

CLANCY & ASSOCIATES, LTD.

Attorneys at Law

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When Your Job Ends...

Leaving your job can be a confusing and challenging time, even if it was your decision to end your employment. After your last day at work, there are many “loose ends” you must tie up to protect yourself and prepare to begin a job search. It is important to take the time to address these tasks during this difficult time. We’ve prepared these tips to help guide you along the way.

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1. **COBRA** If you were covered under your former employer’s group health plan, you are eligible for additional health insurance coverage for up to 18 months post-employment (in some cases, longer for you, your spouse, or dependents) for larger group health plans, and nine months post-employment for small group health plans. The right to coverage is required regardless of the reason your employment ended, except in *very* limited circumstances. Your former employer is legally required to extend COBRA coverage to you under Federal and Illinois laws if the group health plan under which you were covered had at least two participants. You are responsible for paying the cost of COBRA.

Your former employer is responsible for providing you with the COBRA paperwork and election forms soon after your employment ends (time frames vary according to the size of the group health plan). However, be vigilant to ensure you receive COBRA coverage if you’re entitled to it. Administrative tasks can fall through the cracks, and your health coverage rights are important. Don’t be afraid to remind human resources to send you COBRA election forms if you haven’t received your COBRA paperwork. There are very limited circumstances that prevent an employer from extending COBRA coverage, so if your employer refuses to offer COBRA coverage, you should consult an attorney.

2. **Unemployment Benefits** Unless you voluntarily left your former position, you should file for unemployment benefits immediately. Contact the Illinois Department of Employment Security (“IDES”) to find the nearest office at <http://www.ides.il.us/index.htm> or 1-888-367-4382. There is often a waiting period to receive benefits, which is why it is important to start the process as soon as you can.

Your employer may “contest” your eligibility to receive unemployment benefits. If the IDES denies your application for unemployment benefits, you have the right to request and participate in a hearing to review your case, as well as appeal the IDES’s decision. Don’t be afraid to pursue these benefits. You may wish to retain an attorney to assist you. The IDES provides references for attorneys who can assist you in the hearing and appeal process for no charge or a limited fee if your income is below certain requirements.

3. **Severance Agreements** Your former employer may ask you to sign a Severance Agreement when you were terminated from your job. Generally, the Agreement may state that your former employer will pay you a severance package, and in exchange, you agree to

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waive certain causes of action (or lawsuits) you may have against your former employer. The Severance Agreement will include what seems to be an endless list of causes of action under many laws. It is critical that you speak to an attorney to ensure that you don't have an action to pursue against your former employer. Once you sign the Agreement, you will be *forever* barred from raising any of the claims listed in the Agreement.

It is also important to remember that most Severance Agreements are negotiable – from the amount of the severance package, to several protections and details that can be included on your behalf. Resist the temptation and pressure to sign the Agreement on the spot. Review the Agreement carefully, and seek the advice of an attorney to protect your rights.

Your attorney may be able to negotiate a more favorable severance package on your behalf, depending on the circumstances of your termination, and other issues that may arise during discussions you have with your attorney. It is important to be candid and discuss all issues that you think may be relevant to your termination, so your attorney can determine the best course of action to take on your behalf.

4. **References** If possible, you should obtain several positive written references from your former employer. The references will help you in your job search. All too often, former employers promise to do “everything they can” to help the terminated employee find a new job. Then when a potential employer calls your former employer for a reference, the reference they give is neutral and doesn't speak to your personal skills or performance.

For liability reasons, if your former employer is contacted by a potential new employer of yours, it will typically only give out information regarding your position, time worked with the company, and confirmation that you worked for the company. Try to get positive written, personal references that detail your skills and projects before you exit. You can then use these written references when you are interviewing. Often the provision of written references can be negotiated by your attorney as part of your Severance Agreement.

5. **Personnel File** Throughout your employment, your employer keeps a file on you that contains many details of your history with the company. Your attorney may ask you to request your personnel file from your former employer. You will then have to submit a formal written request for this file to your former employer. The information in your file can sometimes uncover potential claims you may have against your employer, or could reveal inaccuracies or mistakes regarding your employment tenure. Under the Illinois Personnel Record Review Act, your employer must provide you with your file within seven business days of your written and signed request. You should request a copy of your file upon terminating employment.
6. **Job Search** If your former company offers job outplacement services, take advantage of them – they are free services designed to help you. Update your resumé immediately and begin to network with as many people as you can. St. Joseph the Worker Ministry in Glen Ellyn, Illinois is a free program that offers many forms of unemployment assistance, from

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resumé writing to career coaching. The Group meets on the first and third Wednesdays of each month at 7:30 p.m. at St. James the Apostle Catholic Church in Glen Ellyn, Illinois. All faiths are welcome to attend. For more information, contact stjosephministry@aol.com or visit the Group's website at www.stjosephministry.org.

7. **Commissions** If part or all of your compensation is comprised of sales commissions, pay close attention to sales you have made (and commissions earned) but for which have not yet been paid. Be sure to keep copies of your sales commission agreement or any employment agreements you may have signed. Hopefully, you have kept careful records of the sales you made and commissions due to you. If you believe you will have trouble receiving your commissions, you should gather the documentation showing your commissions and contact an attorney.

8. **Vacation/Sick Time** Upon termination of your employment, be sure to review the amount of vacation or sick days you have earned but did not take. In many cases, your employer must pay you for these days. The Illinois Department of Labor establishes time periods in which your former employer must pay you for these days. For more information on how you can recover payment, contact your attorney or visit the Illinois Department of Labor website at www.state.il.us/agency/idol/subpages/law115.htm.

9. **401(k)/Profit Sharing/Pension Plans** If you participated in your former company's employee benefit plans, you should devote some time to understanding what will happen to your account upon termination. Ask human resources for summary plan descriptions ("SPDs") for the plans in which you participated. If your account balance is below certain levels, your employer may force you to take a distribution of your funds. If you take a distribution in cash, the funds are subject to early withdrawal taxes and penalties. You can avoid taxes and penalties by rolling over your balance to an Individual Retirement Account ("IRA"). You may also choose to roll over your account balance even if your account balance is above the "forced cash out" level set by your employer's plan. Be sure to discuss these options with your tax or financial advisor before making your decision.

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We hope these "Termination Tips" have been helpful to you. Please note that these tips are for general reference only. Your personal employment matter is unique, and you may benefit from additional legal counseling. If you have questions that are not answered here, or for a complete and individual assessment of all legal issues regarding your employment matter, you should contact your attorney.

Clancy & Associates, Ltd., Attorneys at Law, is a law firm that concentrates its practice in employment, business and contract law. For more information on how one of our attorneys can assist you with your employment matters, please write to info@clancyassociates.com, call (773) 929-9000, or visit our website at www.clancyassociates.com.