

Important Information to Understand the Families First Coronavirus Response Act

The United States Department of Labor released guidance regarding the Families First Coronavirus Response Act which goes into effect on April 1, 2020.

For more specific information related to this act, review the questions and answers posted at www.dol.gov/agencies/whd/pandemic/ffcra-questions.

Donath Law, LLC is available to answer any questions that employees have regarding this new act or the current state of their employment. For assistance, contact Sheree Donath at 516-522-2743 or at [sheree@donathlaw](mailto:sheree@donathlaw.com).

Does Your Employer Have a Policy Prohibiting Workplace Romance or Requiring Co-Workers in a Personal Relationship to Sign a Love Contract?



In an effort to protect against claims of sexual harassment, conflicts of interest, favoritism, retaliation and to ensure objectivity in the workplace, many employers maintain a policy that prohibit employees from engaging in a personal relationship with each. Other employers are taking a different approach and requiring employees engaged in a personal relationship to sign a “love contract.” So what do each of these mean and what is allowed at your company?

Your Employee Handbook may contain a “non-fraternization” policy. Such policy prohibits employees from engaging in a “office romance”, i.e. romantic or dating relationships, cohabitation, or marriage with a colleague. An employee’s violation of the policy may result in an employee’s transfer or termination. Alternatively, the policy may require that if a personal relationship does ensue, that the employees disclose this relationship to HR. Steps can then be taken by the Company to eliminate any real or perceived appearance of authority between the employees. The policy may allow continued employment by both employees, provided the employer ensures that there is no direct reporting relationship between the employees. If there is a direct reporting relation, the employer may reserve its right to transfer or

terminate the employment of one of the employees. Employers may also have policies that limit knowledge of the relationship between the employees in the workplace, i.e. policies that state no kissing, no hand holding, no public displays of affection.

Some employers understand that employees who spend 40+ hours together may result in employees engaging in a personal relationship and feel that having a “no-fraternization” policy is not realistic for their company. Instead these Company’s require that employees in a personal relationship sign a **“Love Contract”**. A “Love Contract” is also known as a consensual relationship agreement that both employees are required to sign.

Love Contracts require that the employees acknowledge they are in a *consensual*, romantic relationship and that this relationship will not affect their jobs at the company. The agreement will require the employees to acknowledge the Company’s Equal Employment Opportunity Policy and the Company’s Anti-Harassment Policy. The employees agree not to take actions that will affect the other’s employment either positively or negatively, including not to take actions that will result in a conflict of interest and not to seek a position that would result in a reporting relationship between them. The Company requires the employees to acknowledge that if a conflict of interest is created or determined then one of them may need to be transferred, demoted, resign or be terminated.

Love Contracts also may require, among others, that the employees acknowledge that there will be no acts of favoritism; that the employees agree to notify the Company if the relationship ends; that the Love Contract is confidential and not intended to invade the employees’ privacy, but just to affirm that the employees will follow Company policies; and that if the romantic relationship ends there will be no workplace retaliation of any kind.

Employers have these policies to help protect the *employer* from potential liability and from claims of sexual harassment and retaliation, among others. Employers are also concerned about what occurs if the employees break-off the romantic relation and one of the

two employees is unhappy with the other. The policies established are done with the intent to limit the Company's exposure, if any.

Employees involved in an "office romance" or considering dating a colleague should find out what the Company's policy is on such personal relationships.

A Love Contracts is a binding agreement. Just like an offer letter, employment agreement, non-compete agreement, severance agreement, etc. a love contract is a legal document. Any such agreement, should be reviewed and understood before you sign it.

To learn more about your rights at the workplace contact Sheree Donath at Sheree@DonathLaw.com.

Halloween in the Workplace – BEWARE!!



Halloween is a time for fun. But what does that mean when you are at work? *Halloween in the workplace can be very tricky and not much of a treat.*

If you are going to wear a **costume to work**, be mindful of the following items, among others:

- costumes should not be sexy or provocative;

- costumes should comply with workplace dress code policies;
- costumes should comply with workplace anti-harassment and anti-discrimination policies;
- costumes should not be inappropriate;
- costumes should not be religious;
- costumes should not be offensive to others;
- costumes should not be so realistic or scary that they may result in health issues to others; and
- costumes should comply with all safety requirements of your office

Keep in mind that Halloween is a **religious holiday**. As such, some employees may not want to participate in a Halloween party, costumes or events because of their religious beliefs. Employees should not be mandated to attend any Halloween parties or events or made to feel bad about their decisions. Employees should not be retaliated against for their non-attendance on Halloween or afterwards. Employees should not be harassed by colleagues or their supervisors to attend these events.

