

Association CEO Employment Contracts: Key Negotiating Tips, Strategies, Pitfalls, and Best Practices

Jeffrey S. Tenenbaum, Esq.

Chair of the Nonprofit Organizations Practice

Lewis Baach Kaufmann Middlemiss PLLC

Washington, DC

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Association CEO Employment Contracts

Four Key Elements

- **Term** (including renewal provisions, typical term is 2-5 years)
- **Termination** (including severance pay, definition of “cause,” etc.)
- **Compensation and Benefits** (including annual pay increases and bonuses, who does CEO report to, who conducts CEO’s annual performance evaluation, and who sets CEO’s salary and bonuses?, structuring benefits to be non-taxable or tax-deferred to CEO, more expansive benefits than for other staff (e.g., deferred comp, added life insurance, car allowance, certain first-class travel, social or health club dues, companion travel expenses), comparability analysis to ensure fair market value, etc.)
- **Authority and Responsibility** (CEO should have sole and exclusive authority for the hiring, firing, supervision, promotion, and compensation of all other association staff, subject to budgetary parameters set by the Board)



Term of the Agreement

- **Initial Term** – *The association and executive should consider the ways the term can end prior to its expiration*
- **Renewal Term** – *All agreements should specify what happens at the end of the initial term*
- *Possible scenarios at the end of the initial term:*
 - *Expiration*
 - *Automatic Renewal*
 - *Notice: Both parties usually want such a provision included*



Termination of the Agreement

- **Notice by the executive, no cause or reason** – *Associations should include the hiring cycle and lead time required to find a new executive*
- **Notice by the association, no cause or reason** – *Establishing cause sufficient for terminating an agreement can be difficult and potentially lead to more issues; coupled with severance pay; the notice period can effectively function as additional severance pay*
- **Termination for cause** – *How “cause” is defined is important for both the association and the executive; strike the appropriate balance; new best practices in “cause” definitions (i.e., regarding issues that “occur or come to light” during the executive’s tenure that bring the executive “into public contempt or ridicule”)*
- **Severance pay** – *Factors to consider are length of service by the executive, lead time to find new employment, and impact of paying two executives at the same time; severance pay usually paid out over time; employee benefits during severance period*



What happens when the agreement terminates?

- **Four Contingencies**

- *Finding the right balance between the needs of the parties is critical*

- 1.) Expiration of the term** (and renewal terms, if any)

- *Executives will want to ensure severance pay if term expires*

- 2.) Executive gives notice**

- *Typically no compensation is due beyond the time that the executive is working for the association*

- 3.) Association gives notice** (termination not for cause)

- *Severance pay (usually in exchange for a release of all claims)*

- 4.) Termination for cause**

- *No severance pay or benefits*



Compensation

- **Salary** – Typically specified with provisions for future upward adjustments
 - Associations should be cautious about specifying guaranteed or minimum increases, but executives generally push for them; specify no decrease in annual salary
 - Critical to spell out the process for the annual performance evaluation, and who will conduct the evaluation (generally preferable to have the executive committee serve such function)
- **Bonus** – Should be tied to the attainment of mutually agreed-upon and yet-to-be specified goals
 - The agreement should specify that other factors may be considered
 - The agreement should spell out the process for setting the goals and determining the bonus amount, and who will serve such function (e.g., executive committee)
- **Long-term incentive plan**
- **Employee benefits (e.g., medical and dental insurance, life insurance, fringe benefits, car allowance)** – taxable or not? Certain benefits are subject to specific disclosure on the IRS Form 990 (e.g., first-class or charter travel, social or health club dues, companion travel, housing allowance, personal services, tax indemnification and gross-up payments)
- **Retirement plans**
- **Deferred compensation** – Be aware of Internal Revenue Code Section 409A
- **Total compensation (must be “reasonable” compared to similarly situated organizations)**
 - *Cannot exceed fair market value*
 - *Potential IRS penalties – Risk can be mitigated by using the “rebuttable presumption of reasonableness”*
- **Compensation from affiliated organizations**



Other Typical Contract Terms

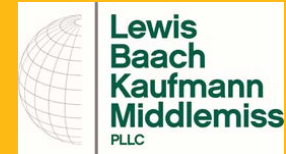
- **Conflicts of interest**
- **Ability to serve on nonprofit and/or corporate boards; outside employment**
- **Professional development**
- **Travel and other business expenses**
- **Non-competition**
- **Non-solicitation of employees, sponsors, exhibitors, donors, etc.**
- **Paid Time Off (more than other staff; ability to rollover; payout upon departure?)**
- **Sabbatical after certain number of years of service**
- **Relocation allowance**
- **Legal fee reimbursement for negotiation of employment agreement**
- **Indemnification**
- **Dispute resolution (e.g., arbitration, mediation (e.g., mandatory non-binding mediation for certain types of claims), loser pays legal fees)**



Questions

Jeffrey S. Tenenbaum, Esq.
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Lewis Baach Kaufmann Middlemiss PLLC
1101 New York Avenue, NW, Suite 1000
Washington, DC 20005



Jeff.Tenenbaum@lbkmlaw.com

Telephone: 202-659-6749

