Executive Employment Agreements

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Keep your eyes on these key provisions.

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Executive employment agreements are a necessity of any relationship between a company and its management. This article will provide a review of what these agreements are and why they are so important. Whether your negotiation of an executive employment agreement is smooth or difficult, you should always keep your eyes firmly locked on a few key provisions. The information below should allow you to foster strong relationships with the executives at your financial institution and largely avoid causing unnecessary harm to your future business.

The Basics: What Is an Executive Employment Agreement?
At its core, an executive employment agreement is a formal and binding contract between a company and an employee with significant management experience. The terms contained within the agreement establish not only the obligations to which both

the company and the employee hold one another, but also their expectations. The nuts and bolts of the employee's relationship with the company are defined, including—but not limited to—his or her compensation, duties during the term of employment, subjection to restrictive covenants (such as non-compete clauses) and conditions/behaviors leading to termination.

Who Cares? The Importance of a Well-Drafted Executive Employment Agreement

Considering that executive employment agreements are used in abundance and their terms are well known to most employers and employees, the masses have broad access to sample and form agreements. Surely, then, the need to carefully draft and pore over each provision is now unnecessary? There could not be anything further from the truth!

As a general rule, forms are intended to be a rough sketch, and as such, they should not be taken as a complete and final picture. Negotiation, perhaps, is the paramount aspect of drafting an executive employment agreement. Both the employer and the employee are seeking to advance their interests—it is extremely important, as an employer, to be as pro-company as possible without giving the employee the short end of the stick. You should leverage as much as you can while still being responsive and attentive to your employee.

While tensions may arise while negotiating an executive employment agreement, the finished product—if drafted properly—will spare you even greater difficulty and nuisance should conflict arise in the future. Be sure not to leave anything ambiguous or to chance—this is your opportunity to hammer out every single detail and avoid opening your company up to unnecessary risks.

Draft Carefully: Key Provisions to Which You Should Pay Heavy Attention

Though it is true that each provision in an executive employment agreement should be carefully drafted, that does not mean all provisions should be given equal weight or consideration. There are a few in particular on which you should concentrate your attention:

1. Compensation—Money is not everything, but it is incredibly important. Both parties should be keenly aware of and negotiate not only the base pay, but also bonuses (and how they will be calculated and when they will be paid). The benefits, if any, that will be provided to the employee should be included as well.

2. Duties—This is one of the most basic provisions contained in the agreement, as it outlines the activities, among other things, for which an executive is responsible. Even details such as to whom the executive should report should be thoughtfully considered and included.

3. Severance—This is typically provided when employment is terminated without good cause. Structuring how severance will be paid can help your company avoid financial devastation; consider providing severance in payments at particular intervals rather than in a lump sum. Additionally, you should ensure that limitations or conditions on

severance payments—such as the release of all claims and/or liabilities against the company—are put in place to minimize future risk.

4. Dispute Resolution—Ensure you are aware of both the risks and benefits that either arbitration or litigation can provide for your company, both in the short and long term. Spend time with your attorneys understanding which venue and which choice of laws are best for you, too—it is not necessarily where you regularly conduct business.

5. "Cause"—Employers should aim to define "cause" as broadly as possible to avoid limiting termination to only the most egregious behavior. You don't need to go overboard, but narrowly defining "cause" may leave your company open to unnecessary risk or harm. For example, notice the difference between "intentional misconduct" versus "material breach of ongoing duties and obligations."

6. Non-Competition—If the executive is key to the organization, a non-compete clause is critical. State laws on non-competes vary widely, and you should work closely with your attorneys to ensure the non-compete clause is enforceable.

Every time you find yourself drafting or negotiating an executive employment agreement, remember to keep these key provisions in mind and to make each term meaningful—it will benefit not only your relationship with your new employee, but also your company, in the long run.

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