

The Art of the Job Offer

Jay Sands seemed like a perfect fit for your VP of Sales opening. He had all the necessary qualifications. He impressed everyone he met. At one point during the interview process, you remarked to Jay that he was in an excellent position to take advantage of a great career opportunity. You may have even said something like, “If you’re as successful as I think you can be, you can earn over \$350 thousand within three years.”

Unfortunately, Jay didn’t work out. After eight months of watching your sales plummet, you decided to let him go.

And now Jay Sands is suing you, claiming that you promised him \$350 thousand for his business contributions. You didn’t make that promise, and there’s certainly nothing in writing, so this should be laughed out of court, right? Maybe not. While this case is fictitious, others like it are being heard throughout the country.

Job offers are tricky things. You want to present your offer positively, but you have to make sure you don’t misrepresent the terms of employment. The fact that these misrepresentations may be verbal or unintentional is irrelevant. How can you prevent such misunderstandings and the costly lawsuits that can result? First, you have to recognize and avoid major job offer pitfalls. Second, you have to learn to prepare offer letters carefully so they protect rather than harm you.

THREE DANGER AREAS

Careless job offers get companies into trouble in one of three ways:

The offer letter is regarded as a contract.

According to the Smart Workplace Practices newsletter, “Letters determined to contain a contractual agreement and letters containing no contractual agreement are for the most part indistinguishable.” (There are some good offer letter writing tips described later in this article.)

The offer letter makes unintentional promises.

In one case, an employee’s letter promised that the company would pay one-half of his relocation expenses immediately and the remainder after one year of employment. When he was terminated before his year anniversary, he sued the company, claiming the offer letter implied his employment contract was intended to last at least a year. He won the

suit.

The lesson is this: never make implicit or explicit promises that you may not keep. Statements that merely allude to job security or bonus assurances can be interpreted as contractual obligations by the courts

The offer letter contains information that conflicts with statements made during the interview.

Your words can be interpreted as implied promises, even if you never put them in writing. These seemingly harmless statements have gotten companies into trouble:

- You'll be with us as long as you can do your job.
- This is a company where you can stay and grow.
- You won't be fired without just cause.

The problem can become especially troublesome when more than one of your employees interviews a candidate. While Bob might not have mentioned quarterly bonuses, perhaps Gail did. That's why it's critical to make sure anything discussed is fully explained in your offer letter.

PREPARING AN OFFER LETTER

The following suggestions can help you prepare a clear cover letter, which may avoid costly problems in the future:

Stick to specifics.

Include information such as position offered, location and working hours, salary, benefits, and starting date. Whenever possible, refer the candidate to official reference material (e.g., employee handbooks, health plan handbooks, stock option vesting requirements).

Write exactly what you mean.

Unclear writing is open to interpretation, and that's when lawsuits arise. For example, if the employee can earn quarterly bonuses, describe all eligibility requirements. Better yet, refer him or her to the official document outlining the bonus process.

Make sure company documents agree.

Trouble can occur when the offer letter states something different from other company literature, like your employee handbook or your job description.

Indicate the offer is conditional.

Avoid phrases like "permanent position" or "direct employment." And clearly indicate those factors upon which the job offer is contingent (e.g., drug test, skills test, reference check, background investigation).

Avoid dangerous terminology.

Most troublesome is language implying job security—phrases like “stable working environment,” “company family,” or “lack of layoffs within our organization.”

Watch what you call the letter.

A Letter of Employment sounds a lot like a legal contract. Instead, call it a Letter of Understanding.

Stress employment-at-will rights.

Most states have employment-at-will laws that allow you wide latitude when you must fire an employee. To protect yourself, include a statement that reaffirms your right and the employee’s right to terminate the employment at will. Further indicate that you or the employee can terminate employment for any reason—just cause should never be a condition.

Ask someone to review the letter.

It helps to have a fresh pair of eyes read the letter and look for potential problems. Preferably, this person should not be directly involved in the hiring process.

Of course, the suggestions above should not be misconstrued as legal advice. It’s always a good idea to allow your attorney to review employment documents.

PROTECT YOURSELF

Don’t let a sloppy job offer cost you time, legal expense, or your good name. With up-front preparation, your offers can clarify conditions of employment, persuade candidates to join your company, and protect you from trouble down the road. Well-designed offers are a prudent—and much less costly—alternative.

RESOURCES FOR THIS ARTICLE:

“Avoiding Unintended Hiring Contracts.” Business Owner’s Toolkit.

http://www.toolkit.ech.com/text/p05_1655.asp

Blake, Daniel J. “Be Careful When Promising Candidates the Moon.” Workforce.

<http://www.workforce.com/archive/feature/22/24/58/index.php>

“Job Offers.” Smartbiz.com. www.smartbiz.com/sbs/arts/swp106.htm.

Monday morning. One of your operations managers walks in and announces that he's leaving for the competition. Tough loss, you think. You review your financials and decide to forgo hiring a replacement. You know you can count on your remaining two operations managers to pick up the slack. Besides, your bottom line needs the boost. Good decision, right? Before you pat yourself on the back, consider the story of Looks Good, a small, direct merchant of women’s clothing.

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