

THREE EMPLOYMENT AGREEMENT “BASICS”

A Company’s Perspective

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Whether you are a small, closely-held company seeking that exceptional talent to complete your executive structure or a public corporation that is accountable to executive pay restraints and shareholder scrutiny, here are some basic concepts to help guide you through a simple employment agreement, in no specific order:

ONE: Non-Compete & Restrictive Covenants Clause – An extremely important provision in an employment agreement is the non-compete and restrictive covenants clause(s). Companies often over-reach when crafting non-compete clauses which ultimately are successfully challenged on various fronts when found to be not reasonably calculated to protect the interests of the company while overly restricting the individual’s inalienable right to pursue his/her trade. Because these provisions are viewed with such great scrutiny, a company should: (i) avoid using a form clause while attempting to add as much relevant specificity as possible; and (ii) carefully tailor the restrictions to address the company’s direct and foreseeable concerns should the employment relationship cease. Finally, this should be negotiated at the inception of the employment relationship in the employment agreement or offer letter, rather than in the final moments during the separation agreement stage.

TWO: Defining “For Cause” – Employment agreements will often define when an executive may be terminated “for cause”. Although an executive will commonly attempt to limit this clause to very specific examples, it is essential for a company to be overly broad when defining this concept. Should this become a point of contention, it is advisable for a company to think carefully about how important this is to the executive and why the executive is so concerned. If numerous specific examples are ultimately listed, it would be wise for a company to consider all possible scenarios and situations for which the executive may violate this clause and add them to the agreement.

THREE: Return of Property – A company should clearly state in the employment agreement that in the event that the employment relationship ends, the employee shall return all “property” of the company. Property should be defined broadly to include all physical items as well as any customer lists or work products that have been created on the hard drive of a computer (company or personally owned) or servers by the employee while employed at the company, unless some alternative arrangement has been made.

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