



## **Summary**

A Separation and Release Agreement is a contract between the Company and a departing employee. A Separation and Release Agreement minimizes the threat of litigation against the Company and protects the Company's goodwill.

## **Instructions to the Company**

1. Negotiate and sign a Separation and Release Agreement with **all** Vice Presidents and C-Level Officers that separate from the Company (i.e., terminate their employment agreement for any reason).
2. Negotiate and sign a Separation and Release Agreement with **any** employees that you feel are high risk for (i) threatening litigation against the Company, or (ii) disparaging the Company on social media.

## **Consideration**

A Separation and Release Agreement must include consideration in order for the Agreement to be legally binding and enforceable. Consideration can be a promise, performance, forbearance, or property with legal value. Generally, consideration in a Separation and Release Agreement is cash (e.g., \$10,000 or four weeks of base salary).

## **Consideration – Termination Without Cause**

The Company's standard employment agreements usually allow the Company or the employee to terminate the employment agreement without cause upon delivery of 90 days' notice. I recommend that the Company (i) offer to pay the employee cash as consideration for signing a Separation and Release Agreement; (ii) offer to pay the employee 90 days of salary and waive the 90 day notice requirement as consideration for signing a Separation and Release Agreement; (iii) offer to waive the 90 day notice requirement as consideration for signing a Separation and Release Agreement; or (iv) offer to waive other obligations as consideration for signing a Separation and Release Agreement.

## **Surviving Obligations**

The Company's standard employment agreements should have surviving obligations against the employee, including non-solicitation, confidentiality, and non-disparagement.

If the employee did not sign a standard employment, then a Separation and Release Agreement can include the same surviving obligations against the employee.