

## *The Executive's Legal Playbook:* **Protect Your Compensation and Your Career**

A practical guide for C-suite executives and senior leaders  
navigating compensation, severance, and employment transitions

### THIS GUIDE COVERS:

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- Contract clauses every executive must negotiate before signing
- Protecting equity and stock options when you leave
- Deferred compensation: your rights when terms change
- Non-compete enforceability in North Carolina
- What "for cause" really means — and why it matters
- Negotiating severance while you still have leverage
- Post-departure liability: what follows you out the door

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## CHAPTER 01

# Contract Clauses Every Executive Must Negotiate Before Signing

*The most important moment in any executive employment relationship is before you start. Once you sign, your leverage largely disappears. The clauses that seem like standard boilerplate are often the ones that will define — or limit — your options years from now.*

## Severance triggers

Many executive agreements include severance provisions that only pay out if you are terminated "without cause." The definition of "cause" is critical — a broad definition can be used to deny you severance even when you were effectively pushed out.

Negotiate for: a narrow definition of "for cause" termination, severance that vests upon any involuntary termination, and a provision that pays out if you resign following a material change to your role or compensation ("good reason" resignation).

## Equity acceleration

Most equity grants vest over time. If you are terminated before full vesting, unvested equity is typically forfeited. This can represent enormous value — particularly at growth-stage companies.

Negotiate for: single-trigger acceleration on a change of control, or at minimum double-trigger acceleration (change of control plus termination). Ensure your option exercise period is extended to at least 12 months following departure.

## Non-compete and non-solicitation scope

The non-compete you sign on day one becomes the non-compete that limits you when you leave. Many executives accept overly broad restrictions without understanding their full impact.

Negotiate for: the narrowest possible geographic and functional scope, the shortest possible duration, explicit carve-outs for existing business relationships, and a garden leave provision that compensates you during any restriction period.

## Clawback provisions

Modern executive agreements increasingly include clawback provisions — allowing the company to demand return of previously paid compensation in certain circumstances. These provisions vary widely in scope.

Negotiate for: clawback provisions limited only to circumstances required by law (e.g., Dodd-Frank), not triggered by subjective determinations like "reputational harm."

**Arbitration and venue**

Many agreements require you to arbitrate any disputes rather than litigate in court. Arbitration has both advantages and disadvantages for executives.

Negotiate for: a venue convenient to you, the right to discovery, and a prohibition on the company's ability to seek injunctive relief without first attempting arbitration.

## CHAPTER 02

# Protecting Your Equity and Stock Options When You Leave

*For most C-suite executives, equity is the most valuable component of total compensation — and it is also the most vulnerable when employment ends. The protections you negotiate upfront, and the decisions you make at departure, can mean the difference of millions of dollars.*

## Understand what you have

Before you can protect your equity, you need to know exactly what you hold: stock options (ISOs vs. NSOs), restricted stock units (RSUs), performance-based equity, and any other equity-linked compensation each have different vesting schedules, tax treatment, and departure rules.

Request a complete equity summary from HR at least 60 days before any anticipated departure. Do not rely on verbal representations about vesting status.

## The exercise window problem

Stock options typically expire 90 days after separation. For executives who have been at a company for years, this creates an enormous and often unexpected problem: forcing early exercise (and a potentially large tax bill) or losing valuable options entirely.

If you are negotiating a departure, always negotiate for an extended exercise window — ideally until the original expiration date of the grant, or at minimum 12 months from separation.

## Vesting acceleration in departure negotiations

If you are being separated before your equity is fully vested, acceleration of unvested equity should always be on the table as a negotiating point. Companies often resist this but will agree to partial acceleration as part of a broader severance package.

The leverage point: the company wants a release of claims. Your signature on a release is worth something. Make sure it is worth the value of unvested equity you are leaving behind.

## RSU taxation at departure

Unlike stock options, RSUs are taxed as ordinary income when they vest. If unvested RSUs accelerate at departure, you may face an immediate tax liability. Ensure your departure agreement accounts for withholding and gives you clarity on timing.

**Clawback and disgorgement risks**

Many equity award agreements contain provisions allowing the company to reclaim previously vested equity if you engage in competitive activity or are terminated for cause. Understand these provisions before you depart — and before you accept your next role.

## CHAPTER 03

# Deferred Compensation Plans: Your Rights When Terms Change

*Deferred compensation plans can represent a significant portion of an executive's accumulated wealth — but they are also uniquely vulnerable. Unlike qualified retirement plans, non-qualified deferred compensation is an unsecured obligation of your employer. Understanding your rights is essential.*

## What is non-qualified deferred compensation?

Non-qualified deferred compensation (NQDC) plans allow executives to defer receipt of compensation to a future date, typically retirement or separation. Unlike a 401(k), these plans are not subject to ERISA protections — meaning your deferred compensation is essentially a promise from your employer, backed by the company's general assets.

In a corporate bankruptcy or insolvency, deferred compensation obligations may be treated as unsecured claims. If your deferred balance is large, you should periodically assess the financial health of your employer.