Employees should be reminded of all **company policies** prior to Halloween as Halloween events and parties could result in **legal claims** of, without limitation, sexual harassment, discrimination, retaliation, overtime, worker's compensation.

Employees who believe they have been treated in an inappropriate or illegal manner should immediately report the conduct as required by their employer. They may also want to consult with an attorney to find out more about their rights and options and to determine if they can take legal action, if they so choose. Contact [Sheree Donath](mailto:Sheree@DonathLaw.com) at (516) 522-2743 or at Sheree@DonathLaw.com to obtain more information to learn more about your [rights and obligations at work](#).

What Can I Ask for When I'm Negotiating a Severance Package?

Employees who receive a severance package should have the [document reviewed by an attorney](#) to ensure they understand what they are signing. They can also seek to have the [package improved](#). In doing so, may employees ask for some or all of the below:



- Additional severance
- Payment of severance over time or in lump sum depending on what is more beneficial for the employee
- Health benefit continuation for themselves and family
- Bonus or pro rata bonus
- Accelerated vesting of options/equity
- Return of their personal property
- Outplacement assistance or money in lieu of outplacement
- References or a departure statement
- Mutual release
- Mutual non-disparagement
- Release from, or limitations on, non-compete or non-solicit provisions
- Expense reimbursement
- Removal of any mitigation of severance offer language
- Modification of the [agreement language](#)

For more information about your rights and options and to determine how you may request some or all of the above items,

[contact Sheree Donath](#) to schedule a consultation.

(Attorney Advertising)

What Terms are Generally Found in a Severance Package?



Employees departing from a job (voluntarily or involuntarily) may receive a [severance package](#). Why? Because the Company has decided that it is in the Company's best interest to have the employee sign a document with certain specific terms that are protective to the employer. Some Company's have a severance "policy" while others believe offering employees severance makes good business sense. Regarding the latter, many Company's feel that in providing employees severance (sometimes even a minimal amount of pay), the employer is generally obtaining peace of mind that the former employer will not raise any claims in a government agency or in court against the employer.

So what terms are generally found in a severance agreement?

Below

are just a few of the many terms that can appear:

* **Consideration** – the amount the employee is to be paid in severance, the payment structure and possibly payment of employee's health insurance or COBRA;

* **General Release of Claims** – employee to release the company (as well as its directors, officers, parent, subsidiary, etc,) from any claims from the beginning of the world until the date of signature;

* **Confidentiality** – employee's agreement to keep the terms of the severance offer and the circumstances of their departure confidential;

* **Non-Disparagement** – employee's agreement not to disparage or say anything bad (verbally or on social media) about the employer (officers, directors, parent subsidiary, etc.);

* **No Re-Hire** – employee agrees not to seek employment with the employer (parent, subsidiary, etc,) at a later date;

* **Cooperation** – employee agrees to cooperate with the employer should employer need transition assistance or if the employee has information the employer needs at a later date;

* **Non-Compete / Non-Solicitation** – employer restates any continuing obligation the employee has previously agreed to by written document

or establishes new terms that the employee is being asked to agree to in

conjunction with the signing of the severance agreement;

* **Choice of Law/ Arbitration** – employer sets out what Court and what law applies to the agreement and/or the requirement that the employee

arbitrate any claims that may be raised;

* **Effective Date of Agreement** – the agreement will set forth the time period the employee has to review the agreement and whether the employee can revoke their signature;

* **Right to Consult with Counsel** – the agreement should state that the employee has a right to have the document reviewed with an attorney prior to signing the agreement. A severance package is an enforceable legal document. [Any employee who receives a severance package should have the agreement reviewed prior to signature so as to understand the terms within](#), if there is any opportunity to increase the offer and what, if any, concerns the attorney sees regarding the language in the agreement and the basis for the employee's termination / resignation.

