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**Employment Agreements: Who Needs Them? When Should a Startup Company Have Them?**

Companies—whether long established or just starting up—are not required to offer a written employment agreement to any employee they hire or currently employ. In some cases, however, it may make sense to have a written employment agreement signed by an employee. Below are some general considerations, good and bad, that a company, particularly a startup, should think about before using an employment agreement.

A startup company may find it useful and in its best interests to have an employment agreement in order to exercise a degree of control over an employee's ability to leave. For example, a company that is spending a significant amount of time and money on recruiting, interviewing, hiring and training a new employee might want to consider an employment agreement. Such an agreement may lock an employee in place for a specific period of time or, at the very least, require the employee to provide a specific amount of notice prior to leaving. Although a company cannot force an employee to remain employed, having an employment agreement may keep the employee from voluntarily walking away, especially if there is a penalty for doing so.

An employment agreement can set performance standards and grounds for termination. With those spelled out, a company may find it easier to

hold an employee accountable and terminate an employee should that employee fail to live up to the company's standards.

A startup may want to take affirmative steps to attract and retain an employee with specialized knowledge or technical skills applicable to critical company functions; particularly since replacing such employees may prove difficult. Rewarding an employee with nonfungible skills by providing secure employment over a certain time period may help ensure that the employee remains with the company, and provide a competitive advantage over rival companies.

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An employment agreement may limit an employee's ability to disclose proprietary information or seek employment with a competitor through certain confidentiality provisions or restrictive covenants. These may include confidentiality, nondisclosure, noncompetition and nonsolicitation clauses. Since the nature of each position is different, an agreement may not need to include all four clauses, or any of them at all. Each position should be examined separately to determine which covenants are appropriate. To be enforceable, the restrictive covenants must be reasonably limited in time and/or geographic area. However, a

company does not need to have an employment agreement with an employee to limit the employee's ability to disclose confidential information or compete against the company. A company may require employees to sign confidentiality, nondisclosure, noncompetition and nonsolicitation agreements without having a written agreement for employment in place.

A startup company should bear in mind, however, that an employment agreement will also bind the company to certain obligations and limit its rights with respect to the employee. For example, if the company decides that it needs to close part, or all, of its business, or if it decides that reorganization is required, the company may want to end the terms of an employment agreement early. Generally, such early termination comes with a penalty. Indeed, depending on the terms of the employment agreement, such early termination may be a breach of contract. To avoid such penalty, a company may have to renegotiate an employment agreement, which may result in less-favorable terms for the company.

Similarly, if an employment agreement provides specific benefits to an employee, such as health insurance, life insurance, disability payments, membership to a health club, or retirement benefits, a company cannot unilaterally stop providing such benefits even if the company is facing financial difficulties. In such a case, the company will have to renegotiate with the employee, who may not agree to the reduced benefits.

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Lastly, while having agreement terms that clearly define grounds for terminating an employee may make it easier for the company to hold the employee accountable, such terms may also limit the company's ability to simply part ways with the employee if the relationship sours or for any other reason. The company likely could terminate the employee without penalty only if he or she engaged in conduct warranting such termination as set forth in the agreement. Any other termination would typically require the company to pay a pre-negotiated severance amount to the employee.

In considering the above recommendations, remember that these are meant as general guidance; each case will present its own unique set of circumstances. Thus, we recommend that you get some input from an employment lawyer prior to drafting and offering a written agreement to an employee.

## About the Author

**Jarad Lucan** is an associate with the law firm Shipman & Goodwin. He practices labor and employment law on behalf of both public- and private-sector clients. Additionally, Jarad advises employers and provides training on a broad range of personnel-related matters, such as disciplinary issues, termination and separation issues, reasonable accommodations, and personnel policies and practices. You can contact Jarad, who is based in Shipman & Goodwin's Hartford office, at jlucan@goodwin.com.