

-----Original Message-----

**From:** [REDACTED]  
**Sent:** Sunday, February 14, 2010 5:30 PM  
**To:** sanfranciscolaw@gmail.com  
**Subject:** Case

I have been offered a severance package from my employer. In the severance part, it has some situations about me going back to work or if they offer my my job back. I am sure they will have me sign this, offer me my job back and then terminate me, to relieve them of the severance package totally. I'll copy the paragraph I am concerned about. I am planning on contacting an attorney next week, before signing the agreement and your web page noted some good things to discuss with my attorney, to make sure I am hiring the correct one. I was employed with this company for 26+ years.

Thank you

[REDACTED]

2. **Severance Pay.** The Company will pay Employee 16 weeks of Employee's current weekly base salary, less deductions and withholdings required by law, as severance pay. These payments will be issued in connection with the Company's normal payroll cycle and will begin with the Company's first normal payroll cycle following Employee's last date of employment and the Effective Date of this Agreement as defined in Paragraph 19 (C).

The Company's obligation to provide severance payments will end when Employee secures a new job, whether as an employee or independent contractor/consultant, or at the end of the Severance Period, whichever comes first. The Company's obligation to provide severance payments will also end in the event the Company offers to rehire Employee during the Severance Period, whether Employee accepts the offer or not. During the Severance Period, Employee agrees to notify the Company when he secures new employment (other than with the Company) or a position as an independent contractor/consultant and to provide his title, start date, and rate of pay. In the event Employee's new job pays less per week than the weekly severance payment described above, the Company will continue to provide severance payments for the duration of the Severance Period, but will reduce the severance payments by the amount Employee will earn from his new employment or contract arrangement. In the event Employee secures new employment (other than with the Company) or an independent contractor/consultant arrangement during the Severance Period but does not notify the Company of the information required, then all Employee's releases and promises set forth in this Agreement will remain in full force and effect, but the Company will be entitled to recover from Employee all severance paid.

Is this something that is normal in an agreement?

[REDACTED]

-----Original Message-----

**From:** Business Litigation Group San Francisco [mailto:sanfrancisco@att.net]  
**Sent:** Monday, February 15, 2010 12:19 AM  
**To:** [REDACTED]  
**Subject:** Case - Severance Pay Clause

[REDACTED]

Can't give you legal advice, so wait until you talk to your lawyer to get the scoop on what is what.

That said, the language you mention is common in concept in severance agreements that choose to include such language. But see below, I estimate only about 10% of employers choose to include your kind of language in severance agreements.

The logic behind giving severance is usually for the following reasons (and such governs the language that will be included): 1) As a reward for long term service; 2) In exchange for a release of all claims; or 3) To tide one over during a period of unemployment.

The clause you mention indicates the employer is giving severance to tide you over during a period of unemployment. I have seen such language before, EXCEPT for the sentence that you point out... if the former employer offers reemployment and you refuse it then the obligation to pay severance stops.

The main problem I see is that the clause does not specify **what position** has to be offered. A mischievous employer could offer you a janitor's position or a job in Alaska, a job they know you would refuse.

The clause should not be a concern if you trust the employer. You can check with ex-employees to find out if the employer has made such offers to get out of paying severance then decide if you want to sign the agreement. I suspect that no one will say that the employer played games with all this. If they had you would have heard about it.

Reward Based Severance: Of course, none of this matters if the severance was strictly a payment for services rendered and an award for your loyalty. In this regard, I can tell you about 90% of the severance agreements I have seen have NOT had your type of repayment provision. Most employers give the money and could care less what happens after that.

Release of Claims Severance: This is where the severance is given in exchange for a release of all claims and not as "tide you over pay." If an employer intends to buy its peace (meaning in the future no lawsuits from you) it will usually not complicate its intent to "buy you off" with provisions that dictate under which conditions you may have to return the money, such as finding another job or being rehired by the company.

Conclusion: From the overall tone of the clause it appears to me that this is standard language by the employer and they are not looking for ways to avoid paying the full severance. If you step back and think about it, the clause makes sense to protect the employer's interests. E.g., It would not make sense nor be fair that if the

employer takes you back that you get to keep the money intended to help you during a period of unemployment. Nor should they be required to pay "tide you over money" if you find a high paying job with severance still owing.

Again, this is just my opinion NOT legal advice.

Regards,

Michael Mortimer

P.s. Your attorney should determine if there is a basis to negotiate a better severance than what is being offered. Four months is not much for a 26+ year employee. If this was in my office the minimum I would seek is six months. And if you use the standard formula of one week for each year of employment that too would be 26 weeks.

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