

December 2008 - Article Published in Lifestyles Magazine

## **Severance Agreements-The Importance of Review and Evaluation**

**By: Joette S. Doran, Esq.**

As the economy continues to struggle many companies are being forced to reduce their workforce through employee layoffs. In a layoff a departing employee is typically offered a severance agreement which is a legal contract. While there is no legal requirement for an employer to provide severance, employers do so in order to avoid potential claims by the departing employee by securing a release of all potential claims. In the agreement, the departing employee agrees not to sue the employer for various employment-related actions and in exchange the employer provides extra compensation to the departing employee which is typically money and/or benefits. If properly prepared, the release contained within the severance agreement is enforceable to prevent legal action against the employer. As such, before signing the agreement, the departing employee should carefully consider the agreement with legal counsel. In particular, the agreement should be analyzed under state and federal laws. Depending on the situation, the evaluation will include an analysis of the facts and circumstances surrounding the separation to determine whether there is any violation of state and federal statutes such as Title VII, Age Discrimination in Employment Act, Americans With Disabilities Act or Family Medical Leave Act in connection with the termination. Also, actions under state law for retaliatory discharge, contract or quasi-contractual rights should be considered. The analysis should also include a review of all final pay issues such as vacation, bonus and commission. Also, benefit issues such as health care and unemployment benefits should be evaluated. A significant concern for most departing employees regards whether the agreement contains a non-compete, non-solicitation or confidentiality provision as a term of the agreement. These provisions should be carefully considered as they may significantly impact future employment. For additional employment information, please visit our web site at [www.joettedoran.com](http://www.joettedoran.com).

*This article is not intended as legal advice. You should consult with an attorney for individual advice regarding your own situation.*

MS. DORAN IS LICENSED IN ILLINOIS, ALL ILLINOIS FEDERAL COURTS AND IS A MEMBER OF THE FEDERAL TRIAL BAR. SHE IS THE PAST CHAIRPERSON OF THE EMPLOYMENT LAW COMMITTEE FOR THE NORTHWEST SUBURBAN BAR ASSOCIATION, A PAST PRESIDENT OF BARRINGTON AREA PROFESSIONAL WOMEN AND A MEMBER OF THE NATIONAL EMPLOYMENT LAWYERS ASSOCIATION.