McMillan Metro Faerber

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Severance Agreements

Severance agreements are useful to both employers and employees. For an employee, severance pay provides compensation helping to cover living expenses until a new job can be found.

For an employer, severance agreements are useful for obtaining waivers of possible claims and managing risk in connection with employment termination.

The challenges of preparing an appropriate severance agreement have grown as various laws have become applicable to issues these agreements address. Employers need to know what issues to cover and, in some cases, what language should or should not be present in a severance agreement. Employees will want to know what they are giving up, what they may be able to negotiate for, and how to approach negotiations.

Common issues in these agreements include:

- Amount of severance pay
- Lump-sum vs. salary continuation
- “Claw-back” provisions
- Handling COBRA continuation coverage
- Sunsetting severance payments (e.g., on taking a new job)
- Preserving obligations under other agreements (e.g., confidentiality and restrictive covenants)
- Non-disparagement obligations
- Outplacement assistance

For executive employees with unvested equity rights, the last day of employment can have major impact on an exit package, and timing windows for exercising vested options present similar issues.

Whether you are an employer or an employee seeking the benefits available in a severance agreement, the employment attorneys at McMillan Metro Faerber, P.C. are ready to assist you.

Attorneys

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