## Section 409A and distribution restrictions

Internal Revenue Code Section 409A strictly governs when deferred compensation can be paid out. Distributions typically cannot be accelerated beyond what is permitted by the plan document and applicable law.

Common permissible distribution events include: separation from service, disability, death, a fixed date specified in the plan, a change in control, or an unforeseeable emergency. Negotiating for favorable distribution triggers upfront — particularly a change-in-control provision — can provide important flexibility.

## Negotiating lump sum vs. installment payouts

Many executives prefer lump sum distributions upon separation rather than installment payments that stretch over years. A lump sum provides certainty, eliminates ongoing counterparty risk, and allows you to invest and control the funds directly.

The company's preference is often installment payments — which preserve cash flow and maintain ongoing leverage over the departed executive. This is a key negotiating point in any executive separation

agreement.

**What happens in an acquisition**

A change of control can trigger complex consequences for deferred compensation plans. Depending on plan terms and the structure of the transaction, your deferred balance may be paid out, transferred to the acquiring entity, or frozen.

Review your plan document before any anticipated corporate transaction. If you have material deferred balances, you should have counsel review how they will be treated before signing any transaction documents.

## CHAPTER 04

# Non-Compete Clauses in North Carolina: When They're Enforceable

*Non-compete agreements are among the most heavily litigated provisions in executive employment law. In North Carolina, courts will enforce a non-compete only if it meets specific legal requirements — and the scope of many agreements executives sign exceeds what courts will uphold.*

## North Carolina enforceability standards

Under North Carolina law, a non-compete agreement must be: (1) in writing and signed, (2) based on valuable consideration, (3) reasonable in time, (4) reasonable in territory, and (5) designed to protect a legitimate business interest.

Courts scrutinize these provisions carefully. An agreement that is overbroad in scope or duration will not be automatically voided in North Carolina — the state allows "blue penciling," meaning a court can rewrite the provision to make it enforceable rather than striking it entirely. This makes it particularly important to negotiate narrow terms upfront.

## What is a "legitimate business interest"?

North Carolina courts recognize legitimate business interests including: protection of trade secrets or confidential information, protection of customer relationships, and protection of specialized training provided to the employee.

A non-compete that simply restricts competition without a legitimate business justification is more vulnerable to challenge. If your role did not involve access to genuine trade secrets or high-value customer relationships, this is a meaningful argument against enforcement.

## Duration and geographic scope

North Carolina courts have generally upheld non-competes of up to two years in duration, though shorter periods are more defensible. Geographic restrictions must bear a reasonable relationship to the executive's actual territory of responsibility.

A statewide restriction for an executive whose customers were all local is vulnerable. A global restriction for an executive with a limited regional role is almost certainly overbroad.

**Strategies for challenging a non-compete**

If you are subject to a non-compete, the following arguments are worth evaluating with counsel: overbreadth in time, territory, or scope; lack of legitimate business interest; inadequate consideration; material breach by the employer; or changed circumstances since the agreement was signed.

Important: if your employer attempts to enforce a non-compete through injunctive relief, time is of the essence. Courts can issue temporary restraining orders quickly. You need counsel immediately.

**Non-solicitation provisions**

Non-solicitation agreements — which prohibit contacting former customers or employees — are generally more enforceable than non-competes because they are narrower in scope. However, they can still be overbroad and are subject to the same basic reasonableness analysis.

Pay particular attention to provisions that restrict you from soliciting former colleagues. These can limit your ability to build a team at your next employer.

## CHAPTER 05

# What "For Cause" Really Means — and Why It Matters

*The definition of "for cause" in your employment agreement may be the most financially consequential language in the entire document. A termination "for cause" typically eliminates your right to severance, accelerates equity forfeiture, and can trigger clawback provisions. Yet many executives sign agreements without fully understanding what "cause" encompasses.*

## Common definitions of "for cause"

Employment agreements vary widely in how they define cause. Common elements include: conviction of a felony, willful misconduct that harms the company, material breach of the employment agreement, fraud or dishonesty, failure to perform material duties after written notice, or violation of company policy.

The most dangerous provisions are the broadest ones — those that include subjective standards like "conduct that may harm the company's reputation" or "failure to meet performance expectations." These provisions give the company wide latitude to characterize an involuntary termination as "for cause" in order to deny severance.

## The difference between "for cause" and poor performance

Many executives are surprised to learn that poor performance — even significant underperformance against targets — does not necessarily constitute "for cause" termination under a well-drafted agreement.

A properly negotiated employment agreement should distinguish between a performance-based termination (which should still trigger severance) and a true "for cause" termination based on misconduct. If your agreement does not make this distinction, you are exposed.

## "Good reason" resignation — your exit equivalent

A "good reason" resignation provision allows you to resign and receive severance as if you were terminated without cause, following certain material changes to your employment. Classic good reason triggers include: a material reduction in base salary or target bonus, a material diminution in title, duties, or responsibilities, relocation of your principal office beyond a specified distance, or a material breach of the agreement by the company.

Without a good reason provision, if a company materially changes your role to make your position untenable, your only options are to stay or resign and forfeit severance.

