

More companies are expanding the use of employment contracts beyond top execs into the hiring of mid-level managers. Juliet F. Brudney explains. F4

Negotiate, have a lawyer check out job contract

AN EMPLOYMENT contract, business as usual for companies seeking a CEO or other top executives, is becoming increasingly common for upper- and even middle-level professional posts. The expanding economy, which puts well-qualified applicants in high demand and low supply, probably accounts for the spread.

The industries involved include banking, entertainment, health care, high tech, and securities. A survey of 50 major US law firms in the fall found that all negotiate such terms of employment. (The findings are to appear in a forthcoming book by Allan A. Kennedy, to be published by Perseus in April.)

Employers generally make the first move by presenting a proposed contract to the candidate, although some especially hard-to-find candidates may present their own stipulations first. Although one or both parties may proceed

LIVING WITH WORK Juliet F. Brudney

on their own, lawyers are likely to draft an employer's documents and advise on negotiations, perhaps behind the scenes.

What issues are involved? Robert Adelson, a partner in the Boston law firm Lawson & Weitzen, serves clients who have been mostly, "but by no means only, in high tech."

"Employment contracts have been a growing part of my work since 1991," Adelson said. "I represent employers and applicants. For example, I included a signing bonus in a contract I negotiated for a high-middle-level applicant, getting him cash or stock from the employer if the job doesn't work out after a few weeks. After all, the applicant turned down other offers when he took the job."

Noncompetition agreements

are an important part of contract negotiations, Adelson adds. They enable employers to protect themselves from competitors for a specified time after the employee leaves the company — a year, for example. Provisions include not using technologies learned while employed at the firm and not soliciting the company's employees, clients, suppliers, or consultants for some period.

Employee concerns that Adelson negotiates include family issues. For example, a client with two teenage daughters in high school and a wife with a job she liked was offered a position in a distant city. "I suggested he move there for a year, the company pay airfare for home visits, and pay rent for a small apartment or hotel room in the other city," Adelson said. If the employee decides to relocate, he gets full relocation costs. If not, company and client save dollars and the wear and tear of a bad move.

According to Michael Hickey, a partner in Kirkpatrick & Lockhart in Boston, some high-level people in high tech who have a lot of leverage won't sign noncompetition and other provisions of an employment agreement. "The employer says, 'OK, don't,' or makes it more worthwhile to sign by granting other benefits," Hickey said. "Also, in California and a few other states, courts are unlikely to enforce noncompetes."

"But even if you're hiring a first-year sales and marketing research person, you'll want a confidentiality agreement," he said. "Most disputes on these contracts are resolved short of litigation. It only happens at higher levels."

Nancy Shilepsky represents job candidates, current employees, and some employers on employment contract issues. She is a partner in the Boston law firm Perkins, Smith and Cohen, which represents employers.

"A broad range of employers

ask applicants and employees at many levels to sign what are, in essence, employment contracts," Shilepsky said. "They're written by lawyers, and candidates should have them reviewed by lawyers before signing them."

"When you buy a house, you have a lawyer," she said. "Your career is certainly as valuable as your house. You need to know what your legal rights and objections are in a contract document."

Shilepsky notes that some start-up companies offer stock options in lieu of pay, but she warns employees not to give up a good job to work 24 hours a day for virtually nothing.

Ask for more cash up front "or in other situations, trade salary money for flex time, flex place," she said. "Negotiate better severance and/or relocation terms. Negotiations may be a series of conversations with an HR person. Lawyers often don't surface."

Messing & Rudavsky is the only employment law firm in Boston that only represents employees, says partner Ellen Messing. She advises candidates to, "first of all, read an employment contract carefully."

"Be sure you understand what you're being offered, its scope, the length of time it operates," Messing said. "Try to be objective about the company's legitimate interests. Frequently, companies won't change contract language or modify the text, although they don't mean it literally."

"At a minimum, try to get the company to put in writing for you that they don't mean something literally or to suggest substitute language for the text," she said.

"If the employer wants to get rid of you, they're more likely to modify the noncompete in a severance agreement you have, to get a happier ex-employee who won't sue if the noncompete doesn't restrict them too much to get a job."

Scott Moriearty, a partner in the employment law group at

Bingham, Dana & Gould, a Boston law firm representing employers, said: "Consulting a lawyer for \$200 or \$300 before signing an employment contract agreement is money well spent."

However, he warned, "many employer-employee agreements aren't worth the paper they're written on."

Juliet F. Brudney is an employment consultant and author. While all questions can not be answered, readers may write her at The Boston Globe, Boston, MA 02107-2378. Please include full name and address.

CAREER Calendar

Networking Exploration Team, 6-8 p.m. Tuesday, Woburn; The Career Place (781-932-5521, \$5, preregistration required).

Dental Assisting Training Program for Adults, 7:45 a.m.-2:30 p.m., from Monday to Friday, from Jan. 31 to June 19, Lexington; high school diploma or GED required. Minuteman Regional High School (781-861-7150, call Tuesday-Thursday, from 8 a.m. to 4 p.m., for registration and other information). All graduates of the last class found dental assistant jobs at \$12-\$16 an hour. Training is free for residents of 16 towns, Acton to Weston.

The Secret Guide to Computers, by Russ Walter, 26th edition. Top-rated computer tutorial, free one-on-one help (603-666-6644, \$16.50 plus \$1 for shipping; 196 Tiffany Lane, Manchester, N.H. 03104-4782).

Simple Interest

by Anthony Schultz



Fed up with having to constantly upgrade his company's computers, Otto tried a new business strategy.

* In 2004, Mr. Adelson became a partner at his present firm, at the following address: Robert A. Adelson, Esq., Engel & Schultz LLP, 265 Franklin Street, Suite 1801, Boston, MA 02110 (617) 951-9980, radelson@engelschultz.com