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## “Tip of the Month”

### EMPLOYMENT SEPARATION AGREEMENTS

Sometimes at the end of employment, employers will offer severance pay to terminated employees in exchange for a separation agreement releasing all claims against the employer and imposing non-compete or other restrictions. While a severance package may appear a generous and welcome benefit, it is important to understand the scope and extent of its terms before signing the agreement.

**Release of Claims.** Separation agreements usually include a general release of every legal claim the employee could have against the employer. Some claims and entitlements should not be released, and others can't be released as a matter of law.

For example, an employee should not release rights under COBRA or the right to seek unemployment benefits uncontested by the employer. Similarly, an employee should not release claims relating to vested stock options or accrued pension benefits.

Claims that cannot be released as a matter of law include claims that fall under the Fair Labor Standards Act, such as overtime and minimum wage actions.

**Restrictive Covenants.** Employees should carefully review the separation agreement for restrictive covenants, such as non-competition and non-solicitation clauses. An employee will want to be sure to minimize the restrictive nature of these provisions as much as possible.

**Integration Clauses.** An integration clause provides that the only enforceable terms and conditions of the agreement are those that are found within the four corners of the contract. This means that any oral promises, under the table deals, and handshake assurances made to the employee are not enforceable and need not be honored. An employee should review the agreement to ensure that everything he or she has been promised is written in the agreement.

**Cooperation Provisions.** Separation agreements often require the employee to cooperate with the employer, for example, requiring the employee to be available by phone or in person for a period of time to assist the employer in transitioning in the employee's replacement. The agreement may also require the employee to cooperate fully with any legal proceeding or investigation involving the employer. If these provisions are burdensome and overbearing, the employee may try to negotiate with the employer to scale down the cooperation requirements.

If you need assistance reviewing or negotiating a separation agreement, please contact the attorneys at Mesmer & Deleault at 603-668-1971, or by email at [mailbox@biz-patlaw.com](mailto:mailbox@biz-patlaw.com).

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