

## **Newsletter for Employees TEN TIPS FOR THE NEW YEAR**

We have enjoyed having the opportunity to work with our many clients and friends through the years to help with employment issues. As we make our own resolutions to even better serve our clients, we find that the most immediate benefit we can give is to provide a list of practical tips to think about on the job as you begin the New Year:

1. **Look Before You Leap:** Before accepting a job, request that the potential employer provide you with all the documents you will be asked to sign. Some employers require employees to sign restrictive covenants (agreements with non-compete provisions) after the employee has already resigned his or her job. Although such a provision may not be enforceable, there is a real risk it may be enforced. The best practice is to review all the forms and contracts in advance of making a change in position.
2. **Beware of Employers Bearing Gifts:** Be sure you carefully review all of the documents accompanying discretionary bonuses or stock options. Many such “gifts” are tied to restrictive covenants, which could result in limiting your employment options down the road. Even if they ultimately have no value, participating in the plan may potentially render the restrictive covenants enforceable. You need to consider very carefully whether you can agree to these restrictions. If not you may not be able to accept or keep the job.
3. **Can’t Touch That:** Under Illinois law an employer may not make deductions for expenses such as training, work materials or uniforms from an employee’s pay without written authorization from the employee at the time of the deduction. Any deductions unlawfully made must be returned to you.

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4. **Read the Fine Print:** Many executives receive a portion of their compensation in stock options. These programs provide very specific deadlines for when vested options must be exercised. Some even require that the options cannot be exercised once notice of termination has been provided. Under such plans, an employee who is notified of termination on Wednesday may be prevented from exercising stock options on Thursday so careful attention should be paid to the terms and time limitations of the plans.
5. **File it Away:** Absent an agreement to the contrary, employment may be terminated involuntarily without notice and even without any opportunity to pack up personal belongings. It is not uncommon for employers to advise terminated employees that personal belongings will be gathered and sent home by the employer. If you have important documents that you might need post-termination, such as employee handbooks, performance reviews, your personal notes and the correspondence between you and your manager, keep copies of documents off work premises. But make sure that you do not take anything the company would balk at as confidential or proprietary property. Consult with legal counsel if there is any question as to what belongs to your employer and what belongs to you.
6. **Time is Money:** Many employees are classified as “exempt” from overtime pay when in fact their responsibilities and the manner in which they are compensated make them non-exempt. A non-exempt employee is entitled to overtime pay equal to one and one-half times the regular rate. A classic tip off that you might be entitled to overtime is when your pay is reduced for any full day or partial absences (although there could be other reasons as well). Determining whether you are entitled to overtime pay is a complex but important issue. For more information on this issue, check the U.S. Department of Labor website at <http://www.dol.gov/dol/topic/wages/overtimepay.htm> and/or consult with an attorney.
7. **Prepare a Plan of Action:** If your situation at work takes a turn for the worse and you become concerned that you are the subject of unlawful conduct, be sure to document what is occurring, including keeping important emails and documents and keeping good notes with dates of important events. You can be assured that your employer’s counsel is giving them the same advice. Be careful not to make any rash decisions, such as resigning, without thinking through the consequences. Resigning your position could limit your damages if you decide to pursue litigation and may cut off your rights to unemployment compensation.
8. **Avoiding Litigation: Priceless:** Even up to the moment you walk out your employer’s door, you owe your employer a duty of loyalty. Be careful not to do anything that would interfere with its business operations or adversely affect your employer. Being coy (or misleading) about your new position can result in problems for you if you are leaving to compete. If you are leaving to join a

competitor, the best practice is to seek legal counsel early on, even if you aren't subject to any restrictive covenant. An ounce of prevention is priceless.

9. **There's No Place Like Home:** So many times work computers are used for personal matters, even when it violates work policies. Use your home computer for all personal matters. Sometimes when employees exit their job, their inclination is to remove personal data. This can cause many problems for a variety of reasons. It is never a good practice (and indeed can be violation of federal and state law) to use any kind of non-company issued software on your work computer or to tamper with your computer or the data on your computer in any way. If you are concerned about leaving personal material on your computer at work, contact an attorney to determine the right way to handle the matter.
10. **Watch Whose Retirement You're Funding:** Many employees are realizing that their 401(k) plans are subjected to excessive fees and expenses in violation of federal law (ERISA). Don't assume that employers are looking out for your investment. If you have reason to believe that your 401(k) plans' service providers are charging improper fees, consult with a financial advisor or attorney.

**Best wishes for a wonderful 2008!**

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