

How to write a legally safe job-offer letter

When it comes to making job offers, you or your hiring managers could be inadvertently locking the organization into employment contracts with new hires. It's a common mistake, and only a few misplaced words can sink you.

Employers that use written job-offer letters run the highest risk of creating implied promises.

If you want to retain the ability to fire at will, make sure any memos, letters or emails detailing a job offer don't create an employment contract. That means never promising that termination will be for cause or for any list of reasons.

Recent case: When Aubrey Burkett was hired, his offer letter included his salary and commission terms. Both Burkett and the company president signed the letter, which was captioned "Employment Contract."

When Burkett was terminated, he sued, alleging the company breached the employment contract. He lost. The court said the letter didn't specifically say the employer agreed only to terminate Burkett for cause. Without that, Burkett remained an at-will employee.

But this employer created unrealistic expectations—and a lawsuit—that could have been avoided. Why call something an employment contract if that's not what you intend? (*Burkett v. Ulrich Barn Builders*, No. 10-11-00392, Court of Appeals of Texas, 2012)

Advice: A better approach is to have your attorneys approve a standard offer letter. Make sure it includes a disclaimer that clarifies there is no employment contract and that the employee is being hired "at will," meaning your organization can terminate his or her employment at any time for any nondiscriminatory reason.

That way, there is no question about your intent and no need to get a court involved in interpreting what the letter means.

5 do's and don'ts

To avoid creating any job-security promises, here are five more do's and don'ts when offering a job:

1. **Don't imply job security** with statements such as, "You'll be able to grow here" or "You have a long career here." Specify the job's starting date, but keep out any reference to *length* of employment.
2. **Don't describe job responsibilities.** Cite the name of the new hire's boss and explain that they'll meet on the first day to discuss duties.
3. **Do clarify that continued employment depends on several things,** including following organization policies and procedures. Cite job-offer contingencies, such as signing a nondisclosure agreement or drug test.
4. **Don't cite an annual salary figure.** Courts could see that as a one-year hiring commitment. Instead, specify how much the employee will receive each pay period.
5. **Don't ask new hires to sign offer letters.** But keep a copy in your files. If you make the offer orally, keep notes of what you promised.