G | P
Grand Park Law Group
A Professional Corporation

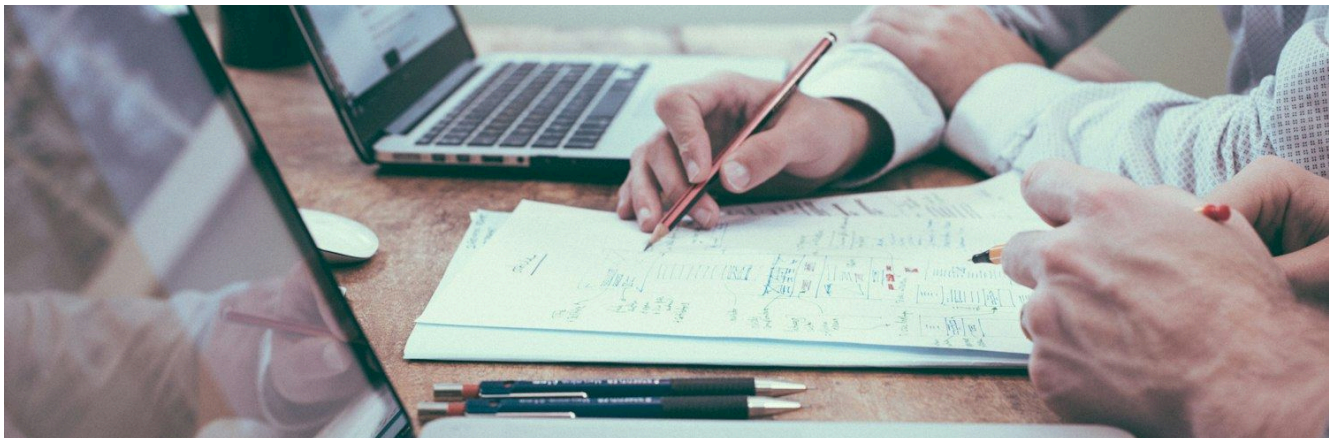
Westside Towers
11835 W. Olympic Boulevard #870E
Los Angeles, California 90064

O:+1 888.629.4754
F: +1 310.900.0805

PRACTICE GUIDE · EMPLOYMENT LAW

Executive Separation & Out-of-State Forum Clauses

Grand Park Law Group · 2026



A.

Negotiating Severance and Equity

Executive separations turn on documents most employees never see during their tenure: the offer letter, the equity grant agreement (with its vesting and forfeiture terms), the bonus plan, the change-in-control provisions, and any prior severance agreement or employment contract. The negotiable points typically include:

- **Cash severance.** Often pegged to a multiple of base salary plus prorated target bonus; defensible packages for senior executives without a contractual floor often start at six months and scale with tenure.
- **COBRA premium reimbursement** for the post-employment health coverage period, usually 12–18 months.
- **Equity acceleration.** For double-trigger awards, acceleration on a qualifying termination can be the largest economic component. Even where the plan does not provide it, accelerated vesting is a frequent negotiation point at the senior level.
- **Tax structuring.** Section 280G "parachute" issues for change-in-control terminations; section 409A compliance to avoid early-inclusion penalties; allocation between wages (W-2) and tort damages (1099) for emotional-distress components.
- **Mutual non-disparagement** and references — both important to future earning capacity.
- **Carve-outs** preserving rights under indemnification agreements, D&O policies, vested equity, and ERISA-governed plans.

B. **Lab. Code § 925 (Forum-Selection Void)**

California-resident employees are protected from out-of-state forum-selection and choice-of-law clauses by Cal. Lab. Code § 925. The statute, effective January 1, 2017, voids any provision in an employment contract entered into, modified, or extended after that date that requires an employee who primarily resides and works in California to (1) adjudicate a claim arising in California in another state or (2) be deprived of California substantive law. The employee may void the provision at her option; if she does, attorney's fees are available.

Section 925(e) carves out employees represented by counsel in negotiating the agreement — a narrow exception that requires actual representation, not merely access to counsel. Employers frequently attempt to deploy out-of-state choice-of-law and forum clauses to evade section 16600 (non-competes) or FEHA's broader protections; *Ryze Claim Solutions LLC v. Superior Court* (2019) 33 Cal.App.5th 1066 illustrates that section 925 is robustly enforced.

C. **Releases and Civ. Code § 1542**

A general release in a severance agreement does not, by default, waive unknown claims. California Civil Code § 1542 provides that a general release "does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

To waive section 1542, the agreement must contain a specific, conspicuous waiver of its protections, and even then certain rights cannot be released. Statutory unwaivable rights include unpaid wages owed (Lab. Code § 206.5), claims under the Equal Pay Act (Lab. Code § 1197.5), and indemnification rights under Lab. Code § 2802. The Older Workers Benefit Protection Act adds federal layered requirements for releases of ADEA claims, including 21-day consideration and 7-day revocation periods.

The negotiation point for departing employees: employers frequently propose section 1542 waivers as boilerplate. Carving out specific known potential claims (e.g., a pending CRD complaint, a known PAGA claim, or accrued but unvested equity) before signing preserves leverage.

Practice	Employment Law
Topics	Section 925
Publication	Practice guide · Chapter V · 2026

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