Does your job offer require that you sign a non-compete agreement?

While Pennsylvania does not have state statutes that govern non-compete agreements, contracts that restrain trade have been generally disfavored as being opposed to public policy, with notable exceptions relating to sale of a business or a contract of employment. As such, a non-compete agreement that is tied to an employment contract may be enforceable in Pennsylvania. However, even within this exception, Pennsylvania courts may require non-compete agreements to meet reasonableness standards (e.g., reasonableness in geographic scope and reasonableness in duration of time). Additionally, unless additional consideration is provided, or another exception holds, a non-compete agreement that is entered into after an employee has begun employment may also not be enforceable.

Does your salary match the salary of your co-workers?

As summarized in an Abstract of the Equal Pay Law drafted by Pennsylvania's Department of Labor & Industry, Pennsylvania's Equal Pay Law prohibits discrimination by any employer in any place of employment between employees on the basis of sex, by paying wages to any employee at a rate less than the rate paid to employees of the opposite sex for work under equal conditions on jobs which require equal skills. The Equal Pay Law also provides that variation in payment of wages is not prohibited when based on a seniority, training or merit increase system that does not discriminate on the basis of sex.

Additionally, the National Labor Relations Act prohibits the rights of any employee covered by the Act to discuss wages in face-to-face conversations and written messages. While employers may have policies against the use of company equipment when using some types of electronic communications, like social media, it is still the case that policies that specifically prohibit the discussion of wages are themselves unlawful.

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

It is not common to negotiate for additional contractual protections, but this is a question that should especially be reviewed for potential employees seeking executive level positions as well as positions that require an employee with specialized skills. For these situations, it is recommended to seek advice of an attorney. And further to these general factors, employees may also be able to negotiate for various job benefits, such as training opportunities. Even when it is not possible to negotiate for benefits that are governed by company-wide policies, such as perhaps retirement benefits or health benefits, it is often beneficial to compare and consider these benefits when assessing multiple job offers.

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

As an initial matter, inventor(s) are presumed to be owners of any patent rights that stem from their invention unless those patent rights have otherwise been properly assigned. See 37 CFR 1.41 Inventorship; See Manual of Patent Examination Procedure 2109 Inventorship.

With that said, it is not unusual for employers to ask employees to sign an agreement requiring employees to assign inventions created during the course or their employment to the employer. It is often beneficial for employees who have their own inventions to identify any and all inventions and other intellectual property (IP) to which they intend to retain ownership rights. It is highly encouraged to consult with a lawyer when employees are looking to negotiate a contract that involves the assignment of individual inventions.

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

On March 3, 2022, President Biden signed into law the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021, prohibiting employers from enforcing predispute arbitration agreements and class action waivers that concern sexual harassment and sexual assault claims. As a result of this act, employers are not allowed to require claims of sexual harassment or sexual assault be brought in arbitration. Those types of claims may be brought in court, either individually or as collective or class claims, regardless of the existence of an arbitration agreement.

Authors: Stephan Duceprin (Fall 2023 MIT Pay Equity Student Researcher), Yining Duan (Spring 2024 MIT Pay Equity Student Researcher) and Kristin Smith, JD, MBA (MIT Equal Pay Working Group)