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Lou DiLorenzo

Including The Right Language In An Offer Letter Can Pay Significant Dividends Later

By: Louis P. DiLorenzo¹

Often the simplest and most straightforward cases serve as helpful reminders of best practices. This is certainly true of a recent federal court decision applying New York contract law and the New York Labor Law ("NYLL") to a claim for bonus compensation. In that case, including the right language in an offer letter made it easy for the court to dismiss the claims.

There are a number of best practices applicable to offer letters. At a minimum, of course, the offer letter should include an employment at-will statement, unless the employment is not intended to be at-will. But simply including that statement does not mean the offer letter cannot be contractual in nature for purposes unrelated to the right to discharge. Representations made in the offer letter can be enforceable, particularly representations about bonus compensation. If the offer letter includes reference to potential bonus compensation, it should also incorporate by reference the terms of the bonus plan, and explicitly describe any eligibility requirements, including, if applicable, the requirement of active employment on the payout date. Most important, if the bonus plan is a discretionary plan — meaning that whether there will be a payout and how much the payout will be is entirely discretionary with the employer — that fact should be stated. Language like that can provide a complete defense to a claim by a discharged employee that he was entitled to bonus compensation as unpaid wages under the NYLL. Bonus compensation can be "wages" under the NYLL, but only if it has already been "earned" at the time of termination. It is not "earned," if, at the time of discharge, the payment is conditioned on some future event or left to the discretion of the employer.

On the less intuitive side, consider including what lawyers refer to as a "merger clause." A merger clause states that the offer letter supersedes any prior discussions and agreements, if any, between the parties. When such a clause is included in an offer letter, it can be used to defeat a breach of contract claim based on an alleged oral promise of something different than what was stated in the offer letter.

Some employers do not like to complicate an offer letter or make it too lengthy. In many cases that is not necessary, but in others inserting some complication in the letter is just prudent risk management, which can pay significant future dividends.

Be Careful Out There!