

WHAT TO DO WHEN YOU HAVE BEEN OFFERED A SEVERANCE PACKAGE?

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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.

What is a severance package?

A severance package is pay and benefits that an employee is offered when they leave employment with a company. A severance package may include compensation or payments based on years of service, payment for unused vacation time or sick leave, insurance benefits, bonus payments, or stock options. There also may be an offer of assistance in finding a new job called outplacement services.

In exchange for receiving a severance package, most employers will require the employee to sign a “severance agreement” that spells out the compensation and benefits but it will also contain several other parts. For example, most severance agreements contain a clause requiring the employee to release any claims the employee might have against the employer. The agreement might also include a clause limiting your ability to go work for a competitor. The agreement might further prohibit you from speaking out about your employer in a negative way.

Why do companies offer severance?

According to one recent survey, the number one reason is to avoid a future lawsuit by the employee. The second reason is to attract top level quality or talent by having favorable severance packages. A distant third reason is the chance that a former employee might return or become a customer.

What should you do if you are 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.