

NEGOTIATING YOUR TERMINATION PACKAGE: TEN SIMPLE RULES

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This paper contains points to consider when reviewing and negotiating a termination package. It is not legal advice. Every termination offer is different and your personal circumstances may dictate a different negotiation or strategy. Therefore, it is very important that you obtain legal advice from a lawyer specializing in employment law before you respond to a termination offer from your employer.

Whether we call it an economic downturn or a recession, more and more employees are receiving termination letters and severance packages. If this happens to you, you may be able to negotiate and often increase your own termination package provided you follow a few simple rules.

Here is how you can control the process and negotiate the best terms:

1. A termination meeting is a very stressful event. Nonetheless, you should try to be polite and professional. It will be a brief meeting so you should take your termination letter and leave. No shouting, slamming doors or hysterics. Clear out your desk, if that is what you are told to do or come back and do it later. You are building up goodwill and bargaining power for the negotiation which is to follow.
2. Keep your wits about you. Make a note of unacceptable conduct. Right after the meeting. Were you escorted out the door by a security guard? Were you prohibited from saying farewell to your colleagues or subordinates? Were you forced to leave your company (and family) car, preventing your wife from taking your child to the doctor's? Did the announcement imply that you left under a cloud? You were a trustworthy hardworking employee yesterday, and it looks bad on the company to treat you like a crook today. You deserve to be treated with dignity and sensitivity, especially on the day you are fired. Unacceptable

conduct by your employer may increase your bargaining power.

3. Don't negotiate piecemeal. A termination meeting is not the time to start a negotiation. You will not get many kicks at this can. Although you may see something wrong with the bonus number in the termination package, or with the vacation pay calculation, resist the urge to raise it until you have a full list of issues. The company may address your immediate concerns and be less willing to consider other points later, on the basis that they have given you what you wanted, and now you have come back with a second list.

4. Understand your rights. You cannot hope to negotiate a termination package if you don't know what you are entitled to and what your employer is obliged to provide. You need some proper legal advice from an experienced employment lawyer (not your neighbour who was dismissed last year). Use your time with your lawyer wisely and be prepared for the meeting. Some suggestions.

- Prepare a briefing document. The emphasis is on brief. While there is often a story to tell about events which preceded the termination, no one wants to read fifteen pages of single spaced prose.
- Understand the compensation that you were paid while you were working. Make a list of your salary, bonuses, car allowance, vacation pay, loans, options, and clubs. Consider every compensation item and include this information in your briefing document.

- Make sure you review the termination offer and check what you can. You can certainly determine whether the numbers are correct or on what basis the payment terms have been calculated. Having your lawyer crunch numbers or wait for you in the meeting while you do it is not a good use of your legal dollars.

- Collect the paper. Your lawyer will ask you for copies of your option plan, the restricted share plan, the bonus plan, and any other document that affects your compensation. If you have that handy little summary of annual compensation that employers like to put together to show how much money you are making, make sure you bring it.

- Do you have a hiring letter? Or a contract? You should find your hiring documents to show your lawyer. Hiring documents often contain termination provisions which will affect your negotiation.

5. At the meeting with your lawyer, you should obtain a good idea of whether the package is fair and reasonable or lacking in one or more respects. At that point, you will have to decide how you will respond to the company. Is it a meeting, a letter, a memo, or a lawyer's letter? In most cases, a lawyer's letter should be your last choice in this list. In terms of deciding between a meeting or something in writing, think of the number of issues you are raising. The person you meet with may not necessarily be the decision maker and you will want to leave a letter or memo outlining your points and the arguments as to why you should receive

more money so that your position can be communicated accurately to the eventual decision maker.

6. You are embarking on a negotiation. We all want to rush these discussions to finish the negotiation, but you should resist that impulse. A negotiation is a process. The first response back may not necessarily be the last position of the company. Once you receive a response, you should go back to your lawyer and discuss an appropriate answer or position. Sometimes another memo is appropriate, but sometimes the matter can be resolved through a telephone negotiation or a meeting. These are issues that you will have to decide at the time, based on what the response is to your demand.
7. Be very pleasant in your negotiations. Aggression will often polarize the parties. You will get further stressing the difficulty of your upcoming job search, the bad job market and the many candidates looking for similar positions than you will threatening a lawsuit. Everyone knows that the company is better able to fund a lawsuit than you. Having said that, sometimes a lawsuit will be necessary, but the vast majority of these cases are resolved through a negotiation.
8. Your lawyer may not have to appear at all in this negotiation, but you should make it clear to the company that you have a lawyer and certainly ask for the company to pay or contribute to your legal fees. Don't hesitate to use your lawyer as a negotiating coach. A brief telephone call with "Here is what they have offered ... What is my next position?" will take you a good way through your negotiation.

9. You will then have to complete the deal. The company will put together new documentation and a release. Make sure you get that properly reviewed. "It looks okay to me" doesn't cut it if the release contains legal restrictions that are not customary in the employment context.
10. You may be able to negotiate your entire termination package with your lawyer - coach in the background. However, if negotiations stall or if your employer becomes overly aggressive, back out and turn the entire matter over to him or her. Acknowledge that circumstances have changed. You might get a better deal if you bring out the heavy guns.

There are no hard and fast rules in a negotiation, because the landscape changes with every step. Throughout the process, you have to decide what is important to you. It's not always about the money. However, you need to focus clearly on your end game while plotting your steps through the process. If you can do this, you can often bring the negotiations about your termination package to a happy conclusion and closure, so you can move on with the rest of your life.

Finally, you should assume that your next employer will call your last one. A dignified exit skillfully stickhandled is a calling card all its own.