

Handling The Non-negotiable Or "Take-It-Or-Leave-It" Offer Letter

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We continue to see employers informing successful candidates that the offer letter or employment agreement is non-negotiable. We see this approach regardless of level and whether the offer letter is a weighty, multipage document complete with an attachment containing various post-employment restrictions or a one page agreement. Employers offer any number of reasons behind their "take-it-or-leave-it" stance, everything from tighter job markets, a purported need for complete uniformity among agreements, to controlling costs of hiring.

Despite the reasons employers may seek to foreclose negotiating the terms of employment, for both pragmatic and legal reasons, successful candidates should not be deterred from attempting to negotiate "take-it-or-leave-it" terms:

- **Don't Give-up the Guarantee.** Bonus eligible employees frequently forfeit their bonus with their former employer when they resign prior to it being paid with the new employer agreeing to guarantee that anticipated forfeited bonus. However, unless the new offer letter specifically provides otherwise, a lay-off by the new employer prior to payment may result in that guarantee actually not being owed.
- **Understand Your Representations.** Frequently, subsequent employers will require you represent you are not subject to any agreements that would prevent you from starting i.e., a non-compete. However, if you are in fact subject to a non-compete which has not been waived by your former employer, that representation in your new offer letter could be used as evidence against you and your new employer to prevent you from starting with your new employer.
- **Do not underestimate your bargaining power.** You are the successful candidate selected over other qualified candidates. As such, the hiring manager will need to justify to management his or her decision to withdraw your offer in favor of a perhaps less desirable, back-up candidate, merely because you raised some substantive concerns regarding your agreement. That is easier said than done. Don't be so quick to relinquish your bargaining power.
- **How you handle your employment agreement says as much about you as it does your new employer.** When your potential employer informs you that the offer letter or employment agreement is non-negotiable, you have at that moment gained significant insight into its culture. It's one more factor to consider as you decide whether the offered position is right for you. Moreover, as negotiations will likely be an integral part of any new role, your decision to readily accept all terms offered rather than press to address those which concern you might be extrapolated (correctly or incorrectly) as to your performance in your new role.

Employees should not be deterred in pressing for revisions even when confronted with non-negotiable agreements. We have represented many clients confronted with "take-it-or-leave-it" agreements and are often successful in negotiating protections to better ensure that the intended terms of employment are effective.



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