

**SAMPLE INSERT TO ENGAGEMENT LETTER TO EMPLOYEE WHERE LAW FIRM JOINTLY REPRESENTS EMPLOYER AND EMPLOYEE—AGREEMENT TO ENGAGEMENT, CONSENT TO JOINT REPRESENTATION, AND CONFLICTS WAIVER**

[Insert Date]

**[Name of Employee Client]**

**[Address]**

**Re: [Style of Case or Description of Matter/Representation] Engagement, Joint Representation, and Conflicts Waiver**

Dear \_\_\_\_\_:

This is to confirm that **[Law Firm]** has agreed to represent you in this matter at the request of and as an accommodation to your employer **[Name of employer]** (the "Company"). **[Law Firm]** will jointly represent the Company and you in **[describe matter]** ("the matter"). Applicable ethics rules allow joint representation of multiple clients -- which is ordinarily a conflict of interest -- if the lawyer will be able to provide competent and diligent representation to each affected client and each client gives informed written consent, confirmed in writing, after explanation by the lawyer of the implications of the common representation and the advantages and risks involved.

In determining whether you should consent to our joint representation of you and the Company, however, you should carefully consider the following issues:

The first issue is that of the attorney-client privilege. It is our opinion that any information disclosed by you and the Company to us in connection with the joint representation will not be protected by the attorney-client privilege in a subsequent legal proceeding brought by one of you against the other. Moreover, we believe we cannot effectively represent you and the Company if information disclosed to us by one of you must be preserved in confidence from the other. Accordingly, in the course of this representation, we will disclose to both you and the Company information we receive from either of you relating to the matter. **[While an employer may wish Law Firm to keep certain information confidential from an employee in a joint representation, Law Firm should only agree to seek an employee's consent to do so in rare instances. In addition, in such instances, the only type of information, that should be agreed to be kept confidential from the employee is information pertaining only to the employer and not the employee.]**

Second, although at this time there does not appear to be any difference of opinion between you and the Company with regard to the major legal issues involved in the matter, it may well turn out, upon further consultation, that you or the Company may have differences with

respect to your respective legal rights and obligations or with respect to the most effective strategy for dealing with the issues presented. It is our duty to explore any such difference with you and attempt to resolve it on an amicable basis. However, you understand and agree that in the event your interests and the Company's interests become adverse, **[Law Firm]** will be required to immediately terminate its representation of you, but may continue to represent the Company, not only in this matter but in any other related or unrelated matter, including litigation, in which the Company's interests and your interests may be adverse.

The Company has agreed to pay your legal fees and expenses. This fact will not interfere with the exercise of our independent professional judgment on your behalf. However, applicable ethics rules require that we obtain your consent and waiver of any associated conflict of interest with regard to the Company's payment of your legal fees and expenses.

We urge you to consult with another lawyer of your choice about our representing both the Company and you on the terms and conditions set forth above before you sign this letter. As a condition of **[Law Firm's]** representation of you in this matter, but without any coercion and as a matter of your free, fully informed and independent choice, by your signing this letter you agree to the terms of engagement, consent to **[Law Firm's]** joint representation of you and the Company, and waive any conflict of interest that could be asserted by you based on the joint representation. You further acknowledge that you have been advised that you are hereby relinquishing rights that you would otherwise have in an attorney-client relationship and that you have been urged to obtain independent counsel regarding your decision to waive these rights.

**[Insert additional terms of engagement including request for signature and return to Law Firm of signed letter]**

Thank you. We look forward to working with you.

Sincerely yours,

**[LAW FIRM]**

By: \_\_\_\_\_

**AGREEMENT TO TERMS OF ENGAGEMENT, CONSENT TO JOINT REPRESENTATION, AND CONFLICTS WAIVER**

I, **[EMPLOYEE]**, agree to the terms of engagement in the above described matter, consent to **[Law Firm's]** joint representation of me and **[EMPLOYER]**, and waive any associated conflict of interest on the terms and conditions set forth in this letter.

By: \_\_\_\_\_

Date: \_\_\_\_\_