



# CMAA Severance Checklist

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## **Introduction:**

The following information is designed to be a reference document for your severance package negotiations. It includes general information regarding statistics and figures and other considerations when constructing your severance package.

## **Background/Fact & Figures:**

CMAA studies show that many of today's general managers/COOs/CEOs have an employment contract. One of the benefits to having a formal employment agreement or contract is to clearly define the terms of employment and, as important, the terms of separation.

- 74 percent of CMAA members that have the title of CEO/COO have an employment contract and more than 60 percent of those are multi-year contracts.
- The average length of a multi-year contract is three years.
- 44 percent of CMAA members with the title of general manager have an employment contract.
- 27 percent of CMAA members with the title of manager have an employment contract.
- 35 percent of CMAA members with the title of clubhouse manager have an employment contract.

Ideally, a severance package is addressed during your pre-employment contract negotiations; however, often times managers find themselves having to negotiate these terms after being informed they are to be terminated. This guide will help you identify the items to include when constructing your severance package. It is strongly recommended that you include language in an employment agreement on the terms of separation prior to taking employment or accepting a promotion, but if you are unable to do that, consider proposing such language during an annual performance review. In the cases where there is not an employment contract and employment is abruptly ended, this document can serve as a checklist of items to consider when coming to terms with your employer.

When starting this process, we encourage you to consult with legal counsel. Having an attorney review the terms of your agreement is the first step in ensuring that you are being treated fairly and that both your expectations and the club's are understood from the outset.

Prepare for your negotiations by researching what is available and what should be considered as equitable and fair.

**Severance Package Components:**

1. **Termination of Employment:** An employment agreement or contract should clearly document the various manners in which employment can be terminated and specifically who within the organization has the authority to do so. See sample language attached.
2. **Severance Payments:**
  - a. How long will payments be offered? These can range from one month to one year. Averages suggest three to six months are common place.
  - b. How are payments calculated? Are payments based on years of service, title, salary level, employee agreement/contract or some combination of all of the above?
  - c. Does the employer have a severance pay policy? If so, the terms of severance will likely be governed by that policy. However, most severance agreements are subject to negotiation.
  - d. Will the severance payment be made in one lump sum or will payments be made over a period of time (e.g., according to the employer's payroll)? There may be different tax consequences based on the way the payments are made and you should discuss these with your tax advisor.
  - e. Are there any additional amounts that the employer may owe to you? By way of example, does the employer owe you all or part of a bonus? Is there a bonus plan in place? If so, what does it provide? Some states require the payment of bonuses as earned income; other states do not have such requirements.
3. **Medical Insurance:**
  - a. COBRA (Consolidated Omnibus Budget Reconciliation Act) allows you to continue your current coverage, including qualified physician, hospital, dental, vision and other medical expenses, at group rate with a small administrative fee. Recent legislation has reduced the employee's share of COBRA expenses under certain circumstances.
  - b. Some employers will continue to provide health insurance coverage under the same terms (i.e., at the same cost to the employee) during the severance period. This is often a negotiable item.
4. **Life Insurance:**

Employer provided coverage for this also typically ends the day you are separated from your position or soon thereafter. Life insurance extension is not provided under COBRA. Your employer may be willing to pay this for some or all of your term of severance.
5. **Disability Insurance:**

If your club does not offer a continuance or if you are not covered in the first place, you may be covered under a state disability insurance plan or some other form of benefit through your state unemployment office.

**6. Retirement Plans:**

Does the club's plan permit your severance pay to be treated as wages for purposes of making 401(k) contributions and receiving any club sponsored matches? Are you eligible for a discretionary contribution if you are still receiving severance at the point in time when that is typically calculated? Be sure to finalize your arrangement with the human resources department or plan administrator. The employer is required by law to contact you within 30-90 days explaining your options for your 401(k) plan or other retirement account.

**7. Education/Training Reimbursement:**

This could be for an educational event that was booked prior to a separation or was in the process of being booked. Depending on the time of year, this could also be for CMAA national membership dues and/or CMAA local chapter dues. Inquire about their willingness to continue payment for these or any educational opportunities in the near future.

**8. Accumulated Vacation Pay:**

Many states require accrued vacation pay to be paid out at the time of separation. Consult with an attorney should you have any questions as to the specific laws governing your situation.

**9. Accumulated Sick Pay:**

Most employers do not pay out unpaid sick leave at the point of separation. This can be dependent, however, on the terms of the employer's policy and can also be affected by state law. Consult with an attorney should you have any questions as to the specific laws governing your situation.

**10. Place of Residence:**

Clubs will sometimes provide managers with either a place within the club grounds in which to reside or provide to the manager a low or no interest loan for the purposes of purchasing a place of residence. The employment contractor agreement language should include the length of time following separation within which the employee would have to vacate the premises or pay back any unforgiving portion of a loan (Take into consideration, given the current economic environment, that it may take considerably longer than in the past to sell a residence in order to pay back a loan).

**11. Club Vehicle:**

Managers should consider including language specific to their use of a club vehicle following separation from employment.

**12. Outplacement Services:**

Many clubs are willing to provide senior managers with outplacement services at the point of separation in order to facilitate the transition to a new opportunity. Make sure to consider the CMAA coaching program when considering how to use this benefit.

