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LOOKING FOR A CLEAN BREAK

For businesses struggling in this uncertain economy, an eventual reduction in force (RIF) may be necessary. If your company is facing this possibility, it is important to structure severance packages to avoid legal challenges, especially where waivers are concerned.

On the other side of the ledger, employees who have been offered severance packages should consult with an attorney regarding their rights. This particular article is limited to the employer's viewpoint.

Common situation: A company relies on a single time-tested application form for all job applicants. When it comes to constructing severance agreements, it takes the same approach. The company uses a standard package devised years ago for an RIF.

However, due to recent trends in this area, particularly concerning waivers, the company may face a protracted legal battle. In addition, the company may still run into legal problems even if its standard agree-

ment will generally suffice. For instance, there may be certain requirements for waivers, depending on the following factors:

- ♦The age of the employee;
- ♦Whether severance applies to one individual, several individuals or a larger group; and
- ♦The location of the company.

Furthermore, the company may have to consider other implications when drafting a severance agreement. Based on the company's objectives and business circumstances, what is appropriate for one RIF may not apply to another. There are risks associated with virtually every situation.

Timing is everything

Employees must be given time to weigh whether or not to sign a severance agreement. This timeframe depends on the employee's age, as dictated by the Age Discrimination in Employment Act (ADEA). The

(see Looking for a Clean Break on next page)



BUSINESS OWNERS: PUT ESTATE PLANNING ON A "TO-DO" LIST

As a busy small-business owner, you probably have a million little things on your mind right now. Practical suggestion: Set aside some time for estate planning.

This critical function is often overlooked. But a viable estate plan can avoid a business sale at distressed prices while preserving assets for loved ones.

Start by setting out your main objectives. Consider the benefits you want to derive from your assets, the risks you are willing to take, how much you will need for retirement or other purposes, and the individuals and any charities you want to share in your estate. Once you spell out your goals, you can formulate the best way to achieve them.

Next, provide your advisers with an inventory of assets. You can do this by simply listing all the assets you own in addition to your business interest (e.g., real estate, stocks, bonds, bank accounts, life insurance, etc.). With professional guidance, you can project the future net worth of these assets to get a clearer picture of your taxable estate.

Also, seek to minimize potential estate taxes. Note that transfers between spouses are exempt from federal estate tax. Currently, the federal estate-tax exemption can shelter other transfers of up to \$3.5 million for 2009 (up from \$2 million for 2008) until the federal estate tax is eliminated in 2010. However, the federal estate tax will be revived in 2011 unless subsequent legislation is enacted.

You might also reduce your estate through lifetime gifts. For 2009, the annual gift-tax exemption covers gifts of \$13,000 per recipient (up from \$12,000 for 2008). In addition, special estate-tax breaks for business interests may be available. For instance, the federal estate tax due on a qualified business interest may be spread out over a 14-year period.

Finally, consider life insurance as part of your estate plan. In particular, business owners may rely on life insurance for its liquidity. If the policy is structured carefully, the proceeds can be received free of both estate and income taxes.

Caveat: This is just a general overview. Assemble the information to develop a comprehensive plan. ↵

LOOKING FOR A CLEAN BREAK

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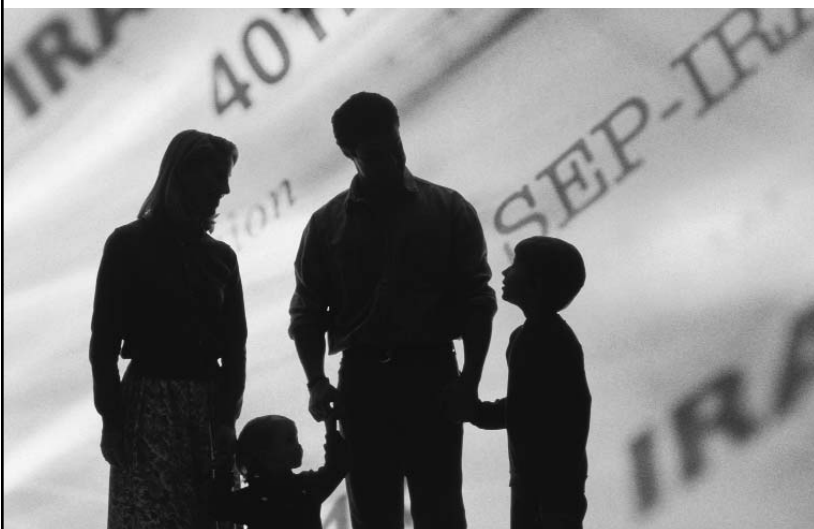
ADEA has been modified by the Older Workers Benefit Protection Act (OWBPA). Other legislation may also apply.

If an employee is 40 years of age or older: The employee must be given at least 21 days to weigh the employer's offer, unless the employee is included in a group termination. For group terminations, the required time limit is at least 45 days.

If an employee is younger than 40 years of age: There is no specified time period for signing the agreement. However, the length of time allotted for this purpose may be a factor in determining whether there is a "knowing and voluntary" waiver under the Americans with Disabilities Act (ADA) or some other non-ADEA claim. As a general rule, the more time granted, the stronger your company's position.

Note that the OWBPA requires employers to give their employees at least seven days to revoke a waiver of an age claim after a severance agreement has been signed. This applies to both individual and group determinations. Employers must decide whether to offer this revocation right to employees who are younger than 40 years of age. If they do, this would help to establish a knowing and voluntary waiver.