[Click here](#) to schedule a consultation with Sheree Donath to have your severance package reviewed or learn more about your rights and options as an employee or former employee.

Fired? Downsized? Laid off? Let go? Terminated? Can I Get Severance?



Employees often want to know if there is a difference between being told they are fired, told they are being laid off, let go, downsized or terminated. In some instances there are, but in other instances, regardless of the terminology, fired is fired. Regardless of the word that is used for your departure, you will no longer be employed at your current employer and you will need to seek new employment. The questions that generally stem from there include when will my salary be paid until? When will my benefits end? Will I receive unemployment benefits? Do I have any restrictions on my employment? And will I be given a severance package on the way out?

Receipt of severance may depend on several items, including among others:

- whether the Company has a severance plan
- whether you are the only person being terminated as a one-off termination or whether you are part of a larger group of employees being let go as part of a layoff
- whether your departure is [based on your performance review](#) or in [response to a performance improvement plan](#)
- whether the Company is closing a portion of the company requiring the Company to provide written notice and payments for a set period of time (i.e. WARN notices)
- whether you have been [terminated with or without cause](#)
- whether the Company is concerned about your departure and wants you to sign an agreement releasing any claim(s) you may have raised or could raise against them
- whether the Company wants you to [sign a non-compete agreement](#)

To learn more about what

[Why](#)

[you Should have Your Severance Package Reviewed Before Signing, click here](#)

If you have been fired, downsized, laid off, let go or terminated you should speak with an attorney to find out your rights and obligations. If you have received a severance agreement or believe you should have received one, contact [Sheree Donath](#) to have your document reviewed.

Is a Non-Compete Agreement Enforceable? How Will it Impact Me if I Sign it?



YES! [Non-Compete Agreements are generally enforceable in New York.](#) It is in essence a chess game between the employer and employee and/or the employer and their competitors. Unfortunately, many employees are pawns in the “game” and are harmed because they are not educated on their rights and options.

Non-Compete provisions can be found in a stand alone Non-Compete Agreement or within various documents, including, among others: [Employment](#)

[Agreements](#), [Severance](#)

[Agreements](#),

Confidentiality Agreements, [Relocation](#)

[Agreements](#),

Workplace Invention Agreements, Bonus Agreements, Deferred Compensation

Agreements, [Retention](#)

[Agreements](#),

etc. .

A Non-Compete Agreement

is a legally binding

contract and should be reviewed

by an attorney prior to your signing the document. it may be presented at the

onset of your employment in your onboarding documents, during the tenure of

your employment or upon your voluntary or involuntary departure from employment.

Employers may use a

Non-Compete Agreement to bind employees and to protect against their employees

going to work against them for their competitors.

Employers may have an

employee sign a Non-Solicitation Agreement. This can, in fact it often is, the

same as a Non-Compete Agreement.

Some employers require

all employees to sign a Non-Compete Agreement and some

employers only have key
employees sign these documents.

Non-Compete

Agreements may

impact your ability to transition to a new job. You may be required to disclose the terms of your Non-Compete to a potential new employer (even if the job is not the same or similar) and this may prevent you from obtaining new employment.

Any employees who receive a Non-Compete Agreement should have the agreement reviewed by an attorney prior to signing to determine if there are any terms within the agreement that can be removed or negotiated.

Any employee departing from employment, voluntarily or involuntarily, should have the agreement reviewed by an attorney prior to making any transition to understand their rights and obligations and to determine if the terms of the agreement apply to potential new employment and/or if there is any room for renegotiation of the terms upon the employee's departure. A non-compete provision may effectively put the employee on the bench for a period of time and impact your ability to obtain new viable employment.

If you have received or have already signed a Non-Compete Agreement or an agreement that contains a non-solicitation or non-competition provision(s) contact [Sheree Donath](#) to have your document reviewed.

My Employer Gave Me a Retention Agreement. Should I Sign It?



A Retention Agreement is often given to valued employees to motivate them to stay with the employer during a period of

transition or turmoil at the company.

The retention agreement may offer, among others, a bonus, enhanced severance, and/or equity if the employee remains employed with the employer for a set period of time.

Employees receiving a Retention Agreement will be required to sign it and return it to their employer. Before doing so, employees should have the Retention Agreement reviewed by an attorney to ensure that they will actually receive what is being offered to them if they meet the terms.

