys' Fees

1. Who pays the fees?
2. Are you liable for even a perceived breach?
3. Are you liable regardless of whether there is a breach?
4. Who pays your fees?

Release

1. Who are you releasing?
 - a. Do you know the parties being released?
 - b. Are unknown persons included?
2. What claims are you releasing?
 - a. Are you releasing only claims related to your employment?
 - b. Are you protected if there is fraud?



Non-Disparagement



1. How broad is the provision?
 - a. Will you know if you are breaching?
 - b. Does it include unknown parties such as lawyers and agents?
2. Is it mutual?
 - a. What will be said about you?
 - b. Are you receiving a written letter of reference?

EMPLOYMENT AGREEMENTS



1. Involuntary Termination
Separation Pay
2. Benefits
3. Job Title and
Responsibilities



Involuntary Termination Separation Pay

1. Are you protected if you are involuntarily terminated?
2. Is there a notice provision?

Benefits

1. Are the benefits clearly explained?
 - a. Do you understand what benefits are provided?
 - b. Is there a probationary period?



Job Title & Responsibilities

1. Is your title commensurate with your experience?
2. Is the reporting structure laid out?
3. Are your responsibilities clearly defined?



Final Thoughts

1. Identify your expectations.
2. Read your agreement.
3. Ask for what you want.
4. Confirm your understanding.
5. Engage professional help. Lawyers, coaches, recruiters and outplacement are all valuable resources that can help streamline the process of transition.
6. Call The Prinz Law Firm for a free half hour consultation at 312-212-4450.
7. Keep up to date regarding employment law issues by following The Prinz Law Firm blog at:
<http://chicagoemployeeadvocate.blogspot.com/>