



## Job-Offer Letters

### What to Look For; What to Look Out For

by Alan L. Sklover, Esq.

*Education is what you get if you read the fine print. Experience is what you get if you don't.*

Pete Seeger

**ACTUAL CASE HISTORY:** Walter, 47, a senior executive with a money management firm in New York, felt in a bind. He'd been with a prestigious firm for 12 years and was generally happy. He'd slowly climbed the firm's ladder of success, and enjoyed his job.

Unfortunately, the firm had recently lost three of its largest clients, and a state of unease pervaded the halls. Cost-cutting had begun and a hiring freeze had been imposed. Prospects for year-end bonuses weren't bright.

Recently, Walter had been aggressively recruited by a money management subsidiary of a large Midwestern bank. Twice he'd been invited to join its newly formed team, with an attractive salary and guaranteed bonus for two years. Of great interest to Walter, the subsidiary's chief executive told Walter that the bank planned to institute a profit-sharing plan that could make Walter wealthy in just a few years.

Because his prospective employers were eager to build their team, Walter was told that they needed an answer from him in three days. The subsidiary's CEO was coming to New York over the weekend, and wanted Walter to sign their "simple offer letter" by Sunday night. Walter called us as soon as he received the offer letter. I assured Walter that we could review it quickly, but I couldn't guarantee that any problems found could be resolved by the Sunday night deadline. I told Walter that, if his prospective employer were willing to meet over the weekend, if necessary, any possible problems could be ironed out

by Sunday night, the CEO's deadline.

But the representative at the "parent" bank seemed hesitant to talk. They complained I was making a "big deal" out of nothing, and that all other executives simply signed these offer letters exactly as written. I assured them that our due diligence was just that; not a sign of distrust, but a reflection of prudence.

When I reviewed the offer letter, I identified serious problems. They were the kind of problems I commonly find in offer letters. I explained to Walter the degree of risk each represented; after all, it was his decision to make. With Walter's approval and his wife's agreement, I sent a simple memo to the bank's HR representative explaining my concerns and offering simple, reasonable solutions. The response was swift: Walter's appointment with the subsidiary's CEO was cancelled and its offer was withdrawn. Walter was not at all happy; his wife was near becoming distraught.

Six months later, Walter called to give me an update. A colleague of his had taken the position he'd been offered. Now, six months later, the colleague was unemployed. The Midwestern bank's money management team had never gotten off the ground because of a disagreement between the subsidiary's CEO and the parent bank. Most of the team was simply let go, without notice or severance. The so-called "guaranteed" bonuses were not being paid; it seems the subsidiary was a limited liability company, or LLC, and it now had no assets to pay anything to anyone. The hoped-for profit-sharing plan had never been formalized. Worst of all, two weeks after he arrived on his new job, Walter's colleague was required to sign a two-year non-competition agreement, and now the parent bank was threatening to send nasty letters to any money manager that hired him until the two-year period was over.

Walter's colleague was now unemployed, without severance, and was unemployable. Though sad for his friend, Walter and his wife were happy that they had done the right thing; they'd looked before they'd leaped. What had seemed like a golden opportunity had been, in fact, a perilous path to a problem.

**LESSON TO LEARN:** Though short and informal, job-offer letters are binding contracts. Even if an employer says, "We don't use employment contracts," that's exactly what an offer letter is. Unfortunately, when presented for initial review, job-offer letters are usually one-sided, in the employer's interests. When reviewing an offer letter presented to you, you must ask yourself, "Why is my prospective employer asking me to sign this? Is this for their benefit, or my own?"

For this reason, you must insist on being given the time and opportunity to carefully review and analyze a job-offer letter, even at the risk of losing out on the prospective job. Because offer letters are legal documents that may have long-lasting and tumultuous consequences to a person's finances, career and family, those who sign job-offer letters without careful review do themselves no favor. Always bear in mind: Your prospective employer would not want you to sign a contract binding the company without legal review, analysis and discussion, so why would they ask you to do just that when your own finances, family and future are at stake?

