

You have more power than you think when negotiating a severance package

Too many otherwise business-savvy individuals take whatever their employer offers them. This employment lawyer explains ways you can get more than what's on the table.



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BY CLAYTON HALUNEN

Employment relationships end all the time—especially now, during the Great Resignation, when a record number of workers are choosing to leave their jobs. But even during this tidal wave of voluntary departures, involuntary or acrimonious separations occur every day.

For C-suite executives, managers, and other high-ranking employees, the unexpected, unwanted, or unjustified end of their tenure can be a time of anxiety and uncertainty. But, it can also be a time of great opportunity—if they know how to seize it when negotiating the terms of separation from their soon-to-be-former employers. Unfortunately, too many otherwise business-savvy individuals take whatever their employer offers them in a severance package—if their employer offers anything at all.

Departing employees often think they have no leverage to ask for a better deal, or that pushing back will result in an even smaller severance package. That's a fallacy, and it's one that employers will take advantage of.

If your employer is pushing you out the door, signing on the dotted line of a severance agreement without understanding the power you have to obtain better terms and without consulting an attorney are costly—and avoidable—mistakes. You have cards to play, and if you play them correctly, you

can obtain greater financial security and more robust benefits. This will better position you for success as you move forward in your career.

THE LEVERAGE YOU MAY NOT KNOW YOU HAVE

Many employees enter severance negotiations thinking they have no leverage because they know their employers likely owe them little, if anything, as a parting gift. And they're right. Beyond legally required benefits, such as COBRA health insurance coverage or earned vacation or sick time, your employer has no obligation to pay you or give you any consideration, unless:

- You have an employment contract that provides for severance.
- A company policy provides for severance.
- You're subject to the terms of a collective bargaining agreement that includes severance in your circumstances.
- Your employer wrongfully terminated you for reasons prohibited by law.

Given that your employer can legally send you on your way with little more than a box for your belongings, why would the organization consider your requests or demands regarding severance pay and benefits?

YOUR SEVERANCE IS AN INSURANCE POLICY FOR YOUR EMPLOYER

Sometimes, an employer will offer severance pay and benefits as a gesture of gratitude or goodwill for a long and largely successful tenure. More often, however, an employer will negotiate or agree to a more generous severance package out of self-interest.

That's because a severance agreement can serve as an insurance policy for the company against future employment-related claims and disruptive litigation that could cost the organization significantly more in financial and reputational costs than a severance package would.

A departing employee may have potential claims against the employer for such things as discrimination, harassment, whistleblower retaliation, or wrongful termination. If the employer knows of circumstances that could support such a claim or has reason to fear that the employee has the ability, intent, and justification to take legal action, the employer may want to insulate the organization from such risk in a severance agreement. In exchange for severance pay and benefits, the agreement will include the employee's release and forfeiture of any potential claims against the employer.

WHAT'S THE REAL REASON YOU WERE LET GO?

The problem is that many executives and employees may not be aware that they have a potential employment-related claim. Rare is the employer naive enough to say, "We're letting you go because you're too old, or disabled, or Black, or a woman, or complained about your manager sexually harassing you." Nor will an employer admit that your internal reports of illegal conduct make you an unwanted liability. When a company makes an employment decision, in whole or in part, for legally prohibited reasons, there's usually a pretense. And that pretense may not be readily apparent.

For example, the Great Resignation may seem like an unwanted problem for employers that are losing valuable employees. But all of that talent on the open market gives them an opportunity to acquire top-flight new hires. These employees may be younger and have more productive years ahead of them than the current workforce. This could incentivize the employer to let older employees go to clear the way for the new ones. While the employer may describe the termination as part of a “reorganization” or say the organization is eliminating the position, the real reason is illegal age discrimination that could be the basis of a valuable claim.

YOU HAVE THE RIGHT TO AN ATTORNEY. USE IT.

Identifying potential claims and pressure points and using them to your advantage is one of many reasons you should consult an employment lawyer who’s experienced in severance negotiations before agreeing to any severance package.

Unlike you, your employer negotiates severance packages all the time, and undoubtedly has an attorney to provide advice throughout the process. Having your own lawyer evens the playing field. Some experienced employment lawyers can be hired on a contingency basis, which means you pay no fee unless they obtain a severance amount greater than what was initially offered by your company. Others charge on an hourly basis.

Even if you think you have no cards to play in severance negotiations, a good employment lawyer may have a strategy that puts you in the strongest possible position to obtain more compensation, benefits, and concessions in your severance package so you can avoid having to “take it or leave it.”

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