



HOW GOOD IS THE SEVERANCE CLAUSE IN YOUR CONTRACT?

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As the Chief Staff Officer of your Association, you have an employment contract with a severance clause that provides that unless the Association fires you for "cause," you are entitled to eighteen months severance payments. "Cause" is defined as conviction of a felony or getting caught with your hand in the Association's funds. Your current Board has let you know that they are not happy with you and that doesn't bother you at all. You have had some talks with a large Association member and you are confident that if the Association fires you, you can collect your eighteen months severance and then become a consultant to the large member. Finally, you have talked to your attorney and have been advised that in the event that you are fired, you have a good age discrimination claim based on some of the comments that Board members have made regarding your age. You think that you are in great shape, but are you? Here are some issues that other Association executives have experienced when faced with the same situation.

Severance Clause Provisions

Exactly what are you entitled to receive? Do you get salary or salary plus the cash value of benefits? If you get the cash value of benefits, what about pension contribution? Is it a flat amount or is it grossed up to compensate for tax consequences? If you are Cobra'd, does the

Cobra policy offer the exact same benefits as the Association group policy? If not, what is the value of the difference and how do you collect?

How about other insurance? Once you are no longer an Association employee, you don't qualify for group programs. Does the Association intend to give you the amount that it has paid for your former coverage or the amount that you would have to pay to buy the same coverage on your own? If the contract is silent on these issues, you have a problem.

What happens when the Association fires you but then says that it won't pay unless you sign a release. Does your contract say that you are required to sign a release? If you sign the release, what happens to your claim for age discrimination? Obviously, you lose it. If you don't sign the release, you don't get your money. Again, what does your contract say? If it is silent, you have a problem.

What happens if your Association fires you without cause but doesn't have the cash to pay your severance package or for that matter, what if there is no money to pay your deferred compensation? As the Chief Staff Officer of the Association, you have to carefully examine how the Association is budgeting its funds. If the Association balance sheet shows \$500,000 in reserve,

but \$200,000 would go to your severance, and \$300,000 is deferred compensation, you have a major problem.

Finally, lets look at the offer that you have to consult with the large Association member. Does your employment contract have a non-compete clause? Could the Association take the position that if you consult for that member, you violated the non-compete clause and lose your entitlement to severance and your entitlement to deferred compensation?

Conclusion

All of these issues are real world issues. At the beginning of this article, you

may have thought that the no cause severance clause in your contract gave you complete protection. Have you changed your mind? The next time that you negotiate your contract terms, renegotiate the terms of your severance package to make sure that everything is well defined. Think about adding a clause that states that if the Association net worth falls within \$250,000 of the amount due to you under your severance package, you have the right to terminate your employment and collect the full package. Think about adding language that defines exactly what you are entitled to receive and when the money is required to be paid.