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## Negotiate This! Severance Tips From A Pro

By Joyce Lain Kennedy, Tribune Media Services  
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DEAR JOYCE: After several years with a law firm of 50 insurance attorneys, I was told yesterday that I'm one of 20 percent who will be leaving the firm in two months. We haven't had the S-talk yet. What severance advice can you give one who is nearly 60? -- D.E.

I passed your situation on to a highly praised business attorney who has tons of experience negotiating severance agreements for executives and professionals.

Robert Benowitz, a partner at Rick, Steiner, Fell & Benowitz in New York City, has negotiated severance agreements in a wide range of industries, including insurance, media, asset management, securities, pharmaceuticals and health care. Benowitz offers the following suggestions for senior-level employees:

WHAT TO EXPECT. "If you don't have an employment agreement, your severance discussion will center on a notice period -- how much time you have remaining with the company. The discussion will typically then focus on whether you are being offered severance benefits, which should be commensurate with what is being offered other employees of similar level, experience and length of service, and whether it will include a prorated bonus.

"One issue that should be on the minds of employees is whether to take severance as incremental payouts, as if they will continue on the payroll, or whether to take a lump sum. With a lot of companies struggling and some perhaps unable to meet obligations, it may be wise to negotiate a lump-sum payment. However, one factor worth considering is whether you will be able to continue receiving health benefits.

BEYOND THE BASICS. "Other issues of concern may relate to deferred compensation (or unvested stock options for those paid in part with equity). That should be raised in a separation agreement, so that you can seek a portion of your earned but unpaid compensation. You should also be paid for any accrued but unused vacation time and outstanding business expenses.

"An agreement should include a mutual non-disparagement clause (neither the company nor you will discredit the other), and you should be indemnified from any claims against you involving your employment with the company. Additionally, you should request all legal fees to be paid in the event that you're subject to any type of legal proceedings resulting from your term of employment.

"You can also request and negotiate the text of a reference letter.

TAKE YOUR TIME. "After the initial discussion, you may be asked to sign the agreement, something you should avoid until you have a chance to carefully evaluate the agreement and perhaps contact an attorney to review it. Companies typically will entertain negotiating certain terms of a separation agreement, and employees should consider what their priorities are, whether it's continued health care coverage, office space for a job search, or sponsored outplacement programs.

"Carefully examine the scope and duration of a non-compete clause that would prohibit you from working for a competitor. The company may be willing to negotiate a waiver of all or portions of the non-compete, or to carve out exceptions. Or they'll have to make sure they're paying you to sit on the beach.

SIGNING ISSUES. "As part of signing a separation agreement and receiving a severance package, you

will forfeit your right to sue the company. If you feel you have a legitimate discrimination claim, including gender, age, race or disability, or the company didn't comply with government notice provisions, you should speak to an attorney to determine how strong your claim is before signing the agreement."

-- P.S.: Benowitz reminds all employees to plan ahead in these difficult economic times where there are so many workforce reductions. Do this by keeping records of performance reviews at home, saving e-mails and taking notes on meetings with human resources personnel and senior-level executives in connection with your performance and termination.

In an economic environment like the current one, companies are going to try to get away with paying out the smallest severance packages possible. So if you don't like what you see, attempt to negotiate something more.

And Joyce reminds you to consider consulting an employment lawyer before you sign a document that could dramatically impact your future.

(E-mail career questions for possible use in this column to Joyce Lain Kennedy at [jlk@sunfeatures.com](mailto:jlk@sunfeatures.com); use "Reader Question" for subject line. Or mail her at Box 368, Cardiff, CA 92007.) (C) 2009 TRIBUNE MEDIA SERVICES, INC.