Assuming your employment is “at will,” can you negotiate for contractual protections?

Maryland is an “at will” employment jurisdiction. This means that, absent an express contract, your employer can terminate your employment or change the terms of your employment whenever they want, for whatever reason they want, other than a few reasons that are illegal (i.e. unlawful discrimination and retaliation). Employees can try to negotiate for additional protection in their employment contract. For example, you can seek a provision requiring notice pay or severance pay if terminated or a provision barring termination absent “just cause.”

Have you properly excluded your individual inventions prior to accepting your job offer?

Your employer may have you sign an agreement clarifying that any invention you develop while working for it becomes their property and/or that you are required to assign your rights to it. This agreement is limited to inventions that are “within the subject matter” of the employment relationship and does not apply to inventions you create before joining the employer. Usually, there is a place in the agreement to identify any such prior inventions and you should make sure you identify any such inventions and avoid using them or incorporating them into the work you do for the employer.

Does your job offer require that you sign a forced arbitration agreement?

Many employers require that employees sign arbitration agreements that waive the employee’s right to pursue claims in court or to pursue claims collectively or through class actions. In Maryland, such agreements are generally permitted. However, an employer cannot require an employee who has a claim for sexual harassment or for retaliation for reporting sexual harassment to go to arbitration. Md. Code Ann., Lab. & Empl. § 3-175. Under the same law, employers also cannot retaliate against employees who refuse to enter into arbitration agreements that waive their rights or remedies for sexual harassment claims. Some employers’ agreements have opt-out provisions that allow you to choose not to participate in the arbitration process. It is generally a good idea to do so if given the option.

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