

## Labour and Employment Law Bulletin

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### How Good Employment Contracts Can Benefit Employers and Employees

An overview of how useful employment contracts really are.

#### Employment Contracts

I'm always surprised at how few of my clients regularly use employment contracts. This almost inevitably comes to light when a client asks me how much notice of termination of employment they owe an employee, and I ask if there are any notice provisions set out in any employment contract. More often than not, the client sighs, and says that yes, they wish they had taken the time and effort to enter into an employment contract – but they didn't.

It is my view that one of the most important steps an employer can take to reduce the cost of disputes with employees is to get good legal advice at the point of hiring an employee. It is becoming more common for employers to recognize this, but in many cases, issues with employees (and former employees) that could easily have been avoided end up costing employers a lot of time and money. A good, clearly written contract of employment can prevent lengthy dispute, or even litigation.

The language used in employment contracts should be clear and understandable to the employee receiving the offer, even if he or she doesn't get legal advice. This is especially true about language used to describe "what happens at termination".

Employment contracts are especially critical in the following instances:

1. a prospective employee is leaving secure employment to join your business;
2. you don't anticipate that the employment will be indefinite;
3. the employee is joining as an executive and clarity is required surrounding the expectations of the employer;
4. there are complicated share option, commission, bonus or other compensation aspects in the contract;
5. the contract is being offered in the context of a purchase or sale of a business in which employees are being hired by a successor employer, or
6. a transfer of an employee from one location to another is occurring.

Clear and precise employment contracts can provide certainty as to such issues as the "start date" of the employment, or compensation issues that arise after resignation or termination of employment. In cases involving the hiring of a senior employee to oversee a particular function or to oversee a project successfully, the performance expectations of the employer can be established at the outset. Where an employee is joining an employer from a competitor or moving locations to take an opportunity of employment, special provisions regarding moving costs or non-competition expectations can all be dealt with very clearly – at the outset.

#### Company Policies

Also, many employers have individualized company policies that they may wish to inform prospective employees about. For example, if an employer has a discipline policy that contemplates suspension with or without pay, or a special policy regarding computer and internet use, they may find that policy is a lot easier to enforce if it has been emphasized or referred to in an employment contract.

If an employer is involved in a competitive industry, and is hiring an employee to perform sales or marketing work, there may be a very real interest in ensuring that the employee signs a Non-Competition or Non-Solicitation agreement at the time of hire. These agreements are designed to ensure that employees don't leave a business taking valuable clients and business opportunities with them, especially when they have been entrusted with confidential business information. Restrictions of this nature can be difficult to enforce, but a business can increase its chances considerably by good drafting at the hiring stage, and also by keeping the restriction reasonable.

I have noticed that employment contracts are particularly important for businesses expanding into Ontario from an outside jurisdiction, or in cases where a business is being purchased along with employees. In these cases, some employees might be transferred or retained following the purchase, and there are special issues that arise. Some of these include

trying to ensure consistency between employees who may work in different jurisdictions in areas of benefit entitlement, and also ensuring employees understand what their start date will be considered to be by the employer. Sometimes there is a further issue as to what law is going to govern the contract, and jurisdiction can be specified right in the offer letter.

### Enforcement of the Contract

For an employment contract to be enforceable, an employee needs to receive it and have an opportunity to consider the terms of employment before his or her start date. Therefore, it is very helpful to legal counsel to be advised that their assistance is going to be sought a few days before the employee is going to be given a written offer. Once the employment con-

tract has been counter-signed the employee can begin working.

It is also important to keep employment contracts up-to-date, and prepare letters amending the terms of employment if there is a change in important aspects of an employee's relationship with his or her employer, such as increased job duties and access to confidential information, changes in job location or promotion.

Having a really good contract that describes the relationship that you want to have with employees can take a little bit more time and money at the hiring stage, but it is well worth it. It can help both employers and employees save time and money later on.

### Pallett Valo LLP Labour and Employment Law Group

Representing your best interests in an efficient manner is what our lawyers do best. We have the legal expertise and rich experience to provide creative and pragmatic solutions for a wide variety of employment-related issues. Our approach is to provide advice that minimizes the time, costs and disruption associated with labour and employment disputes. We represent our clients before various provincial quasi-judicial tribunals, in court, and at conciliation, mediation and other proceedings.

We provide support to management in drafting employment contracts and company policies, collective bargaining, collective agreement administration and grievance arbitration. We work for a diverse range of employers in the private and public sectors, and have specialized expertise in the construction industry.

**For more information on this topic, don't miss our next HR Roundtable November 1, 2006.**

### Training Seminars

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#### Seminar topics include:

- Employment Standards
- Progressive Discipline and Performance Management
- Managing Absenteeism
- Health and Safety Obligations
- Human Rights and Accommodation
- The Law of Wrongful Dismissal
- Union Organizing and Certification
- Privacy Law and Compliance Strategies

Our seminars focus on providing employers, managers and supervisors with practical information and pro-active strategies. If you are interested, you can contact any of the lawyers in the **Labour and Employment Law Group**:

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