



# NEGOTIATING AND STRUCTURING EMPLOYMENT AGREEMENTS

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# INTRODUCTION

- Sensitive Issues Involved
- Types of Employment Agreements
  - Offer Letters
  - Detailed Employment Agreements
  - Which One to Use?



# Offer Letters

## ■ Content

- At-will (to be discussed later)
- Position
- Compensation
- Expiration
- Merger clause
- No oral modifications



# Detailed Employment Agreements

- Introduction

- Founder's mistake
- Contains all provisions of offer letters



# Compensation

- Salary
- Bonuses
- Benefits
- Term
- Stock and Stock Options - Covered Later
- Noncompete Agreement/Nonsolicitation Agreement (to be discussed later)



# Compensation (Continued)

- Employee Loans

- Mandatory prepayment


- Loan forgiveness

- Amount to be repaid may decrease on certain dates if still employed
  - Loan bonuses - company pays interest on loan on certain dates if still employed




# Termination

- Termination for Cause or Good Reason or Involuntary Termination
  - Definition of Cause
    - Violations of company policies or employment agreement
    - Misconduct
    - Crime
    - Dishonesty toward company
    - Misappropriation
    - Interference with company's business relationships or reputation



# Termination (Continued)

- Definition of Good Reason (AKA Constructive Termination)
  - Company's breach of employment agreement
  - Reduction of employee's compensation or benefits
  - Assignment of duties inconsistent with position or material change in reporting responsibilities
  - Relocation
- Definition of Involuntary Termination
  - Employee disabled
  - Employee dies



# How is Cause, Good Reason or Involuntary Termination Determined?

- Board of Directors Determines
- Independent Authority Determines
- How to Deal With Disagreements
- Notice Requirements

# Termination for Cause, Involuntary Termination or Voluntary Termination

- Employee Receives
  - Earned But Unpaid Salary and Bonuses
  - Expense Reimbursement
  - Payment for Accrued But Unused Vacation Time
  - Unvested Options or Stock Terminate
  - Company May have Right to Repurchase Vested Stock/Options at a Favorable Price



# Termination Without Cause or Termination For Good Reason

- Employee Receives (in addition to what he/she receives if terminated for Cause, Involuntary Termination or Voluntary Termination)
  - Salary for shorter of [1] year after termination or remainder of employment agreement term
  - Pro rata portion of bonus for year in which termination occurs
  - Benefits continue for set period of time
  - Portion of unvested stock or options accelerate
  - Employee may have right to force company to repurchase its stock or options at a favorable price



# Arbitration - Requirements For Enforceability

- CA S. Ct. - Armendariz v. Foundation Health Psychare Services, Inc.
  - Neutral arbiter
  - More than minimal discovery
  - Written award with facts and conclusions
  - Permit recovery of all types of relief available from courts
  - Do not require employee to bear unreasonable arbitration costs