

# Boom Times for Employment Attorney

February 9, 2009

Detroit Auto Scene

VOL. 77 NO. 4

By Christine Snyder  
Staff Reporter

Lay-off trends have created a growing, and unexpected niche in a Royal Oak employment law firm.

Andrey Tomkiw of Tomkiw Dalton said the bread and butter of his firm is representing employers – including helping them write severance documents when they need to reduce the workforce.

Now that lay-offs are snaking their way up the corporate ladder to include high level executives, Tomkiw said an increasing amount of work is coming from the other side of employment law: Clients who want his firm to look over their termination packages.

“Who better to advise them than the people who write them?” said Tomkiw.

This isn’t the first time he has seen a surge in severance package review requests.

“Five, six years ago, when the first big crunch came, we were reviewing a lot of packages for middle management. Now... the types of severance packages we are seeing is impacting the higher level CEO, CFO... executives.”

These executives want to know what they are signing and have the resources and where-withal to hire a lawyer to advise them, said Tomkiw.

Tomkiw charges a flat fee of \$500 to review the documents.

“That would be telling them really what the document is, what the reality of the situation is from the perspective of the employer, which I think is the greater insight, said Tomkiw of the service provided.

If Tomkiw believes the client has the basis of a lawsuit, such as for age discrimination, Tomkiw refers them to an appropriate attorney.

Typically, executives are most interested in a soft landing, said Tomkiw.

“They are looking for a smooth transition. They understand the business position so it’s handled more like a transaction than emotionally,” he said.

While most items in a severance package are non-negotiable, for example, the amount of pay, there are some red flags to look out for, said Tomkiw.

Non-compete, non-solicitation and confidentiality clauses can be troublesome, said Tomkiw.

“If you don’t already have one from (hire date) they will try to include that and they will try to include that in broad terms so it’s not apparent,” he said.

Signing a broadly worded non-compete or related clauses



can seriously limit later employment opportunities, said Tomkiw.

“If you are letting an employee go and you don’t already have a non-compete, that employee should seriously consider signing that non-compete.”

Also worrisome are non-disparagement and cooperation clauses, said Tomkiw.

“For executives, there’s a standard cooperation clause assaying that if I, the employer, get sued, you agree to cooperate in court depositions.”

The problem is the time and money spent to fulfill that obligation, said Tomkiw.

“Those are the little things you need to look at,” he said.