Specifically, the employee should understand the following issues, among others, that may or may not be addressed within the Retention Agreement:

- the time period that the employee must remain with the employer
- what happens if there is a change of control
- has a change of control been defined
- who is responsible to make payment of the bonus, severance, equity, etc. that is being offered
- what happens if the employee is terminated without cause during the retention period – will the employee still receive the reward?
- what happens if the employee seeks to resign or leaves with good reason- will the employee still receive the reward?
- when will the employee receive the retention compensation and/or benefits
- is the employee's employment guaranteed during the retention period or is the employee considered at will

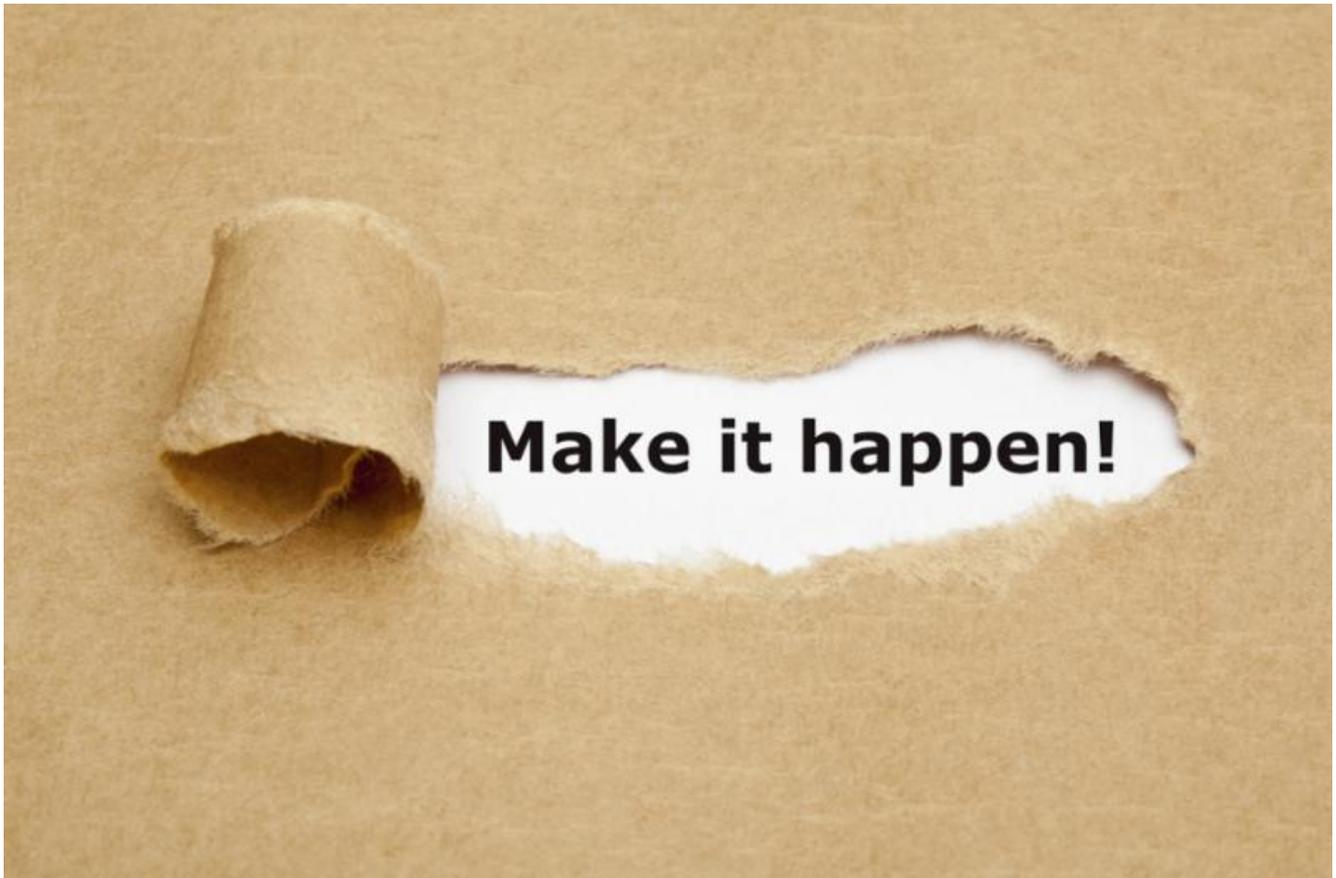
Retention Agreements generally occur when an employer is considering a sale of all or part of the business, or if there has been a mass exodus of employees departing from the company.

