

# Transition Strategies, LLC

*Succeed* in ways you never thought possible.

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Summer 2020 E-News Brief

## Dear Clients and Friends

We have all been profoundly affected by recent incidents in the news about racial injustice. Bias is real, and meaningful actions are long overdue to catch up with our words.

Our firm has always been a strong voice for justice, committed to taking actions that help diverse employees in their quest for inclusion in every workplace. The continued unfair treatment of black Americans and other minority racial groups is disturbing and cannot be tolerated (read our blog post on the Harvard study "[Discrimination in America](#).") We are committed to helping individuals affected by such injustice.



We at Transition Strategies, LLC stand firmly against discrimination and for equality. We believe that the color of a person's skin is not the color of their heart. In negotiations, you make progress by building bridges - by finding some common ground, and moving on from there. Let's all be committed to building strong bridges, and making the world a better place for everyone.

Robin F. Bond, Esq.

## Fast Facts:

- In a landmark June 15, 2020 decision the U.S. Supreme Court held that federal law protects workers from discrimination based upon sexual orientation and gender identity. This means that all states must now provide equal protection to LGBTQ+ employees in the workplace. The decision is *Bostock v. Clayton County, Georgia* and you can [read more about it in our blog post](#).
- Courage, humility and empathy are the [3 qualities business leaders need](#) if they hope to guide their employees through current crises like the COVID-19 pandemic and ongoing protests over racial injustice. This is according to a SHRM interview with Carly Fiorina, former CEO of Hewlett-Packard.
- Furlough is a term used if an employer has to temporarily lay you off until business conditions improve. If you are furloughed, you are not paid salary (so you are eligible to apply for unemployment compensation benefits), but you keep your current health insurance. If you are laid off, your medical benefits will most likely end unless provided via a severance agreement. Laid off employees have the right to continue benefits under their employer's medical insurance plan at their own expense through COBRA, or to see if there is a less expensive option through the Affordable Care Act's Exchange. [Click here](#) to read more information on healthcare benefits.

- Australia's Workplace Gender Equality Agency recently published a study that shows a positive [causal link between gender diversity and business success](#). After studying 11,000 organizations over 6 years, WGEA concluded that companies that appointed a female CEO increased their market value by 5% - worth nearly \$80 million to an average ASX200 company. Increasing the number of women in other key leadership positions by 10% or more increased a company's market value by 6.6% or an average \$105 million.
- [A recent IBM study](#) found that 54% of the 25,000 workers surveyed hoped to primarily work from home after COVID-19 restrictions are lifted, and 75% would like the option to do it occasionally. 40% of respondents stated they feel strongly their employers should offer opt-in remote work options. Employees can save over 200 hours a year in commuting - time that can now be spent with their families or pursuing other fun interests.
- After more than 7 years of litigation, a federal judge in the Third Circuit signed off on a \$6.2 million settlement brought by more than 600 female sales representatives against Merck. The complaint alleged that Merck systematically paid its female sales representatives less than similarly situated male sales representatives who performed the same job duties and worked under the same conditions. The female sales representatives said they were routinely assigned to lower levels than male sales representatives, resulting in lower salary ranges, and further alleged discrepancies in the compensation and evaluation processes which negatively affected their compensation and promotion opportunities. The case is *Smith, et al. v. Merck & Co., Inc.*
- Getting good at taking risk is key to success. [A German study](#) with more than 20,000 participants showed that people who were comfortable taking risks were more content with their lives. As people look back over their lives, they often find that the risks they most regret are the ones they didn't take.

## Troubleshooting Tips for Employment Contracts

What should I expect to see in a new employment offer or agreement? To help our clients do some initial troubleshooting, and maximize the value of their deals, here are 5 key provisions to look for in any new employment offer or agreement:



### 1. Term & Termination

There's a reason "Term" is the root of "Termination": these two concepts go together and have to be read as one. The term of a contract refers to how long it is in force before it expires or has to be renewed. The termination provisions tell you how either party can get out of the deal - and what the financial implications may be. For example, it does you no good to have a term provision promise you a 3-year contract if the termination provisions go on to say that, "Either party can terminate this agreement upon 30 days advance notice to the other." If the contract term provision says that it renews automatically, plan well in advance of the renewal/non-renewal notice date to start re-negotiations.

### 2. Severance

In our Winter 2020 newsletter, we discussed the concept of "employment at will." At the executive level, attorneys routinely modify the at-will rule by providing that if employers exercise the right to terminate an employee at will and without cause, then the employer will provide severance

assistance to help the executive effectively transition to new employment. When we negotiate employment contracts, we are careful to define what "cause" means. Additionally, we negotiate for "termination for good reason" rights by the executive. "Good Reason" must be defined in compliance with IRS regulations, and can include, for example, diminution of pay, benefits, authority and duties, or relocation of the principal place of work. If the good reason event occurs, then the employer has to pay the same severance amount as though it was a termination by the employer without cause. The concept of severance is further expanded in the event of a Change of Control of the company, and this enhanced type of transition provision should not be overlooked.

### 3. Incentive Compensation

Your compensation package is not just your base salary. In addition to the company benefits package, you need to explore what types of annual bonus, incentive bonus(es) and equity provisions are on the table. For example, can you negotiate for a signing bonus to make you whole for an unpaid bonus or unvested equity with your current employer? What portion of your equity will be in stock options versus restricted stock units versus performance shares? All of these incentive vehicles have pros and cons that need to be explored for your particular situation. And in privately-held companies, you always want to make sure that you try to negotiate for some protection provisions to realize the value you have helped to create in the event of a termination prior to the official liquidity event.

