

My Severance Package Has a Non-Disparagement Clause – Is that Common?

Employees who are terminated from their employment may be offered a [severance or separation package](#). Aside from the monetary component of the severance offer, there are various legal provisions that the employee is asked to agree to in order to receive the payment(s) that are being offered. One common provision found in a severance package is the non-disparagement clause.

Non-disparagement clauses generally seek to protect the company from the current or former employee stating anything negative about the company, its officers and its employees. They can be found in severance documentation and/or in employment agreements.

An example of a standard non-disparagement clause is the employee agrees not to make any statements, written or oral, or cause or encourage others to make any statements that defame, disparage or otherwise criticize the personal and/or business reputations, practices or conduct of the employer, officers, employees, affiliates, and/or the products and services of the employer.

Non-disparagement clauses can be more detailed, stating specifically, that the employee may not say anything negative or that may result in any harm to the business. Such statements cannot be verbal or be to the media, on social media, in writing, or in any future publications, among

others.

Rarely, are departing employees offered mutual non-disparagement clauses. Employers are generally concerned about providing a mutual non-disparagement clause because depending on the size of the employer it may be difficult for the company to control the remaining employees and former employees of the business.

However, like all other components of a severance package, severance is a business exchange, the employer is seeking to buy something from the employee and in exchange have the employee agree to some limitations (i.e. release of claims, confidentiality, non-disparagement). Thus, employees have rights and should have the agreement reviewed and possibly negotiated so that the employee understands what they are signing, what they are giving up and what they may be receiving and possibly receive their own non-disparagement protections.

Severance and new employment documents should be reviewed before signing them so that the employee understands the legal terms within. For more information on why a severance package should be reviewed, [click here](#).

To find out what terms generally appear in a severance package, [click here](#).

To understand whether terms in the severance agreement can be negotiated and what items can be requested, [click here](#).

If you received severance or separation documents that you would like reviewed and to determine if the offer within can be enhanced, contact Sheree Donath by [clicking here](#) or at sheree@donathlaw.com or at (516) 522-2743.

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