

Seven Tips for Vetting a Contract or Work Agreement

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Employees and contractors with specialized skills or responsibilities often may be asked to sign written agreements to limit their future ability to work in the same industry, to solicit clients or employees or to disclose information about the job or employer. Such deals may also link pay and continued employment to specific performance benchmarks. Whether these agreements end up protecting you or punishing you may come down to how attentive you are to the issues involved before signing on the dotted line. Here are seven tips to keep in mind when vetting these contracts or work agreements.

1. **Negotiate more than the paycheck.** For a full-time employee, the amount of severance guaranteed in an individual contract should be in excess of company policy, particularly if the company is seeking to put limits on your post-employment actions. Vacation time, sick or parental leave, stock options, 401(k) match, pension, health insurance contribution, deferred compensation, relocation bonus, company car, Internet or device subsidies, bonus structure, even title or starting salary tier may all be up for negotiation. For work-for-hire, a bonus for meeting certain performance goals, such as an early deadline, may also be possible to reach a deal on. A non-financial issue that should be hashed out for all parties is how to resolve disputes about the agreement, including what governmental entity has jurisdiction.
2. **Seek to limit the scope of the noncompete, nondisclosure and nonsolicitation language.** The noncompete's industry restraints, geographic area and time frame should be as limited as possible. Loose or vague language as to which companies constitute the competition may make it difficult to impossible for you to find a new job if the current one doesn't work out. Likewise, if you think you could exit one day to start your own company, it's worth eyeing what the policy is for making offers for valued colleagues to leave with you or to solicit business from clients. For nondisclosure clauses, look at how

the agreement defines confidential information and the term of the NDA and seek to draw these as narrowly as possible.

3. **Get the job spelled out in detail, in writing.** For those accepting full-time positions, this means getting the title, direct report and all duties listed, perhaps even the location where the job is to be performed. This could protect you in case the employer substantially changes the job or decides to move the position across the country from where you intended to live. For those who are independent contractors, this means defining the exact scope of work, including what is due when to meet any intermediate targets for completion. This will help set expectations on both sides for what constitutes performance that merits full compensation. It also may help you walk away in case the working relationship turns sour.
4. **Reserve rights to prior work, side projects and moonlighting.** Not every company will be supportive of outside work, even though done on your own time and without conflicts of interest. Some companies will view ANY work you do, even when not in the office, as work product for them, especially if it relates to the job or work that they are hiring you to do. If you are working on anything in your garage or simply anticipate you may get involved in a side project down the road, be sure to raise the issues of “prior inventions” and “work-in-progress” and carve out part of the agreement to protect your rights to this intellectual property. Of course, the company may insist on owning your time and your work 24/7 during the life of the deal. Better to discuss this up front and make sure they pay for it appropriately before you can’t walk away (see 7).
5. **Check the term of employment and the grounds for termination.** Make sure it’s clear what day and even what time and where the employee should report for work and when pay starts accruing. If the contract covers a fixed term, also make sure the term or end date is spelled out. Clarify what triggers a severance package upon contract termination versus what constitutes termination “for cause.” It’s to your advantage to make the grounds for termination for cause as narrow as possible.

6. **Ask a lawyer to review this and ALL written employment documents before signing.** Attorneys have experience in troubleshooting the verbiage of written agreements, even if contract law isn't their specialty. Their trained eye for noticing problems hidden in what isn't spelled out or detailed may save you headaches down the road. Request copies of not only the proposed contract or work agreement but any other documents you are required to sign beforehand for the attorney's review. (Never sign a document you haven't read yourself in its entirety, either.)

7. **Know your bottom line.** Negotiations aren't always successful in meeting the minimum standards to take a job and to succeed at it. Be willing to walk away, and know what is a must for you versus a wish-list item.

Sources:

Axial.com. "The three key items to negotiate in your NDA." Nov. 28, 2010. Retrieved Oct. 11, 2016 at <http://www.axial.net/forum/three-key-items-negotiate-your-nda/>

"Contracts" tag, The Workplace community at StackExchange.com. N.d. Last visited Oct. 11, 2016 at <http://workplace.stackexchange.com/questions/tagged/contracts>

Richard Harroch. "Negotiating Employment Agreements: Checklist Of 14 Key Issues." Forbes.com, Nov. 11, 2013. Retrieved Oct. 11, 2016, from <http://www.forbes.com/sites/allbusiness/2013/11/11/negotiating-employment-agreements-checklist-of-14-key-issues/#7be6bd09475f>

Nolo.com. "Written Employment Agreements: Pros and Cons," n.d. Retrieved Oct. 11, 2016 from <http://www.nolo.com/legal-encyclopedia/written-employment-contracts-pros-cons-30193.html>

Lekan Oguntoyimbo. "5 Things to Keep in Mind when Signing an Employment Contract." Dice.com, Aug. 23, 2013. Retrieved Oct. 11, 2016 at <http://insights.dice.com/2013/08/23/5-things-to-keep-in-mind-when-signing-and-employment-contract/>

Annette Richmond. "Employment Contracts 101: What to look for and what to avoid in an employment contract." CareerIntelligence.com, n.d. Retrieved Oct. 11, 2016 from <http://career-intelligence.com/employment-contracts-101/>