### 4. Repayment of Relocation Expenses or Sign-On Bonuses

The Society for Human Resources Management has reported that a typical executive relocation can cost in excess of \$100,000.00. The move for a recent college graduate could well be under \$10,000.00. Relocation package provisions can vary greatly, and you have to negotiate for what you need (house-hunting trips, trips back home, realtor fees, closing costs, packing, moving, temporary living and storage, costs to move vehicles/boats/horses, etc.). However, almost all agreements provide that if you leave voluntarily within some time frame (typically one to two years), you will have a repayment obligation to the employer. This same repayment obligation can apply to sign-on bonuses. Try to negotiate pro-rata forgiveness of these important provisions, and consider the potential implications to you of having to repay the gross sums after you have already paid taxes on them.

### 5. Restrictive Covenants

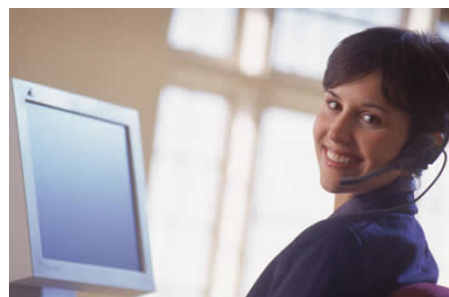
Restrictive covenants are clauses that typically limit you in terms of your ability: to work for competitors after termination of employment, to solicit former customers or employees after termination of employment, or to use confidential information of your former employer. Restrictive covenants are governed by state laws. It is critically important to review these provisions before you agree to accept an offer. We analyze these clauses based upon the reasonableness of their proposed limits on the scope of services, the geographic area, and the period of time. We then endeavor to limit them to the least restrictive terms needed relative to a legitimate business purpose of the employer's. Restrictive covenants are often found in the equity grant agreements or stock plan, and their implications are integrally related to termination and severance provisions.

Employment agreements are all different, as each deal is unique. Some contracts are relatively brief - others are quite lengthy and reference multiple ancillary documents, each of which is also important. It can be overwhelming! But in every contract, the choice of language is vital to your protection. Our attorneys have done thousands of employment contracts, on both sides of the table. Let us put our experience to work for you.

## How to "Ace" that Zoom Interview!

### 1. Spruce up your Space

Limit distractions in the background. Virtual interviews provide an intimate glimpse into your personal life. To give a good first impression, keep the area tidy and limit any interruptions from family children, pets and roommates.



## 2. Test your Tech

Test your technology several times before the interview - especially on the day of the interview - to make sure everything is working: double-check your Wi-Fi connection, camera, computer audio, and video conferencing platforms to confirm they are all working. A certain level of tech savvy is expected.

## 3. Prepare and Prepare

Just like for an in-person interview, prepare to speak about why your skills and interests are the best match for this company and this role. Why is this job so appealing to you? How does the company's mission resonate with you? What is the value you will bring to the specific role? Create relevant "success" stories on-point, based upon past work you have done (without breaching confidentiality, of course!) and be ready to share if appropriate. As you practice your responses to potential interview questions, you'll gain confidence and be more relaxed when the camera is rolling. Also prepare a few questions you may want to ask each interviewer.

## 4. Dress to Impress

Business formal, or at least business casual, attire is recommended. Put your best foot forward to demonstrate respect toward the interviewers. Also, studies have shown that you feel more confident and competent when dressed in business attire. Dark, solid colors work best - avoid busy patterns that can look "wavy" on the screen. Dress for success and look the part.

## 5. You are the Message

Good personal "fit" is a key criterion for success in any company. Interviewers want to get a sense of who you are as a person to see if you are both the right person for this job and for the company culture. Build rapport with the interviewer (research in advance to see what you may have in common) and be very aware of things like pitch and pacing of your voice, eye contact, facial expressions and smiling, as well as overall body language. Practice your interview questions in front of a mirror so you can see what you look like when speaking, and make appropriate adjustments. You are the message.

## 6. Thank You

Thank you notes matter. They show your interest and your respect. Immediately after your interview(s), send a thank you email to each interviewer to recap your interest and show how much you want the role. Personalize each note based upon what you learned about the interviewer or other relevant talking points from your conversation. Remember to focus on what you can do for the company, not what the company can do for you.



## COVID-19 and UC Claims

[In a report released on June 25, 2020](#), the Department of Labor data shows that COVID-19 continues to affect the unemployment numbers and initial unemployment compensation ("UC") claims in at least the following ways:

- About 1.48 million U.S. workers filed for new unemployment benefits during the

week ending June 20, 2020. First-time UC claims hit a record of 6.8 million in late March. Jobs rebounded somewhat in May, and the DOL says that new UC claims numbers have fallen for 12 straight weeks thereafter as employers began reopening and rehiring laid off workers.

- The DOL also reports that 19.5 million workers continue to claim unemployment benefits - down from a peak of nearly 25 million in early May.

- Another 11 million people continue to claim unemployment under the newly created Pandemic Unemployment Assistance program providing jobless benefits to workers previously not eligible for unemployment.

- Extended UC Benefits are available to workers who have exhausted regular UC benefits during periods of high unemployment. The basic Extended Benefits program provides up to 13 additional weeks of benefits when a state is experiencing high unemployment. At least through June 6, 2020, Extended UC Benefits were available in the following 44 states: Alabama, Alaska, Arkansas, California, Colorado, Connecticut, the District of Columbia, Delaware, Georgia, Hawaii, Idaho, Illinois, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, and Wisconsin.

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