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Do I Really Have to Pay the Penalty in My Contract?

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Contractual damages clauses are commonly used in contracts in many industries and many different circumstances. Asset managers and other financial services companies often use these clauses in employment contracts to help ensure the loyalty of key employees and to discourage them from leaving. Whether in financial services or another industry, each of these uses can present the same crucial question to employers and businesspeople alike: When push comes to shove, can the contractually agreed upon damages clause be enforced? The answer to that basic question turns on whether damages could reasonably be calculated and the reasonableness of the agreed-upon damages amount. In this article, SRZ litigation partner Harry S. Davis and former SRZ lawyer Christopher H. Giampapa discuss a recent decision by New York's Appellate Division that offers insight into how New York law addresses and answers those critical questions.

This article also appeared in *Bloomberg BNA Alternative Investment Law Report*.

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