Unfortunately, offer letters are frequently deceptively written, and deceptively dangerous. These may appear to "guarantee" you what you want, but rarely guarantee anything. Job-offer letters may appear simple, but are far more complicated than they seem. They appear "welcoming," but often have hidden trap doors. Offer letters usually are written in a casual style, with a

friendly, encouraging tone. But if you're not careful before signing one, you may later regret it—very much.

If you take the time, there's a lot you can do to help yourself get a more rewarding, less problematic offer letter. The pressure and temptation to sign an offer letter can be hard to resist.

**WHAT YOU CAN DO:** We analyze and negotiate scores of job-offer letters each year. In doing so, we bear this in mind: In every employment agreement, seek (a) Rewards, (b) Risk Limiters, and (c) Responsibilities and Resources. We look to make sure these are covered with certainty in every job offer agreement.

The seven most common problems we find in offer letters, and how we address each, are discussed below:

### **1. Clarity: Is all Language**

**"Window-Clear?"** Look out for "cloudiness." Everything in a job-offer letter should be expressed in clear, simple and understandable language. Our standard is this: Are the terms understandable to a 12-year-old? That standard is something we strive for no matter how "sophisticated" and "important" the people are. Jargon, legalese and fancy language must be avoided so that you can later avoid disputes and lawyers. The very purpose of a job-offer letter is to set down for future reference what's been agreed to today. If it's not clear now, while everyone's on "friendly" terms, it won't be any clearer later, if distrust or discord has arisen. The words and phrases need to be "unarguably" clear for the very simple reason that, if a dispute later arises, the employer's lawyers will look for "potential arguments." That's their job, and you can presume that they will do it well. Demanding clarity now is the best way to avoid lawyers later. Consider asking your spouse or friend to review your offer letter to see if he/she can easily understand what it says.

### **2. Conditions: Be Cautious About Pre-Conditions.**

Look out for when

you become "officially employed." Very often, job-offer letters state that they're not binding or effective until all "pre-conditions" have been "successfully" met. These include such things as background reports, drug tests, security clearances, and reference checks. Don't be surprised if these take months to complete. Avoid moving from your present position, or curtailing other job interviews, until these are all "successfully" completed. One client found out that her personal background report was unacceptable . . . three weeks after she started the job. She was asked to leave immediately. Ask that the offer letter be rewritten to state that you'll start two weeks after you've received written notice that all "pre-conditions" have been satisfied.

### **3. Commitment: Do You Have any Job Security?**

Look for a firm "term." The employment relation is either committed—like marriage—or it is not—like dating. Most employment is uncommitted, what lawyers call "at will," and can be ended without any notice, and without any reason. That's not good because it constitutes job insecurity. By agreeing to take the new job, you're making a big commitment; so should your employer, in return. It's important to request that the employer commit to a firm "term" of the relation, that is, that the employer will employ you for a minimum term, of perhaps one or two years. After all, it will take at least six to twelve months, or more, to mutually assess each other. (Of course, the offer letter can say that if you commit theft, harassment or other "cause" for firing, you can be fired.)

### **4. True Guarantees: Will Monies Promised in all Events Be Paid?**

Look for absolute certainty of payment. Whether or not you're guaranteed your continued employment for a set period of time, you should be truly guaranteed the monies you've been promised. Watch out for these two traps: (a) you must be employed on the date that pay-

ments are made to receive one; and (b) you will be paid in accordance with some plan or program, the details of which are not provided (these frequently will provide that you get nothing if not employed at the time payments are made). For example, if you've worked the entire calendar year, and bonuses are given out in February, what happens if you're laid off in January? Very often bonuses, equity and commissions are promised but denied on these bases, even after being described as "guaranteed."