**13. Securing a Reference Letter:**

Depending on the cause for separation, it may be appropriate to ask for a positive letter of reference as part of the separation terms. It does not cost the club anything financially but it could be very important for you in securing a future position.

**14. Use of Office Space, Work E-mail Address, Cell Phone or Club Voicemail:**

If the club has an office or area for you to work in for a period of time to assist in your job search this can always be helpful. Additionally, having access to e-mail, cell phones and office voicemail will give you a stronger position from which to seek new employment. Employees who are completely cut off from their previous employer find it harder to search for a new position than those who can look for a job while still having a job, or the illusion of one.

**15. Unemployment Compensation:**

Depending on the reason for the termination, many employers will agree not to oppose the filing of a claim for unemployment benefits. This will provide the separating employee with a limited income stream and potentially can be helpful during the transition period. Separating employees may wish to ask for the employer's agreement not to oppose the claim for unemployment benefits.

**16. Federal Legal Rights (Older Workers Benefit Protection Act):**

If the employer is asking you to sign a waiver of potential age discrimination claims under the federal Age Discrimination in Employment Act (ADEA), the separation agreement/waiver must meet certain specific legal standards, including:

- The waiver must be part of an agreement written in a manner calculated to be understood by you;
- The waiver must refer specifically to rights or claims arising under the ADEA;
- The waiver must not include claims arising after the date the waiver is signed;
- The waiver must provide the individual with severance pay or benefits to which the individual is not otherwise entitled (i.e., sufficient consideration to support the agreement);
- The employer must advise you in writing to consult with legal before signing the waiver;
- You must be given 21 days to consider signing the waiver; and
- You must be given seven (7) days to revoke the waiver after signing it.

If there is a group exit incentive (e.g., if a group of employees are being terminated at the time), additional requirements are involved. Some states have additional requirements. As always, it is recommended that you seek your own legal counsel to assist you during this process.

**Sample Employment Contract Language:****TERMINATION OF AGREEMENT.**

Death or Permanent Disability: If Manager dies or is permanently disabled during the term of employment herein, Manager's employment with the Club shall

immediately upon death or the effective date of permanent disability cease and the Club shall pay to Manager or his estate the compensation and benefits that would otherwise be payable to Manager under this Agreement through the end of the month in which Manager's death, or the effective date of permanent disability, occurs, as the case may be. Manager shall be deemed "permanently disabled" if a physical or mental incapacity actually prevents him from continuing the proper performance of his duties hereunder, with or without any reasonable accommodation, for a period of 120 days (whether or not continuous) days during any 365-day period. The last day of the period shall be the effective date of such permanent disability. The Board in the good faith exercise of its judgment shall make the determination regarding whether Manager is permanently disabled hereunder.

Resignation by Manager: Manager may terminate his employment with the Club at any time, upon 120 days written notice to the Club. In the event of such resignation all compensation and benefits, except benefits provided by law (e.g., COBRA benefits), will cease to accrue on the effective date of resignation, and all compensation and benefits accrued through the effective date of resignation shall be paid to Manager as required by applicable law. The Club shall have no further obligation to pay severance of any kind.

Termination for Cause: The Club may terminate this Agreement at any time for cause should any of the following occur:

- a. Manager shall willfully engage in any material misconduct, including but not limited to unlawful harassment or discrimination, which is or could reasonably be expected to become materially injurious to or reflect adversely upon the Club; shall make libelous remarks about the Club or its Board; shall act or fail to act in a way which is reckless or grossly negligent with respect to the Club, its assets or employees; shall refuse to follow a lawful written direction of the President or his designee; or shall violate any other fiduciary duty or duty of loyalty to the Club.
- b. Manager shall report to work or engage in work for the Club while under the influence of alcohol or drugs.
- c. Manager shall be convicted of a felony or any crime involving moral turpitude by a court of final jurisdiction from which there is no appeal.
- d. Manager shall commit a material breach of his obligations set forth in this Agreement, and the breach shall not be corrected within 20 days after Manager received written notice of the alleged breach from the President.

Termination for cause shall be approved by a majority of the Board and shall be effective on the date designated by the Board. Termination as provided in D above shall become effective only after Manager shall have received written notice specifying the cause for termination and after he shall have been given 20 days from the date of said written notice to cure such cause for termination. On termination under this section, the Club shall pay Manager the compensation provided for herein and all benefits through the effective date of termination less applicable withholdings and deductions.

Termination Without Cause: By a majority vote of the Board, the Club may terminate Manager without cause at any time; provided however, that in such event the Club will pay Manager six month's severance pay at the base rate then in effect, plus full benefits for the six month period, less applicable withholdings and deductions. In addition, the Club will provide Manager with out-placement assistance from a provider of his choice.

#### **ARBITRATION.**

The parties mutually agree to submit to binding arbitration for disputes and claims between them which directly or indirectly concern this Agreement or which arise out of or relate to Manager's employment or termination of employment with the Club.

**\*\*\*\*\*Disclaimer\*\*\*\*\***

***This document is provided to members/individuals as a reference tool only and does not constitute legal opinions or advice. Managers are encouraged to have legal counsel review the terms of an agreement or contract prior to signing.***

#### **Provided by:**

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