Employees may also consider requesting a retention bonus when there are periods of instability at their employer.

Depending on the value that they offer to the employer, employees may also be able to negotiate the terms of the Retention Agreement prior to execution.

A Retention Agreement is a legal and binding document. It should be reviewed prior to execution. For more information on these agreements or if you want to have your retention agreement reviewed, [contact Sheree Donath](#) to schedule a consultation.

My Employer Placed Me on a Performance Plan. Should I Quit or Stay and Try and Achieve the Plan's Goals?



EMPLOYEES SHOULD TAKE ACTION AND WORK THROUGH THE PERFORMANCE IMPROVEMENT/ ACTION PLAN AND MAKE IT WORK FOR THEM!

Performance Plans are used to manage out employees. They help the employer create a written record for termination. Employees should understand that they have rights even while they are still employed and do not have to accept the performance plan as is or resign from their employment.

Many

employees who receive a performance plan, wonder if they should quit. Others are pushed to resign from their employment either by their manager or HR, sometimes with the offer of minimal **severance** if they do so. Let's be clear – **you**

DO NOT WANT TO QUIT! While that is the goal of your employer, that is often not in your best interest.

Employees that quit their jobs or [resign from their employment](#) generally do not get unemployment benefits. While this may seem minimal to some people, the benefits are ones that you are entitled to and some money is better than no money. Even if you decide to accept a severance package, you should make sure that you are not resigning from your employment.

Employees that quit may also lose out on unpaid bonuses and/or unvested stock, among others. Generally if you are not employed on the payment or vesting date(s) then you lose these rewards that you have already worked hard for and earned.

Moving forward on the performance plan, while stressful, allows you to continue getting a weekly paycheck and health benefits (if you have these through your employer) for you and/or your family for at least a set period of time.

There may be changes in the company while you are on the plan and the person who previously thought you didn't offer enough value or with whom

there was a conflict, may be let go and your position may be safe. You may also be able to prove to your employer that you should not have been placed on the performance plan making it difficult for the employer to continue the plan and/or fire you.

Staying on the plan also allows you time to look for a job while you are still employed, to possibly prevent a gap in your work history.

If you are placed on a performance plan, you should have the plan evaluated and question items within. You should not simply accept the statements within the [performance review](#) or the plan as factual. You should also question the motivation and timing of your being placed on the performance plan.

If you have received a performance plan, don't just sit back or follow the guidance of your employer or HR. You should find out your rights and options. There are various ways to proceed based on what is best for you and/or your family.

[Make it Happen! Take Action Now!](#)

For more information about your options [contact Sheree Donath](#) to schedule a consultation.

EMPLOYEES CAN TAKE ACTION WHILE THEY ARE STILL EMPLOYED AND DO NOT HAVE TO WAIT UNTIL THEY ARE FIRED OR FORCED TO RESIGN!

What is the Faithless Servant Doctrine in Employment?



The Faithless Servant

Doctrine allows employers to claw back compensation paid to an

employee,
including salary, commissions and/or bonuses.

The Faithless Servant

Doctrine may apply if the employer can show that the employee, during the course of their employment, engaged in repeated acts of disloyal conduct.

Examples of disloyal conduct that have been found to be actionable are

generally acts against the employer's interest such as embezzlement, improperly

competing against the employer and/or usurping business opportunities. In order

to give rise to a claim under the Faithless Servant Doctrine, the employee's

conduct is generally such that it substantially and materially impacts the

employer's business or rises to the level of a breach of the duty of loyalty or

good faith.

If the Faithless Servant

Doctrine is found to apply, an employee may be required to **forfeit all of**

their compensation (salary, commissions and/or bonuses) received during the

time period that the employee engaged in such conduct, regardless of whether

the employer can prove damages.

To find out more about

the Faithless Servant Doctrine and how this may affect your employment and

business opportunities or to find out what your rights and obligations are to your current employer [click here](#).