### **5. Completeness: Is Everything that Was Agreed to Included in Your Offer Letter?**

Look for what you've been "assured" of. Common sense and the law agree: "If it isn't in the offer letter, it may later be denied you." Early on, before looking at your offer letter, make a list of what important things related to the job you've been assured of. Are these in the offer letter? As examples, will you have an entertainment budget, a research associate, and an administrative assistant? Vacation of five weeks, or two weeks? A right to audit commissions? If it's important to you, and not in the offer letter, ask that it be included. This is of the essence of an offer letter review and negotiation.

### **6. Present or Later Non-Competes: Is Your Future Employability Restricted?**

Increasingly, we find that new employment is offered with a dangerous catch: "If you work for us, later you won't work for our competitors." You must presume that non-competes and non-solicits will later be enforced. We view all "non-compete" agreements to be dangerous and unfair—yet surprisingly negotiable. Your first task is to find the non-compete agreement, because these are often hidden. They may be in so-called "confidentiality agreements," in stock option plans, or even in codes of conduct. If you don't find one, ask that your offer letter state that you won't be asked to sign one later. If you do have a non-compete, your second task is to resist it when you can (that is, ask for

its removal), limit it to a short list of companies and a short period of time, and to insist on continued salary and bonus while you're restricted.

### **7. Duties, Reporting, and Locale: What Exactly Is Your Job?**

In our experience, these three—duties, reporting and locale—are often the sources of the most political, and, hence, intractable, future problems. Will your job include responsibilities that you hate, reporting to someone you thought would report to you? Might you be transferred to Afghanistan? We find that those who fulfill critical responsibilities are those who continually develop leverage to acquire more rewards and greater risk limitation in the future. Focusing on these three aspects of your employment will either prevent future problems, or indicate for you that the job you thought you were going to have really wasn't that job at all.

To negotiate smartly, you need to know what you want, and what you don't want. When given a job-offer letter, both subjects need to be addressed, openly, frankly . . . and smartly. Always be proactive. Always be creative. Always be persistent. And always do what you can do to protect yourself and your family. Take all available steps to increase and secure employment "rewards" and eliminate or reduce employment "risks." ●

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## PROTECTING YOURSELF

# How's the New Person Working Out?

## Negotiating Severance Up Front

by *Kate Wendleton*

When you are new in a job, the jury is still out on you. "How's Ellen doing?," someone may ask. "We'll have to see," another person may reply. "It's too soon to tell." When a company makes so little investment in whether or not you stay, it is less likely to keep you if something goes awry. The company should be allowed to get rid of you when it wants to, but should have to pay for this privilege. If managers have to part with a substantial amount, they will think twice about letting you go.

If you have no severance, you have no breathing room—no time to feel safe and get your bearings. If Ellen had gotten a six-month severance agreement, she would have had the comfort of a six-month window to settle in and devote herself to the job and the comfort of feeling that the company was truly committed to her. The company, in turn, would have been motivated to try harder to make things work out.

In fact, this is becoming more the norm. In the last few years, many companies have realized that the traditional policy of giving two weeks' severance for one year of work is completely out of date for mid-level people.

Today, everyone knows that employees are unlikely to last 10 or 20 years and accumulate better severance arrangements, as they would have in the past. Therefore, companies are tending to grant severance packages based on the level of the person they are hiring. At present, a 6-month severance arrangement is becoming more common for those earning over, say, \$80,000 a year. After all, a person earning a large amount is likely to have a longer job search than someone earning a small amount.

### **CASE STUDY: Stephen— Could He Get a Real Commitment?**

Stephen was making a huge career change—from telecommunications devel-

opment to the energy industry. He and his family were also making a major geographical change: from New Jersey to the Midwest. The company offered him a \$90,000 base plus bonus. It was a great company, and he got along well with everyone he had met. The move fit in perfectly with his Forty-Year Vision because he had wanted to work in the energy industry on development projects. This was a dream come true. Or was it a nightmare waiting to happen?

Before the negotiations were over, Stephen asked for severance the way we suggest doing it at The Five O'Clock Club (see below). The company asked, "What kind of severance would it take to make you comfortable so you could concentrate on your job and not worry about having moved your family here?" He answered with a smile: "The longer the severance, the better I'll feel."