**What to do if you are threatened with "for cause" termination**

Do not resign. A resignation forfeits any potential claim to severance and eliminates important legal protections. If you are told that you are being terminated for cause or given a choice between resignation and termination, you should consult counsel before taking any action.

The company's characterization of a termination as "for cause" does not make it so. If the cause claimed does not meet the contractual definition, you may have a viable claim for the severance and benefits you were denied.

## CHAPTER 06

# Negotiating Severance While You Still Have Leverage

*Most executives wait until they are handed a severance agreement to think about severance. By then, their leverage has been significantly diminished. The most effective severance strategy begins long before separation — ideally at the time of hire.*

## Negotiate severance terms at the beginning

The best time to negotiate severance is when you are being hired. The company wants you; you have maximum leverage; and the conversation can be framed as standard contract negotiation rather than adversarial dispute.

At a minimum, negotiate for: a defined severance period tied to tenure (e.g., one month per year of service with a floor of 12 months), continuation of benefits during the severance period, outplacement services, and a favorable reference.

## The severance agreement is negotiable

Many executives assume that the severance agreement they receive is final. It is not. Companies present initial offers that favor their interests. The executive's signature on a release of claims is valuable — and that value should be reflected in the severance terms.

Before signing any severance agreement, have counsel review it. Do not sign anything within the first 48 hours of receiving it, regardless of pressure from the company.

## What a complete severance package looks like

Beyond base salary continuation, a complete severance negotiation addresses: target bonus for the current year (pro-rated or in full), equity vesting acceleration, COBRA premium reimbursement, extended exercise periods for stock options, a neutral reference agreement, outplacement services, continuation of perquisites, and a mutual non-disparagement provision.

Companies frequently offer salary continuation and nothing else. Everything else on this list is a negotiating point — and experienced counsel can often recover significant additional value.

## The release of claims

Every severance agreement will include a release of claims — an agreement not to sue the company for anything related to your employment. You should understand exactly what you are releasing before you sign.

Under the Older Workers Benefit Protection Act (OWBPA), executives over 40 must be given at least 21 days to consider a separation agreement and 7 days to revoke after signing. Do not waive this period.

**When to threaten litigation — and when not to**

In some situations, the credible threat of litigation — for wrongful termination, discrimination, or breach of contract — can meaningfully improve your severance outcome. In others, it hardens the company's position and reduces the likelihood of a negotiated resolution.

An experienced employment attorney can assess whether your situation involves legitimate legal claims that create negotiating leverage, and how to deploy that leverage most effectively.

## CHAPTER 07

# Post-Departure Liability: What Follows You Out the Door

*For most executives, departure is not a clean break. Obligations, restrictions, and potential liabilities follow you into your next role. Understanding what you remain subject to — and what you can push back on — is essential to protecting your future.*

## Non-compete and non-solicitation obligations

Review your employment agreement and any equity plan documents before starting a job search. Many executives are surprised to find that their non-compete restrictions are broader than they remembered — or that their equity award agreements contain restrictions not reflected in their employment agreement.

If you are considering a role that may implicate your non-compete, consult counsel before accepting the offer. Your new employer may have indemnification obligations, but you bear the personal risk of an injunction.

## Confidentiality obligations

Confidentiality provisions typically survive employment indefinitely. You remain prohibited from disclosing or using your former employer's confidential information — including customer lists, financial data, strategic plans, and trade secrets.

Be particularly careful about the information you bring with you or retain after departure. Courts take confidentiality violations seriously, and companies routinely conduct forensic reviews of departing executives' devices and accounts.

## D&O; coverage — are you still protected?

Directors and officers liability insurance (D&O;) typically provides coverage for acts taken during your tenure, even after you have departed. However, coverage can be complicated by the company's subsequent actions, changes to the insurance policy, or claims asserted after the policy period.

If you are aware of any potential claims arising from decisions made during your tenure, understand the extent of your D&O; coverage before departing. If the company allows D&O; coverage to lapse, your exposure may increase significantly.

**Cooperation obligations**

Many executive employment agreements require you to cooperate with the company in litigation or regulatory matters following your departure. This can be a significant burden — requiring your time and potentially limiting what you can say publicly.

Negotiate for: reasonable notice, compensation for your time, and limitations on the duration and scope of any cooperation obligation.

**Representations and warranties that survive**

Some employment agreements include representations — about your qualifications, prior employment, absence of competing obligations — that survive your departure and can form the basis of claims if they prove inaccurate.

Review any representations you made at the time of hire before departing. If circumstances have changed, you may want to address this proactively in your departure agreement.

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**A NOTE ABOUT THIS GUIDE**

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## About This Guide

This guide was prepared by FineCounsel to provide C-suite executives and senior leaders with a practical overview of the legal issues most commonly encountered in executive employment. It is intended as an educational resource, not as legal advice.

Every executive's situation is different. The strength of your contractual rights, the enforceability of restrictions you are subject to, and the leverage available in any negotiation depend heavily on the specific facts of your situation, your jurisdiction, and the language of your agreements.

If you have questions about your specific situation — or if you are facing a departure, a new offer, or a dispute — we encourage you to contact FineCounsel for a confidential consultation. There is no obligation, and the sooner you have counsel, the more options you typically have.

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