

WHITEPAPER

Is An Executive Employment Contract Really Necessary
by Mark Alcorn

Is An Executive Employment Contract Really Necessary

by Mark Alcorn

WHITE
PAPER

A long time friend and client recently asked me whether a contract between a nonprofit executive and the nonprofit was really necessary. My friend correctly noted the contract would be difficult if not impossible for the nonprofit to enforce with an employee who is determined to leave. I have known other nonprofit leaders who seem to believe an employment contract is of little or no benefit to the nonprofit, and exists only to benefit the executive. The following are some of my thoughts on this subject.

An Employment Contract is Strongly Recommended

I strongly recommend a written employment contract between nonprofits and their executive. The contract benefits both the executive and the nonprofit in many ways. Although my client is most often the nonprofit itself and not the executive, the existence of a well-crafted contract is so beneficial that the disadvantages are far outweighed by the advantages.

An executive employment contract should, among other things, clarify the role and authority of the executive, describe in detail how the relationship may be terminated and each party's obligations at the time of termination. This eliminates unnecessary battles over the power and authority of the executive, as well as costly and disruptive disputes that frequently occur when the employer-employee relationship ends. A well-written contract will almost always completely prevent these problems.

Executive Employment is NOT the Same As Regular Staff Employment

One of the reasons a nonprofit executive is likely to want a written employment agreement is the executive is, by necessity, not entitled to some of the job security protections afforded an ordinary employee. That is, the board of directors must be able to let an executive go for any reason it deems necessary in the best interests of the corporation. If it does not like the direction of leadership, it needs to be able to -- and arguably has a duty to -- change that direction as soon as it can practicably do so. The same is not true with an ordinary employee. In theory, the lower level the employee, the greater need for the employer to have documented business reason or "cause" for terminating the employee.

Employment Contracts Serve the Nonprofit In Many Important Ways

The reason an executive would want a written contract, as noted above, is exactly the same reason the nonprofit should want one. Specifically, the contract should set forth the terms under which the nonprofit may terminate the executive with dramatically reduced risks of lawsuits. Further, the contract should spell out exactly how the termination decision should be made, thereby lessening the risk that the executive is terminated in a hasty or unlawful manner. In effect, the contract protects the nonprofit from substantial risks.

As we all know, nonprofit executives generally work in constantly changing environments. Members of the board of directors (hereinafter, "directors") constantly turn over, so the board itself is constantly changing. These changes can result in an unstable situation for both the nonprofit and the executive, as the change of even one or two directors can dramatically change the relationship between the board and the executive. An employment contract adds stability and continuity to this situation by setting forth terms under which the executive is overseen, evaluated and terminated. Abrupt changes in relationship between an executive and his or her board are far more likely to result in serious disputes or litigation. Thus, the employment agreement is again an asset to the organization in that it lessens the likelihood that the organization will be seriously disrupted by misunderstandings, disputes or even litigation between the organization and the executive.

Is An Executive Employment Contract Really Necessary

by Mark Alcorn

WHITE
PAPER

Concerning my friend's point that the contract is probably not enforceable against the employee, I agree only in part. Indeed, no court would attempt to force an employee to work for an employer and many circumstances of an executive's violation of a contract may not lend themselves to enforcement (the cost of enforcement in terms of time and money can be very high). Still, most executives will abide in the agreement unless the situation is a very ugly or negative one. Meanwhile, the contract continues to protect the employer in many other ways and serves as the basis for recovery if legal enforcement of the contract against the executive is deemed necessary.

Conclusion

Long story short, I strongly recommend a written contract exist between a nonprofit and its executive. True, an employment contract benefits the executive, but the advantages and security a nonprofit receives from the contract more than justifies its existence.

About the Author

Mark Alcorn founded Alcorn Associates Law Offices in 1997 and is also a principal in Alcorn Associates Management Consulting. Mark is an experienced attorney and management consultant specializing in the non-profit association community. As part of the law practice, he counsels numerous associations and for-profit firms on business, tax, antitrust, management and related matters. As part of the management consulting practice he conducts visioning and strategic planning.

You can find out more about Mark here:

<http://associationlawblog.com> • <http://facebook.com/Mark.D.Alcorn> • <http://linkedin.com/in/markalcorn> • <http://alcornlaw.com>