



Negotiating your Executive Employment Agreement _____

By Stephen Semprevivo



Thinking about taking that new job? Before you do, make sure that you understand your relationship with your new employer. The one frustration I hear from executives in this tough economy is that people feel that they just were not on the same page as their employer in a number of key areas. An effective tool in understanding the employee/employer relationship is the employment contract. Recognize that your ability to get the best terms in a contract is directly related to how desirable and scarce your skill set is relative to an employer's need. That being said, strive to maximize your position relative to the leverage you have with an employer. Here are some highlights from our last career management session that sheds some light on how to do this.

To Be or Not To Be ... Under Contract

Although there are clear benefits to having a contract for an employee, keep in mind your contract goes both ways. The pros of an agreement are that it can give you a concise summary of the terms of your employment avoiding any misunderstanding. It binds your employer to whatever terms are set forth in the contract and generally (but not always) contracts provide some level of long-term protection and security for you the employee. On the flip side, this very same contract binds you the employee. Depending on what is agreed to, it could invite a potential breach of the contract, which could lead to damages against you. If the contract has a term, an employer may be able to prevent you from working during the term of the agreement. For your own protection, make sure you clearly understand your obligations, duties and the criterion by which your performance is measured.

What are you being hired for?

... Put it down in writing

An area often glossed over, yet the most crucial to your long-term happiness in a job is the description of your duties. Employers will often offers your title; position and some general catch phrases expecting you to fill in the blanks. Do not to stop there. Your ideas and the employer's ideas can differ greatly. Flesh out your real duties in a job description. Make sure your responsibilities are clearly outlined. This is as important to employer as it is to you. It is unlikely you will get objections about building out this section of your contract. A little extra time here prevents you from being one of the folks who three months into a job says; *"This job is really different than I thought it would be."*

Your term

Do you have one or are you "at will"?

When going into a new role it can be beneficial to both you and your employer to have set time frame or term in your contract. This can be renewed at the end of the term. Terms are particularly attractive to employers when dealing with persons of unique or specific skill sets. If you feel your skill sets warrant it, (i.e. you are one of 50 people in the country capable of doing what you do) push to get a term.

When setting a term, make sure it automatically roles over and you are not exposed at the renewal time to termination without negotiated benefits, (severance, bonuses, stock options etc...)

If you do not have the leverage, (skills in demand, contacts or influence) or do not desire a specific term you are employed “at will”. Either party with or without notice or cause can terminate an “at will” employee. In a tough economy many people find out just how “at will” they are. Keep in mind that “at will” employees can still be entitled to severance *if they have made provision in their employment agreement*. An employee with a specific term may not be entitled to severance if there is specific language in their agreement, in other words it was not negotiated ahead of time or included in the employment contract. Pay special attention to the termination language in your contract. This could mean the difference between keeping your credit, a roof over your head or feeding your family in the event of the company going under, new ownership or a host of other adverse situations.

Termination.

It will never happen, but just in case ...

Regardless of your term you should always clearly define both the reasons and the benefits you receive upon different types of termination. It never hurts to ask about including these situations. By asking you signal the employer you are astute and consider contingencies. These are key qualities in leaders. Here are some things to think about:

Termination for cause: This section of an agreement allows the employer to terminate regardless of term if an employee does specific things. “Cause” usually encompasses things like illegal conduct, failure to perform duties, incompetent performance of duties and insubordinations. It is important what ever is agreed to that it is clearly defined. The more leverage you have, the more limited a definition you will be able to negotiate. In an ideal scenario you would just have illegal conduct outlined as “cause”. If you cannot get everything you want in terms of the definition, you may want to ask to have a *notice period* with time to cure any deficiency. Typically a termination for cause does not grant the employee any severance rights.

Termination for good reason: This is the parallel for the employee to “cause”. Like cause it should be clearly defined. Typically an employee can terminate for reasons such as a change in title, job duties, reporting structure, salary, and job location. If you have the leverage to include this in your agreement, make sure that by enacting this terms you get the full benefit of any severance that you would have received for a termination without cause.

Termination for death: It’s probably not debatable that you’ll not be working after you die, but if you have a severance clause, you should ask to have this paid to your family if you die while employed. This is often overlooked and not a big expense to employers if they do it through an insurance policy.

Termination for disability:

You should define disability and your coverage.

Termination for reasons other than death, disability or cause: An employer may want to terminate your emplacement even if you have a term in your agreement. If you have a term this would be a “without cause” termination. Make sure this allows you to get the full benefits of any negotiated severance. Sometimes employers will put a notice period for 30 or 60 days, which allow them to be release from the contract. Make sure you understand the consequence in these types of situations and the effect they may have on severance payouts.

Severance ...

*Breaking up can be hard,
but service can make it feel all right*

Both employees with specific terms and “At Will” employees can and should have **severance provision** in their agreement. The extent of these terms will depend on your leverage. In thinking about severance people often focus on their base pay. One word of advice is to think of your entire compensation package: Base pay, bonus, stock and benefits. COBRA alone can cost your more than \$600 a month out-of-pocket for a family of three. If you have agreed on six month of base pay, try to negotiate for six months of bonus pay as well as six months of benefits (health, life).

In looking at stock plans, it is not uncommon for options to vest immediately upon termination. If you have a multi-year contract, don't think in terms of one year for severance pay out. If you have the leverage ask for the remaining term of your contract if it is greater than the time period proposed. In all cases strive to make your severance trigger in all cases of termination other than cause.

Compensation ...

If it's not there it's probably not there.

Compensation is the area most misunderstandings occur. All forms of compensation should be clearly defined in your contract including signing bonus, relocations expenses, pre-term compensation, wages, salary, commissions, cash incentive plans, retirement plans, savings plans and stock.

Common areas of misunderstanding are in *bonus and stock option plans*. If a large part of your compensation is determined on bonus or commissions define the milestones in your agreement that trigger specific payouts. Attach the entire bonus plan to your agreement and have the hiring person sign off or initial it. Additionally, if there is not a defined stock option plan with in the company but you will be eligible once it is defined, either push for definition if you have the leverage, or don't work this into your value equation. Use the bird in the hand theory. If it isn't there yet, it can't be considered. Maybe or some days are undetermined variables.



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