



June 19, 2020

Have You Thought About ... Whether You Can Rescind Job Offers?

In the face of the coronavirus pandemic, many companies closed or significantly reduced operations. As they are slowly ramping back up, their staffing needs may be drastically reduced in the short-term and perhaps beyond. What can an employer do with respect to outstanding job offers for positions that may no longer be needed?

The first option is to defer the start date (subject to the terms of any employment agreement with the individual). If the employer reasonably believes that it will be able to employ the candidate in the relatively near future, it should advise the candidate in writing of the anticipated deferred start date, understanding that, in the interim, the individual may find alternate employment without some additional incentive to wait out the deferral period.

Rescinding the offer is a less desirable—but sometimes necessary—option. If there is an employment agreement (verbal or written) containing a specified employment term or severance provision, for instance, that agreement will govern the terms under which the company may revoke the job offer and the consequences of the revocation (e.g., whether the company must provide severance or other compensation).

Where the employment relationship is at-will, the company technically may rescind the job offer, but this is not entirely without risk. For instance, if the candidate relocated or resigned from another employer to take the position, s/he may be able to assert a claim for promissory estoppel; in other words, in reliance upon the offer of employment, the individual reasonably acted to his or her detriment, and was damaged as a result of the company's revocation of the offer. Candidates also may have legal recourse if the employer misrepresented information in the recruiting process upon which the candidate reasonably relied. From a discrimination standpoint, if the employer has multiple offers outstanding and plans to revoke only some of them, it should conduct an adverse impact analysis and ensure that it has legitimate business reasons for differentiating among the candidates.

Particularly in circumstances where the candidate can show actual harm as a result of the revocation, such as relocation expenses that would not otherwise have been incurred, the employer may want to offer the candidate some compensation and/or other consideration (such as outplacement services) in exchange for a release of claims. Employers also should consider how to handle any signing or relocation bonuses already paid to candidates; allowing candidates to retain them, even if they ultimately do not commence employment, may constitute consideration for a release.

In extending new offers of employment going forward, given the possibility of a resurgence of COVID-19 in the near future, employers also would be wise to include “caveats” in their offer letters to candidates whose potential employment is reasonably likely to be impacted thereby. Specifically, the offer letter could specify that employment is dependent on the company's business needs as of the anticipated start date, and that in the event of a resurgence of COVID-19, the start date may be deferred or the offer rescinded. Where employment is for a specified term or

provides for severance subject to an employment agreement, employers may want to address pandemic issues; for instance, including business shutdowns due to pandemics as “cause” for termination. In any case, to limit potential damages, candidates should be discouraged from resigning from existing positions too far in advance of the anticipated start date.

Finally, in assessing whether to rescind offers or pursue another course of action, in addition to potential liability concerns, employers should consider potential reputational damage and the impact such conduct may have on future recruiting efforts.

[Click here](#) to read more Brownstein alerts on the legal issues the coronavirus threat raises for businesses.

Christine A. Samsel

Shareholder

303.223.1133

csamsel@bhfs.com

This document is intended to provide you with general information regarding updates related to coronavirus. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact the attorneys listed or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.