

# Transition Strategies, LLC

*Succeed in ways you never thought possible.*

Fall 2020 Newsletter

## Dear Clients and Friends

As the COVID-19 pandemic continues to change so much of what we have known as "normal," we hope this newsletter reaches you doing well, surviving and thriving.

A significant amount of our work this past quarter has been supporting executives across all industries in the successful negotiation of new job offers and employment contracts in the private equity space, with publicly-traded companies and with nonprofits.

That said, the crucial need for solid strategic and tactical advice in the negotiation of severance agreements has never been more vital. Here are just a few of our recent success stories helping clients during this most difficult of times:



- Negotiated a 162% severance deal increase for a manufacturing company executive, including continued over-time vesting of all equity shares;
- Successfully helped a financial services executive negotiate a 65% severance deal increase;
- Represented a health care executive in a contentious separation matter, avoiding litigation and resulting in a high-six-figure settlement as well as a positive characterization about the circumstances of that departure;
- Resolved a racial discrimination claim by doubling the contractual separation provision, as well as obtaining full payout of six-figure annual incentive compensation benefits that otherwise would have been forfeited;
- Negotiated an 80% increase in one pharmaceutical executive's severance package, and over 50% increases in several others; and
- Successfully helped several mid-level employees terminated due to the pandemic to obtain reasonable severance packages when their employers had originally offered none.

We appreciate every opportunity to be of service. Contact us for a free consultation to see how we can help you or your friends and colleagues.

Robin F. Bond, Esq.

## Case Law Update:

- In November 2020, the U.S. Supreme Court will hear its first case ever regarding the interpretation of the Computer Fraud and Abuse Act (CFAA). In [\*Van Buren v. United States\*](#), the petitioner was authorized to access information on his employer's computers for specific reasons, but he allegedly used the information for an improper purpose. There currently is a split in the lower courts as to whether or not such an action violates federal law. The U.S. Supreme Court will decide if accessing information for another purpose beyond the original authorization violates the CFAA.
- The Pennsylvania Supreme Court has held 6-1, in [\*Harrison v. Health Networks Laboratories, et. al.\*](#) a case of first impression, that a whistleblower complaining of retaliation after she defended a co-worker who complained of discrimination may proceed directly to file her lawsuit in court without first having to file an administrative charge with the Pennsylvania

Human Relations Commission (PHRC). More importantly, 3 justices said they would have gone even further by allowing anyone with a discrimination claim under the PA Human Relations Act to go directly to court, if they could make a claim under any law that makes discrimination illegal. (Pennsylvania's Whistleblower Law applies only to organizations that receive public money.) For over 30 years, plaintiffs claiming workplace discrimination have been required to file an administrative charge with the Pennsylvania Human Relations Commission (PHRC) before being allowed to proceed to court. This usually results in a one-year waiting period - and a recent report showed that the average age of a case on the PHRC's docket was about 21 months. We will monitor any future changes that could substantially broaden this opportunity to expedite resolution of employee claims.

- In another case of first impression, [Hudnell v. Thomas Jefferson University Hospitals, Inc.](#), a federal court in Pennsylvania ruled in September 2020 that Pennsylvania's Medical Marijuana Act (MMA) provides that individuals who are lawfully using marijuana have a right to bring discrimination claims against their employers. The MMA provides that employers may not "discharge, threaten, refuse to hire or otherwise discriminate or retaliate against an employee regarding an employee's compensation, terms, conditions, location or privileges solely on the basis of such employee's status as an individual who is certified to use medical marijuana."

## How to Negotiate During a Pandemic



Throughout the pandemic, we have been bombarded by news about layoffs, salary reductions, hiring freezes and other scary topics. It can make anyone ask, "Where's my

leverage for negotiating???" Here are some tips on how to get the best outcome under less than ideal conditions, either when negotiating a new job offer or when seeking a raise:

- 1.) **Prepare.** Know your market, and your worth. Research to get meaningful data, and get good advice from counsel so you don't overlook critical elements, as well as with formulating how to best make your ask (for example: What is the biggest problem the hiring manager needs you to fix? What qualities or characteristics made the last outstanding employee the company hired so great?).
- 2.) **WIIFM.** We believe in showing the hiring manager, or your current boss, as the case may be, "what's in it for **them**" to give you what you are seeking. Create a few success stories that quantify how you have created value for your team and your company. Convey that you are a problem-solver with the right experience to help this boss look good and achieve his/her objectives.
- 3.) **Practice.** Play out likely responses to your ask, and develop possible responses to avoid impasse (for example: if salary is inflexible, then can you secure equity, more vacation, a signing bonus, etc.) Practice your ask in front of a mirror so you can gauge your non-verbal communication and finesse it to convey the right tone.

We help our clients strategize and prepare in advance for important negotiations of all types to improve their chances of a successful outcome. You often get only one change to secure your best outcome and create a positive image of the type of employee that you are. Take your best shot!

## Honors & Awards:

- For the eighth year in a row, Robin Bond has been selected for [Super Lawyers](#), a national organization recognizing the top attorneys in each state.

- Robin Bond was selected as a **2020 Top Lawyer of the Main Line** in the field of employment law.
- Robin Bond is featured on the September 2020 cover of Suburban Life magazine, as part of its feature on "[Super Women of the Main Line](#)."



## Recent Speeches:

- October 20, 2020: [Association of Professional Insurance Women](#) - "***The Power of Brave: How to Strengthen your Virtual Presence and Get What You Want in Negotiations.***"
- October 15, 2020: [Career Networking Group of Montgomery County](#) - "**The HR Angle on Recruiting and Hiring.**"
- September 24, 2020: [The Institute of Electrical and Electronics Engineers \(IEEE-USA\)](#) - "**Pitch Perfect: How to Get What You Want in Negotiations.**"



## Philadelphia's Salary History Ordinance - Legal Update

In February 2020, an injunction was lifted that had blocked part of [Philadelphia's Wage Equity Ordinance](#) that prohibited employers from asking job applicants about their past wage history. Now employers cannot:

- Ask about a job applicant's wage history;
- Require an applicant to disclose wage history;
- Rely on past salary history in determining the pay rate for the job in question - unless the applicant "knowingly and willingly" discloses that information, or
- Retaliate against a job applicant for refusing to provide past wage history information.

Employers are permitted to ask job applicants questions about their skill level, past experience, and what their salary requirements or expectations are. If there is a federal, state or local law that specifically authorizes disclosure or verification of wage history for particular employment purposes, then the question may be asked. The PA Human Relations Commission will be enforcing violations of the ordinance.

On a related note, in Maryland, effective October 1, 2020, employers must provide job applicants, upon request, with a wage range for their potential position. In that state as well, employers may not take adverse action against applicants for not providing a wage history nor can employers rely on an applicant's wage history in considering the applicant for employment or in determining the applicant's wages.

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