

Congratulations On Your New Role: Here's How to Protect Yourself Legally

If you have recently obtained a new position in the C-Suite, you are aware that the new position brings prestige, authority, and opportunity. But you may not be aware that as an officer of a company, you have also increased your personal legal risk of liability. Regardless of the role you are stepping into, your legal exposure changes dramatically the moment you are elevated to join a senior leadership team. Before signing on the dotted line or assuming new duties, pause. It is essential to review your legal exposure, understand your obligations, and fully negotiate the protections, contract terms, and other compliance requirements to safeguard your interests.

Know what you are signing before you sign it. Even if the promotion feels like a formality, your executive agreement is not just a welcome letter; it is a binding legal document with real financial and long-term legal consequences. Packages from the internal HR team often create a false sense of security. Don't assume the company's standard terms are in your best interest. Whether you are joining a new company or were promoted from within yours, an offer letter and contract package must be reviewed, and more importantly, negotiated independently, by counsel representing your specific interests. You should pay particular attention to the following aspects of your offer:

- **Compensation:** How is compensation structured and awarded? Is bonus discretionary or formula-based? Is there a waiting period? How are stock options or deferred compensation handled in general and if you are terminated without cause?
- **Severance:** Is there a guaranteed severance package outlined? Or will you face the prospect of negotiating severance as you exit? Your contract's severance clause should include duration of salary continuation, treatment of bonuses and equity, health insurance coverage, and any restrictions on competition or solicitation (i.e. "garden leave").
- **Indemnification:** Will the company cover your legal expenses if you are named in a lawsuit or regulatory investigation?
- **D&O Insurance:** Will you be covered by directors and officers insurance for any liability resulting from the performance of your role and at what level?
- **Termination:** Are you protected in the event of sudden leadership change or the sale of the company? Under what circumstances can you

resign without losing your benefits (such as stock grants, bonuses, or participation in other benefit plans)?

- **Equity and Vesting:** What happens to your unvested equity if you're terminated without cause, or leave for "good reason"? The details of vesting schedules, acceleration, and clawback rights can significantly impact your financial upside. Accelerated vesting, particularly based on metrics that are within your new role, may be attractive to you and your company.
- **Scope of Duties:** Are you being assigned responsibilities or signatory authority that might expose you to liability? Do you want to build in protections to maintain or elevate the position that you are moving into? Who are you responsible for supervising directly and indirectly (dotted line)?
- **Reporting:** Your new contract should clearly spell out who your new role reports to. Sometimes the C-suite reports directly to the company's board of directors; sometimes to the CEO or COO.

Understand your reporting obligations. Senior executives are often subject to responsibilities under federal and state law. Some roles are required to certify regulatory filings, and in some instances, could face individual liability for compliance failures. You may also be required to report to the board if you become aware of any corporate misconduct (i.e. "blow the whistle"). And if you fail to report such misconduct, you can open yourself up to personal liability.

The extent of these concerns will vary depending on the size of the company and the specifics of your role. Engaging experienced counsel to review and negotiate these aspects of your new job will ensure that you can focus on continuing to successfully contribute to the business!.