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## **The Employment Offer Letter: Your Firewall Against Viruses that Infect the Employment Relationship**

by Justin Daniels

Have you opened your bonus check only to find that the amount was much less than you were anticipating? Perhaps your employer changed the formula of how the bonus was calculated? Have you ever found out too late that the medical insurance plan you discussed verbally during the job interview is not quite what you thought it was going to be? Have you ever started a new job that turned out to have much different responsibilities than you were told you would have?

If you are familiar with, or can imagine, situations like these, you instinctively understand how a written employment offer letter can clarify up-front important points that employers often leave vague or ambiguous. This article addresses why your best opportunity to resolve potential employment issues is at the beginning, when you receive the employment offer. The article will also discuss problems that can arise later, when you are slated to receive a performance-based bonus.

### **The All-Important Offer Letter**

Requesting a written employment offer letter at the outset seems so obvious that you may wonder why it's worth mentioning at all. Many times, especially in tough job markets, people are so happy to find a job that they don't focus on potential issues. This may be because they blindly trust what they are told, or don't speak up for fear of rocking the boat. Remember the job interview process is much like a succession of first dates; the employer is trying to dazzle you with their organization's positive attributes while ignoring or downplaying any shortcomings.

The verbal employment offer is the culmination of the job interview process. The employer, furthermore, has expended significant time and effort to find the person who they feel will best help the organization. As a result of all the time the employer spent finding you, you should not feel bashful about asking that certain aspects of the employment relationship be put in writing so the parties can get off on the right foot in the new relationship.

Don't be led astray by employers who tell you, "We don't do things that way," or, "Don't you trust us?" You should respond by saying that you prefer a written letter that both parties sign so that everyone is on the same page. Employment offer letters commonly address:

1. Duties and responsibilities;
2. Compensation, bonus and stock options;
3. Medical benefits;
4. Non-competition and non-solicitation; and
5. Confidentiality.

Unfortunately for employees, changing market conditions, poor management decisions, and pressure to cut costs often result in sudden, unexplained bouts of employer amnesia regarding compensation and benefits they verbally promised you when they first hired you.

## Performance-Based Bonuses

Performance based bonus compensation is an area where employees who fail to consider the details are left without a firewall when the cost cutting virus infects the employer and is invariably transmitted to the employee. Build your firewall in this area by considering the following four points:

1. What eligibility conditions must be met to trigger a bonus (employee closes \$100,000 in business, brings the company 10 new clients a quarter or hits mandated quota for the year)?
2. How is the formula calculated, i.e. is it based solely on how much business the employee originates that is collected so that employee takes the risk that the firm may not collect accounts receivable from the new customers?
3. When is the bonus paid, 30 days after the end of the year or on a quarterly or monthly basis?
4. What happens to the bonus if the employee leaves the firm?

Let's examine each point more thoroughly.

1) Eligibility requirements seem straightforward. Do you need to meet a certain revenue or client quota; must it come from existing clients or be solely from new ones? Don't give an employer looking for an excuse not to pay you the argument that the eligibility requirement magically became solely new accounts generated or at least 10 new clients a quarter. This may appear from your perspective to contradict their initial statement when you were hired that your bonus would come from "revenue you bring to the company." It's your interpretation against theirs. You can imagine how an employer could massage a vague provision to suit their needs when the cost cuts are coming down.

2) The area where most employees get burned is the actual bonus calculation. Many people fail to consider that there can be a major distinction between a bonus based on billed revenue versus what is actually collected. You want to clarify who is taking the risk in the event the new client you landed for the company did not pay its invoice. Is it the employer, is it you, or can you negotiate some type of discount commission for customer revenue that is written off as uncollectable.

3) The timing of the bonus payment does not seem like it should be complicated. However, why let an employer say your bonus will not be paid until the end of the year when you had the initial verbal understanding that it was paid quarterly? You are counting on that cash

flow to pay the bills. Without written clarification of the arrangement, you are left with a he-said/she-said argument that is hard to document—and most of the time you will not win the argument.

4) What happens to the bonus if you leave the company is not normally a topic most people want to discuss at the time they receive the offer. It seems uncomfortable to discuss the end of a relationship when it is just beginning. Stop and consider the likelihood of whether you will still be employed by this company at the end of your career? How many times will you change companies between now and then? If you don't determine at the outset of a new relationship what will happen to the bonus in the event the employment arrangement ends, what are the employer's incentives at that point to resolve such an issue amicably?

## Conclusion

In today's marketplace, we realize that company loyalty is an antiquated concept. People change jobs as often as Microsoft launches a software upgrade. How many different jobs will you have in the next 10 or 15 years? Going forward, when next you change jobs, I hope you treat the ideas discussed in this article as the source code of your employment offer letter—the firewall that will protect you against the corporate cost-cutting virus that continues to afflict much of corporate America.

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