



Executive Employment Contracts

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I. Who Should Have a Contract?

A. The Chief Staff Officer of every trade association or professional society should have a written employment contract.

B. Unless the association or professional society is extremely large, all other staff members should be employees "at will." The employment entitlements of "at will" employees should be described in the organization's employee manual.

C. The Chief Staff Officer should be authorized to hire and fire all staff employees. Giving employment contracts to employees other than the Chief Staff Officer opens the door for challenges to the Chief Staff Officer's policies and authority.

II. What Should the Employment Contract Provide?

A. The basics terms of the employment contract should include:

1. Term -- When does the contract start; when does it end; what procedures and schedules exist for renewals or extensions?

2. Salary -- What is the base salary; when will the employee be eligible for raises/bonuses; what are the factors to be considered in determining the amount of any raise and bonus?

3. Fringe Benefits -- A list of all fringe benefit entitlements including those offered to all employees plus non-standard benefits such a long-term care insurance, payment of expenses for attending specified educational programs, a leased car, etc.

4. Job Description/Statement of Responsibilities -- Explains that the Chief Staff Officer has exclusive right to hire and fire staff, describes to whom the Chief Staff Officer reports, i.e., Chairman of Board, Executive Committee, Board of

Directors. Attach a copy of the official job description to the employment contract as an exhibit incorporated as part of the contract. Make sure that the Chief Staff Officer is an ex-officio member of both the Board of Directors and Executive Committee.

5. Termination -- How can the employee terminate the contract and what are the financial ramifications? How can the employer terminate the contract either for cause or without cause? How is cause defined? How can the employer terminate in the event the employee suffers a disability that results in an inability to perform his/her responsibilities? What are the financial ramifications of the various employer termination options?
6. Severance -- What is the severance payout if the contract is not renewed; if the Chief Staff Officer is fired without cause or if the Chief Staff Officer is fired for cause?
7. Merger -- How will the employee be treated in the event of a merger with another organization?
8. Annual Evaluation -- Establish a mandatory annual evaluation requirement with a time schedule.
9. Approval -- Contract must be approved by the full Board.

B. The employment contract should not include:

1. Conflicting reporting responsibilities placing the Chief Staff Officer primarily responsible to both the Board and the Executive Committee.
2. Carve out's for existing high level staff members making them responsible to a Committee Chair or the Board rather than the Chief Staff Officer.
3. A very broad definition of what constitutes "cause" for purposes of termination, i.e., failure to properly implement Board policies. Such a broad definition makes the Chief Staff Officer an employee "at will" for all practical purposes.

III. What should the Chief Staff Officer do before signing a contract?

A. Compare the terms of the contract with the provisions of the Article of Incorporation and the Bylaws of the organization to make sure there are no inconsistencies.

B. Insist on Transparency. Good corporate governance requires that the full Board have access to the Chief Staff Officer's contract and that the full Board votes on the contract.

C. Require that the organization either hire a salary consultant or obtains copies of authoritative salary surveys disclosing salary, severance provisions and fringe benefit ranges for Chief Staff Officers for similar organizations in the metropolitan area where the employer is located. The salary, benefit and severance provisions of the Chief Staff Officer's contract should be within the reported range. Make sure that copies of those reports are presented to the Board when it votes on the Chief Staff Officer's contract.

D. The Chief Staff Officer should hire experienced counsel to assist him or her in negotiating the final contract. Non-profit organizations are characterized by revolving Boards of Directors and if the Chief Staff Officer has a three year contract, odds are that more than half of the members of the Board who review the contract when it comes up for renewal were not on the Board when it was originally negotiated. If there has been a change in the industry or profession or if there is a recession, these members may balk at the terms of the contract and the Chief Staff Officer needs to make sure that they don't have a way to wiggle out of the organization's contractual responsibilities.

IV. Conclusion

Within the parameters of the outline above, there are a multitude of nuances that the Chief Staff Officer will be faced with when negotiating his or her contract. The nature of the organization and the income level of its members and directors will usually be indicative of what salary and benefit levels an employee can expect to receive as the Chief Staff Officer of the organization. An experienced attorney can show the Chief Staff Officer ways of drafting contract proposals that maximize his or her opportunities without causing undue angst for the organization's salary negotiating committee or Board of Directors.

If you are interested in learning more about Executive Employment Contracts, contact Steve Fellman, GKG Law, P.C. at 202.342.5294 or sfellman@gkglaw.com.