

# Negotiating Job Offers, Rights at Hire and Separation & Paid Sick Leave



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March 24, 2019

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# AGENDA

- 1. Negotiating Job Offers**
- 2. Rights at Hire and Separation**
- 3. Paid Sick Leave (Chicago and Cook County)**

**Questions**

# 1. Negotiation – General Tips

- Should you request changes/negotiate? Why bother?
- Advantages of negotiation
- Due diligence
- Reasonable demands/position
- Legal review of proposed contract



# Job Offer Terms – Compensation



- Salary
- Salary increase/timing (6 months?)
- Signing bonus or retention bonus
- Incentive package (stock options, commission, performance bonus, incentive bonus, management bonus)
- A note on minimum wage (new IL law)

# Benefits/Expenses

- Paid time off (vacation, sick leave – now 1 week paid in Chicago and Cook County, leaves of absence)
- Benefits package (health insurance, dental, vision, flex spending, disability, life, long-term care)
- Relocation – expense reimbursement
- Other perks (training/continuing education; parking; expense account; license fees/membership dues; company phone/car or allowance)
- Business/travel/client entertainment expense reimbursement (NEW Illinois law)

# New Illinois Expense Law



- Mandated for the first time
- Covers: necessary expenditures and losses incurred as part of employment duties and which primarily benefit the employer.
- Excludes: losses due to employee's negligence, normal wear, and losses due to theft unless it is the result of the employer's negligence.

# Day-to-Day

- Job title
- Duties, reporting relationships  
Can be general. Devote best professional skills. Full time; devote as much time as necessary to satisfactorily perform duties.
- Schedule/location, flexibility, telecommuting, accommodations
- Confidentiality (sometimes separate agreement)

## 2. HIRE/FIRE RIGHTS: AT-WILL VS. CONTRACT EMPLOYMENT



- Specific duration, expiration/renewal, or at-will?
- At will: Employer or employee can terminate the relationship at any time, without cause or notice
- No guarantee of employment for specific duration
- Can be negated by written or oral promises of employment
- Employee handbook with progressive discipline policies, termination for cause policies, “probationary periods”, required notice of resignation can **turn at-will to contract employment**
- “Without cause” does not mean discriminatory or unlawful reasons (e.g. based on race, gender, age, and other legally protected classes; or in violation of laws protecting employee rights)



# Termination for “Cause”?

- Termination by company for “cause” or voluntary resignation by employee
- Death/disability
- Termination by company without cause or by employee with “good reason” (with severance package)



# Employee Rights at Termination

- Accrued salary, commission, bonus
- Unused vacation pay or PTO
- Business expense reimbursement
- Health insurance conversion
- Retirement/401k/profit sharing rollover information
- Unemployment compensation (with exceptions)

# Negotiated Termination Provisions



- Delay separation date
- Consider consulting arrangement, position or location transfer, part-time
- Severance or salary continuation
- Lump sum or installments
- Age 40+ paid after 7-day revocation period
- Subsidized health insurance
- Unemployment benefits (no contest)
- Positive reference letter, non-disparagement
- Outplacement
- Attorneys' Fees

# POST-EMPLOYMENT CONTRACT PROVISIONS

- Confidentiality (sometimes separate agreement)
- Restrictive covenants (reasonable time, scope, place.)
  - a. Non-solicitation of clients/customers
  - b. Non-solicitation of employees
  - c. Non-competition
- Remedies
  - a. Injunction
  - b. Arbitration (or Court)
  - c. Fees

# Restrictive Covenants



- Confidentiality/NDA and intellectual property (sometimes separate agreement)
- Non-competition
- Non-solicitation of clients/customers, non-interference
- Non-solicitation of employees

# General Rules On Restrictive Covenants

- Confidentiality and intellectual property terms can be broad and indefinite.
- Other restrictive covenants must be reasonable in time, scope, place.
- All contracts require legal “consideration” – something of value exchanged.
- Is offer of new/continued at-will employment enough?



# Not Since 2013 (in Illinois)

**Illinois courts changed the rules:**

**2 years of continued employment** for new or existing employees

(absent signing bonus or other consideration)



*Eric Fifield and Enterprise Financial Group, Inc. v. Premier Dealer Services, Inc.*

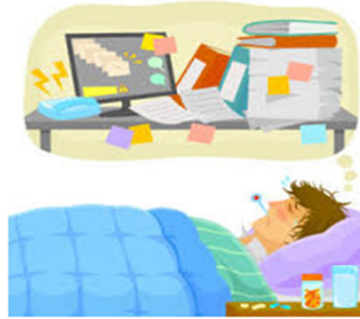
# Departure from *Fifield* by Some Courts

- No bright-line 2-year rule. Former employee needs a “substantial period” of employment. 15 months may be enough.
- Decisions: Based on length of employment, voluntary resignation, and often planned competition.
- What about enforceability of out-of-state restrictive covenant agreements?
- Don’t forget about ongoing restrictive covenants with former employers.
- Be careful of validating unenforceable restrictions with severance agreement or committing to unreasonable obligations in employment agreement.





### 3. Chicago and Cook County Paid Sick Leave Ordinances



- 80+ (3/4) municipalities opted out, some have since opted in
- Chicago “Covered Employer”: Employers who maintain a business facility in Chicago and/or who are required to obtain a business license to operate in the City.
- Cook “Covered Employer”: Employers with principal place of business within Cook County (opt-in town) and who employ at least 1 Covered Employee.
- Includes “a person or entity that employs 1 or more employees, including domestic workers, home health care workers or day laborers (temp.)



# Covered Employees

- A “Covered Employee” is one who performs at least 2 hours of work in a 2-week period for an employer while physically present within Cook (or Chicago.)
- To be eligible for leave, they must work at least 80 hours for an employer in any 120-day period of time
- Most part-time, non-seasonal workers will qualify.

# Sick Leave Reasons



- Employee or family member is ill or injured.
- Employee needs to receive medical care, treatment, diagnosis or preventative medical care.
- Employee needs to care for a family member receiving medical care, treatment, diagnosis or preventative medical care.
- Employee or family member is the victim of stalking or domestic or sexual violence.
- Employee's place of business closed due to a public health emergency.
- Employee must care for a child whose school or place of care closed due to a public health emergency.

# USE OF ACCRUED LEAVE - WHEN AND HOW MUCH

- **Chicago:** Employee may use a maximum of 40 hours of accrued regular PSL during a benefit year, plus 20 hours of PSL for FMLA use.

Time Off Balances			
	Accrued	Taken	Remaining
Paid Time Off	40	8	32
Sick Leave	24	12	12

- **Cook:** 40 hours of regular PSL. For FMLA employees, 40 hours for FMLA and 20 for “regular” PSL (opposite of Chicago.)

- Discipline exception

# Common Paid Sick Leave Rules

- Use after 180 days
- Minimum increment of 4 hours.
- Notice: 7 days' if reasonably foreseeable, otherwise day of sick leave.
- Medical certification for absences >3 consecutive work days
- Carryover: ½ unused up to 20 hours/year (for FMLA employers, another 40 for FMLA use)
- Rounding up: (Cook – fraction rounded up to the next even number; Chicago – odd number rounded to even) for calculating carryover of regular use PSL.
- No unused sick pay at separation

# Questions?



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