

Severance Agreements

In these difficult economic times, you may find yourself in a situation where your employer has announced a layoff, position elimination, or outright termination. Many employers may offer you a severance package as part of the lay off or termination. The severance package may play a significant role in your ability to bridge the gap between jobs.

Severance packages are frequently offered to professionals to prevent expensive litigation between employers and terminated employees. A severance agreement is a contract between an employer and employee waiving certain legal rights of the employee in exchange for additional compensation or other benefits provided by the employer.

- Severance benefits may include large one-time payments, continued health benefits, additional salary payments, letters of recommendation or other offers.
- These contracts are offered to you to protect the company, and therefore not to protect your career. Accordingly, a severance agreement can affect your rights as an employee for years into the future. Employees and their attorneys often negotiate the terms of severance agreements. Employers will therefore often agree to revise agreements to provide additional compensation and benefits. We work hard to negotiate more mutual terms for our clients. You may not have considered other ways to structure your employment transition. It can be very useful, therefore, to have an employment attorney advise you on your options.
- Severance packages may also include critical non-compete and confidentiality agreements, as well as releases requiring the employee to give up any claims she may have forever. Before signing, be knowledgeable of the effects any such agreement may have on your future ability to obtain employment.

What to do when offered severance?

1. **Take your time.** Most severance agreements include time provisions allowing an employee time to consider the agreement. Take it. Time is critical. Time can allow you to analyze the offer, negotiate, or retain counsel to assist you. If you are over 40, the law requires employers to include in most standard severance agreements a minimum of 21 days to consider it.

2. **Gather information.** You need to determine exactly what is being offered, what has been left out, and whether you have room to negotiate. Locate your original offer letter, employee handbook, e-mails, or other documentation of your salary and the company severance plan, if there is one. Gather all information on your bonus plans, stock option rights, life, health and disability insurance, and vacation time. Write down all the possible sources of compensation and benefits you currently have such as bonus, commissions, stock options, or other payouts. Determine whether you have any unpaid vacation and sick time, unreimbursed business expenses, or possession of company property such as cars, laptops, or PDAs.

3. **Review the package in detail.** Determine if the package leaves out sources of compensation, benefits, or insurance. Determine how it stacks up against other standard offers in the industry or other similar employees.

4. **Think of reasons why you were fired.** You may have grounds to claim wrongful termination or to negotiate a better severance package if you were fired for any of the following reasons: to deny accrued benefits; due to a legitimate illness, disability or absence; for voting or serving on jury duty; for whistle blowing or speaking out; for reasons against public policy; for union activities; for military duty; discrimination for sex, gender, age, religion, or national origin; retaliation for workers' compensation claims or sexual harassment claims; violation of written or implied contract; or as part of a large layoff without proper notice. If you sign a severance agreement without negotiation, you likely will be giving these rights away forever.

5. **Decide whether to negotiate.** Many employers will negotiate severance on some level. In some situations, an employer may be able to revoke an offer of severance if you reject the offer. As such, there may be a risk associated with negotiating your severance agreement. However, in most circumstances severance is negotiable. Your chances of negotiating successfully may depend on any basis to claim that the severance package is not fair in light of your industry; employment salary, terms, and benefits; other similar employees with lower performance; or the circumstances of your termination. In the end, you will never know if your employer will negotiate and give a better offer if you do not ask.

6. **Decide what to negotiate.** Although the dollar amounts may be your initial focus (including bonus, stock options, and company property), many severance packages can and do include many other aspects including extended insurance coverage, disability benefits, and outplacement services. You might also consider negotiating for letters of recommendation or a favorable statement regarding your "voluntary separation" rather than termination.

7. **When in doubt hire a lawyer.** In addition to the shock of being let go by your employer, you may be faced with significant financial distress. These factors can interfere with your ability to objectively assess your rights. You should consider hiring an attorney to review the severance package, help you decide if there is room to negotiate, or negotiate directly for you. Deciding whether to accept, reject, or negotiate a severance package can have significant financial implications.