

Keep Your Bonus, Don't Give Away Your Rights

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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.

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