This situation often results in a delicate balancing act for employers. With the assistance of an expert legal adviser, you may develop a plan of action that suits your particular needs. ↵





Mortgage Relief for Homeowners

Under the new housing law enacted last year—the Housing and Economic Recovery Act of 2008—a homeowner may be able to replace an existing mortgage on a principal residence with a new fixed-rate loan lasting at least 30 years. Due to a later modification, the amount of the new loan can be as high as 96.5% of the current value.

To obtain this special relief, the monthly housing payment (as of March 1, 2008) must exceed 31% of the homeowner’s monthly household income. The program ends on September 30, 2011.

If you or another family member is eligible for a replacement mortgage, contact a professional adviser.

DOES IT PAY TO SETTLE?

Suppose you are going to be involved in litigation. Of course, if you are convinced you are “in the right,” there is a time and place for fighting to the bitter end. At other times, you might choose to settle out of court.

Why would you want to settle? There are several possible reasons, including the following:

- If the judicial system is so backlogged that it may take months—sometimes even years—before your case goes to trial.
- The longer your case lasts, the more you will likely pay in related legal expenses (e.g., depositions and expert witnesses).
- A drawn-out trial can be an emotional strain. Even if you come out ahead, you may not feel that it was worth the effort in the long run.
- When you pursue a trial to its conclusion, you run the risk that adverse information will come out that you might prefer not be disclosed.
- The adversarial process in court pits one side clearly against the other. Instead of easing the tension that already exists, court cases often tend to aggravate it.
- Even if you prevail in court, an appeal may start the process over.

• If you are pursuing a collection case against someone who owes you a debt, winning in court is only half the battle. You still have to collect.

Besides deciding to settle, you must decide when to settle. Frequently, early offers will be on the low side, and it pays to be patient. Higher offers may be forthcoming. On the other hand, early offers that meet your requirements should be considered. Consider these points:

Liability: Do you have a strong case or a weak one? Is there a real prospect a judge or jury may decide against you?

Witnesses: Will the parties make good witnesses? Will your witnesses be sympathetic to a jury?

Trial location: Where will the trial be held?

Delay: How long will it take to get the case to court? The longer the delay, the more pressure to resolve the case.

Experts: How strong are your experts? What are the other side’s experts saying?

Damages: How has the plaintiff been damaged? Are the damages easy to prove? A large exposure may increase subsequent offers.

Be sure to obtain proper legal guidance in this area. 



LAST-MINUTE BREAKS IN RESCUE PLAN

The Emergency Economic Stabilization Act of 2008—the so-called federal “rescue plan”—establishes a program for providing financial relief. Among other changes, the new law also temporarily raises the limit on Federal Deposit Insurance Corporation insurance from \$100,000 to \$250,000 per account.

Significantly, several tax provisions, including extensions of key tax breaks that had expired after 2007, were added to the rescue plan at the last minute. Here is a brief rundown.

- ◆ The new law patches the alternative minimum tax (AMT) again. For 2008, the AMT exemption amount is increased to \$69,950 for joint filers, and \$46,200 for single filers.
- ◆ The tuition deduction is reinstated through 2009. It permits a maximum of \$4,000 of qualified higher education expenses paid for yourself, your spouse or a dependent (although the deduction is phased out for high-income taxpayers).
- ◆ An individual can choose to deduct state and local sales tax in lieu of deducting state and local income taxes on his or her personal tax return. This tax break is extended through 2009.
- ◆ The new law also extends the new property tax deduction for nonitemizers for one more year. Initially authorized only for 2008, a deduction of up to \$500 (\$1,000 for joint filers) may be claimed by nonitemizers.



- ◆ Individuals 70½ years of age or older may make tax-free IRA withdrawals that are contributed to a qualified charity. The maximum annual contribution remains at \$100,000. This tax break is now available through 2009.
- ◆ The research credit is extended, with certain modifications, for qualified amounts paid or incurred in 2008 and 2009. The modifications include an increase in the alternative simplified credit and a repeal of the alternative incremental credit.
- ◆ The new law enables taxpayers to write off certain leasehold and restaurant improvements over 15 years instead of the usual 39-year period. This tax break is available through 2009.
- ◆ The new law revives enhanced deductions by businesses for charitable donations of food, books and computers made in 2008 and 2009.

This is just an overview of several key provisions. More details are available upon request. ↵

B R I E F S

◆ **Defining Misconduct**—When possible, define key terms in your company’s employment manual. **Example:** An Ohio manufacturer’s manual said it could fire workers for “gross misconduct.” Subsequently, a worker was fired after he failed a drug test. The employee sued for accrued vacation time—and won. **Reason:** The manual did not define gross misconduct. Since there was no evidence of wrongdoing at work, the court sided with the employee.

◆ **Nix the Nicknames**—In a new case, an employee of a major electronics chain was called “Grandma” by a new supervisor. The supervisor put her on a performance improvement plan before he had ever worked with the elderly employee. Subsequently, the employee quit and filed an age discrimination claim. **Result:** The Illinois District Court said calling the worker “Grandma” suggested ageism.

◆ **Higher 401(k) Limits**—The amount that employees can contribute to their 401(k) plans has increased. The maximum deferral allowed jumps from \$15,500 for 2008 to \$16,500 for 2009. Plus, if you are 50 years of age or older, you can add another \$5,500 to your account in 2009 (up from \$5,000 for 2008). Therefore, the total dollar limit for 401(k) plan deferrals in 2009 is \$22,000.

◆ **Cell Phone Policies**—It is important to establish a safe and sound cell phone policy for your company. **Example:** After an attorney who was driving and talking on the phone tragically hit a teenage pedestrian, the girl’s family sued the law firm for \$30 million. (The case was settled out of court.) **Advice:** Require the use of hands-free cell phones and comply with all state laws.