

Keep Your Bonus, Don't Give Away Your Rights

It's bonus payment season again. That means that many firms will require their employees to agree to certain terms as a "condition" to receiving their bonus. Unfortunately, many employees agree to the terms without reading the document or assume they are non-negotiable so what's the use of reading them. This gives rise to something I see a lot of in my practice - employees giving away their heavily negotiated rights. Please, before you sign or electronically "click-on" your agreement, **read** these year-end agreements carefully. You will want to make sure that the terms of these year-end agreements do not contradict terms that may be contained in your offer letter, employment agreement, or related documents.

Here are the most common negotiated contract rights I see employees giving-away:

- **Longer Restrictive Covenants** - Agreeing to restrictive covenants with time periods longer than those you may have negotiated as part of your offer letter;
- **Improperly Acknowledging At-Will Status** - Acknowledging you are an at-will employee when your employment agreement clearly provides you are employed for a fixed-term;
- **Weakening Definitions of "Cause" or "Good Reason"** - A year-end agreement may have definitions of "cause" or "good reason" that are more favorable to your employer than those you bargained for as part of your employment agreement;
- **The "Claw-back"** - The firm conditions the bonus on you agreeing that certain payments may be "clawed-back" upon your resignation despite the fact that such a provision may be expressly prohibited by the terms of your employment agreement.

Certainly, if there are differences between your prior agreements and a year-end agreement, it's often easier to attempt to address them while you're an employee in good standing than when you're contemplating resignation or have already accepted a position at another firm.

You've spent an entire year earning your bonus. So spend some time understanding your documents and make sure you're maximizing your ability to retain it.

This note has been prepared by Wigdor LLP for informational purposes only and does not constitute advertising or solicitation and should not be used or taken as legal advice.