

## Negotiating a Fair Severance

Many businesses are facing very tough economic times. Laying off employees is one of the options available to business owners and managers to reduce expenses. Many issues arise when you are considering layoffs. Depending on the size of the business and the number of people being laid off, there are certain advance notice requirements that may apply under both federal and state laws. Many employers are turning to severance packages that include a waiver of liability to help soften the financial blow of a lay off. It's important for both the business owner and the terminated employee to ensure everyone has a complete understanding of what they are agreeing to do before they approve the severance package. Most severance packages include the terms of payment and will state clearly how that payment will be made. Another typical part of any severance is for the employer to continue providing insurance coverage for a certain amount of time. It is becoming more common to also have the employer provide outplacement services, which normally include job search assistance, counseling and an agreement on the wording of a letter of recommendation. The letter of recommendation is normally included as an attachment to the severance agreement so that employees and employers know in advance what will be provided during the reference checking of a new employer. The most important sections of any severance package for a business owner are those dealing with a waiver of liability for employment-related discrimination, an employee's availability to assist the employer during the separation period, and, on occasion, a non-compete provision. When drafted correctly, the agreement not only provides for the needs of the displaced employee, but also serves as protection for the employer in the event of future litigation. For the employee, when you are presented with a severance agreement, understand that you generally have 21 days to decide whether to sign it. And even after you sign it, you could have up to 7 days to revoke that signature if you later determine the package wasn't in your best interest. I recommend that before anyone, either employer or employee, signs any legal obligation, they should speak with an attorney to ensure the decision is a well-informed one. Also, should the agreement be subject to litigation in the future, it is more likely to withstand a legal challenge if drafted fairly and correctly. All parties need to understand that severance packages should generally be negotiable. Be prepared for reasonable counter offers, such as the inclusion of pay for any unused vacation or sick time or changes to the letter of recommendation. In cases of mass layoff, the offer is usually a template one extended to each employee and they are generally of a "take it or leave it" nature. When weighing the cost of a severance, make sure you consider the risks and cost of employment-related litigation that could result if no severance is provided.