

When negotiating executive compensation, do you need your own counsel?

You just received the call you've been waiting for – you got the job! You just left the meeting you've been dreading – your employment is being terminated.

In either case, it is possible that your new (or soon-to-be former) employer will say that the employer's in-house or outside counsel is perfectly capable of handling your employment or severance documents and negotiations. Or your new employer may simply say nothing. Or you may be afraid that the other side will “walk” if it learns you have retained counsel.

Should you enter the negotiations naked, without a lawyer to help? Probably not. Employer's counsel has the employer's interests at heart. You probably want to arm yourself with the skills and perspective of someone who has your own best interests at heart – and is not afraid to “redline” and return the employer's drafted documents, as often as necessary.

Even if you are a very successful executive who negotiates multimillion-dollar deals for a living, these deals are probably not employment or severance agreements – with all of the specific legal, business and personal nuance such agreements entail.

Plus, you may not be feeling emotionally neutral about your deal – which is often essential to good negotiation. You are either very pleased (you got the job!) and may want to make the deal happen to such a degree that your ability to negotiate hard is compromised. Or you are extremely displeased and possibly worried about cash flow, family needs and professional reputation in a way that clouds your decision-making abilities.

It is often helpful to retain counsel at the very start of negotiations, although your lawyer will frequently serve as “shadow counsel” at the outset – reviewing the employer's documents and proposals and advising you on negotiation elements and strategies. Most of the time, you will be better off negotiating the bullet point business terms of your employment deal.

Often, the time to bring your attorney to the table is later in the process, when discussion of essential but negotiable legal terms like “cause” and “good reason” is taking place. Sometimes, your lawyer will act as a scapegoat for negotiating trial balloons, “taking the heat” to preserve your relationship with your would-be (or former) employer.

When negotiating executive compensation, you should strongly consider retaining your own counsel at the beginning.