

Five Things to Look for In Your Next Employment Contract

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Employees often view the terms of their employment only in dollars and cents. While getting the highest compensation for what you bring to the table in knowledge, skills and ability is important, often the terms of the employment agreement may add to the value of an offer or, conversely, make it less appealing or even hazardous to your career. This article will explain some of the common aspects of employment agreements and hopefully dispel some common myths employees have in regard to the terms of their employment.

Form of the Agreement

Contracts come in different versions. For executives and key personnel, some contracts are comprehensive, multi-page documents labeled “employment agreement” or a similar name. Other agreements are in the form of an offer letter. For salespersons, the contract may be in the form of a sales commission or non-compete agreement.

At Will vs. Just Cause Employment

A common erroneous belief some employees have is that they cannot be terminated from a job unless they perform inadequately. This is simply not true. Employment in Michigan and other states is presumed to be “at will” unless the parties agree that its not. This means that the employee and employer can end the employment relationship for any reason or no reason at all, without any advance notice. Because of a series of cases that occurred in the 1980’s and 1990’s, employers zealously protect their employment “at will” rights in employment contracts. Therefore, if you see such language in an employment agreement, you are, generally speaking, not being offered a promise of employment forever.

On the other hand, the “just cause employment” relationship offers the employee some job protection, promising the employee a job as long as the employee adequately performs or as long

as it is economically feasible for the employer. However, this must be agreed upon by the parties and is rarely offered outside of the unionized workforce.

Non-Compete Agreements

Employers frequently require employees to enter into agreements limiting the employee's ability to work for a competitor, operate a competing business and solicit employees or current or prospective clients within a certain amount of time after departing the employer's business. Courts will enforce non-compete agreements that they find to be reasonable.

Non-compete agreements require reasonableness of the agreement in four respects. The agreement must 1) protect the employer's reasonable competitive business interest, 2) be reasonable in duration, 3) be reasonable in the geographical area in which it restrains competition and 4) be reasonable as to the type of employment or line of business prohibited.

Generally speaking, a reasonable non-compete agreement will be just restrictive enough to protect an employer's legitimate business interests while allowing the employee to earn a living. Employees must be particularly careful in their consideration of these agreements because they can effectively block the employee from working in a specific business for a substantial amount of time, generally a term of several years.

Sales Formulas/ Closed Sales

For the commission-based employee, the sales formula is probably one of the most important terms of the employment contract. In light of this, it is surprising how often employees waive parts of their commission simply by failing to closely analyze and monitor the payment of their commissions. Employees are often owed substantial commissions because of the "life of the part" doctrine. The basics of this doctrine are that, where the employee finds a prospective client who begins ordering a particular item, the employee is to receive a commission based on the sale of that item for as long as the client orders it from the employer, even after the employee leaves employment. An exception to this is a written "closed sales" agreement. Under this exception, the employment agreement/sales formula contains language that limits the employees' commissions to sales which are closed on the date of employee termination.

Assignment of Inventions

The “assignment of invention” clause is common in the scientific, academic and creative fields of employment. These agreements should be limited in scope to the employee’s field of practice and should be limited to the duration of employment with the employer. Beyond the scope of the assignment, employers may have the right to any invention created with their materials or while on employer’s time (i.e., on the clock).

Limitation of Employment Based Lawsuits

There are two basic, but powerful, limitations employers generally place on employment-based lawsuits. First, employers sometimes place a contractual limitation of the time in which to sue for events that occurred during employment. Courts have enforced time limits as little as six months. Under this agreement, events occurring beyond the six-month limitation would be barred.

Second, some employers prefer that all claims against them be placed in the forum of arbitration and, therefore, place binding arbitration language in the employment agreement. Employers disagree as to whether this is preferable. Some believe that arbitrators “split the baby” and, in the process, disobey the law. Others simply prefer to avoid costly litigation and/or possible class-action suits. In either event, both of these limitations could seriously hamper an aggrieved employee’s lawsuit against the employer.

It is easy to understand how just a bit of tweaking of contract language can render an employment agreement more or less valuable to the employee. With this in mind, the employee should keep a vigilant eye out for the opportunity to negotiate and fine-tune the agreement to his or her liking and, if need be, consult an attorney.

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