The company offered Stephen an astounding two years' severance if he lost his job for any reason during the first two years, one year's severance if he lost his job during the following two years, and the normal company policy after that.

Now Stephen can concentrate on his job. The company is taking some risk on his move and making a commitment that is at least equal to his own.

### **Protect Yourself by Hedging Your Bets**

Stacy moved from her native Philadelphia to Boston to take a job as a senior litigator with a not-for-profit. Three months later, the organization faced serious budgetary problems that were unknown to the board at the time she was hired. They had to cut back, so Stacy's job was eliminated. Here she was in a new city, with no job and only four weeks' severance.

But Stacy had planned ahead and had protected herself. Though the company had paid for the move, they had not agreed to a

severance package that was adequate. So she sublet her apartment in Philadelphia and rented one in Boston, rather than purchasing another residence. The company was making little commitment, so why should she take unnecessary risks?

Stacy devoted herself to the job. But she had been warned by plenty of fellow Five O'Clock Clubbers to keep up her contacts while in the new job. She had wisely heeded their advice. Thus, when her position was eliminated, she was shaken but not totally unprepared. At the time of termination, she even negotiated an additional month's severance—arguing that the company had upset her life. She could not move back to her own home for the next few months because she could not kick out her tenant. Her search was back to full steam in no time at all, and she was able to move back to her old apartment within a matter of months when the sublet lease was up.

Stanley received an offer to work for a company in Pittsburgh. The pay was less than he had made in Chicago, but the cost of living was lower. He had a wife and three kids. Though the company would pay to relocate the whole family, they refused to offer him more than two weeks' severance. Stanley accepted the position anyway because he needed to work. He told the company how excited his family was about moving to Pittsburgh. However, he said

that they needed to stay in Chicago until the end of the school year. Then Stanley continued to interview with other companies he had met during his search. He has seven months (until the end of the school year) to find a job that would be better for himself and his family, or to decide that it would be worth it to take the Pittsburgh job, despite the risk. In either case, he has bought himself time—time that the company would not give him.

*A tough lesson in life that one has to learn is that not everybody wishes you well.*

Dan Rather

### How to Negotiate Severance

After you have negotiated everything else (base, bonus, and so on), you may bring up the issue of severance. Here is one scenario.

You have settled on everything, including the start date. The deal is in the bag—but perhaps not in writing.

Set the stage by saying how happy you are to be joining their firm. Then further set the stage by expressing your concern that you may be at risk through no fault of your own. For example:

You: "I am thrilled to be joining your firm. I know this is a good match, and I believe in what you are trying to accomplish."

Hiring manager: "We're glad you will be joining us."

You: "My only hesitation is that I am leaving a firm where I feel very

secure. I'm afraid that there is the chance that your company may be taken over, or that you may wind up leaving the firm, and I wonder what would happen to me. I was wondering if there was any way you could give me some comfort about that."

Hiring manager: "Well, that's always the chance you take in today's market."

You: "Yes, you're right. But I was wondering if I could receive, for example, six months' notice if my job [or assignment] were to go away for any reason."

Notice that you are asking for payment if you are dismissed for *any* reason, but when you set the stage, you named situations that have nothing to do with you. This way, you will not appear worried about whether you can do a good job.

Asking for six months' notice is the same as asking for six months' severance. When your offer letter gets written up, it will usually be written up as severance. That will give you the cushion you could need for your next search.

These days, six months is common. One executive had to move across the country to take a job. He asked for the six months' severance and got it. The company later forgot that they had to agree to such terms. When they wanted to fire him after only six months on the job, he reminded them of their agreement and they had to give him what they had agreed to, which made his unpleasant situation at least bearable. That severance alleviated the trauma of losing his job shortly after a major move. ●



**"I'm sending you to a job hunting seminar. Trust me when I say you're going to need it."**

The above is an excerpt from our book, *Mastering the Job Interview and Winning the Money Game*, available on The Five O'Clock Club website.

