

Michael Cromwell and Vox Gaming

General Information for Both Parties

Michael Cromwell is a 36-year-old father living in the West Coast state of California. Recently, using his background in computer science, he developed an educational game via a mobile app for his 4-year-old daughter to help her develop her reading skills. Cromwell launched his app by submitting it to a large, nationally known app store. The app, called Reading Rules!, was unexpectedly successful, with over 450,000 downloads in the first month.

Reading Rules! quickly got the attention of Vox Gaming, a software and gaming tech company located in California that specializes in educational computer games, video games, and websites for children aged 12 and under. Brad Wilson, an executive at Vox, reached out to Cromwell to discuss Cromwell's work in creating and developing the app. Wilson was especially impressed with the app's user interface and simple, intuitive design for both kids and parents. After their first conversation, Wilson learned that Cromwell was essentially a stay-at-home dad who did some guest blogging on various websites and dabbled in technology and software to keep himself busy.

After several conversations, Wilson informed Cromwell that Vox was interested in offering Cromwell a position as a software and game developer. Cromwell was immediately flattered and intrigued, but said that he was pretty devoted to continuing his role as a stay-at-home dad and didn't feel like he was ready to give that up. Wilson replied that maybe that was something they could talk about and that Vox could probably make Cromwell a generous offer.

Interested to see where things might go, Cromwell discussed his options with his wife. Together, they agreed that it would be worth it for Cromwell to continue discussions with Wilson and Vox to see what kind of final offer might come from it. Over the next few weeks, Wilson and Cromwell spoke several times on the phone, discussing salary, benefits, and other terms that would make up the job offer. After several conversations, the parties agreed on a few terms: if Cromwell did accept an offer to work at Vox, he would be a contracted employee with the title of Senior Software and Game Developer (based on Cromwell's experience in the industry), and that he would receive full health benefits, a month of paid leave each year, and a 401(k) match of up to 5% of his annual salary. The parties have not reached a final agreement on certain other terms, including salary and the length of the contract term.

Even though the parties have not reached a final agreement on all of the terms of Cromwell's potential employment with Vox, Cromwell asked if Wilson could provide a draft of the employment contract, with the parties' agreed-to terms included and, of course, blanks left for the terms that the parties had not reached a final agreement on yet, which Wilson was happy to do. Once Cromwell received the contract draft from Wilson, Cromwell was surprised to see a non-compete clause included in the contract. The non-compete

clause stated that if the employee left his or her employment at Vox within the first two years of the contract, she or he was prohibited from seeking employment at “any other technology or software company” within a 300-mile radius in the state of Calivada for a period of one year.

Cromwell immediately called Wilson and asked to know why he hadn’t been informed that the contract would include a non-compete clause. Wilson said that Vox’s employment contracts always contained a non-compete clause and that Calivada law allowed them. Cromwell requested a meeting to discuss several issues between the parties, including specifically the employment terms that the parties had not agreed to yet, the contract as a whole, and especially the non-compete clause. Cromwell emphasized to Wilson that he wouldn’t sign a contract until he’d had a chance to discuss its various terms at arms-length. Wilson agreed and suggested that Cromwell send his attorneys to the negotiation, as Vox would have its in-house counsel present. Cromwell agreed to send legal counsel, and the parties arranged a time and place for the meeting.

Under relevant Calivada law allowing non-compete agreements, for the agreement to be enforceable, it must be in writing, signed by all parties, and supported by adequate consideration. A one-year restriction is presumptively reasonable, and the employee can offer a defense against the non-compete by showing an undue hardship.