

THE CONTRACT OF EMPLOYMENT



Regional Management Services Inc.

What Is The Contract of Employment?



- The agreement between employer and employee governs the relationship between the two parties
- It needs to be in writing and can be implied from surrounding circumstances



Why Provide A Written Contract?

To eliminate ambiguity

Reduce incidence of disputes



What Does A Contract Cover?

- Terms and Conditions of service (minimum rights and obligations)
- Content of each contract will depend on the nature of business and the job on offer
- Protection clauses (e.g.) Payment in lieu of notice
- Confidential information
- Restrictive covenants to protect trade secrets, employee confidential information

Implied Terms

- These are terms not spelt out in a contract
(e.g.) employer will provide a safe working environment

Expressed Terms

- Terms which are explicitly agreed between the employer and employee, either in writing or orally.
- Usually written in collective agreements and company handbooks.

Expressed Terms In A Contract

- Title of positions which the employee holds
- Duties and responsibilities
- Salary or wage to be paid (Overtime Pay)
- Benefits to be provided (Person scheme, Medical)
- Start date of employment
- Hours of Work
- Termination of employment / Dismissal (date and condition)

Expressed Terms In A Contract

- Leave (Annual vacation, study leave, training leave, sick leave)
- Absence
- Promotion
- Safety and Health
- Retirement Policy
- Maternity and Paternity Leave

Expressed Terms In A Contract

- Bereavement Pay/Compassionate leave
- Code of ethics and Confidentiality Policy
- Probationary period
- Permission to work elsewhere
- Policy regarding drugs and alcohol

Implied Terms In A Contract

That the Employee Will:

- Not be terminated without just cause or reasonable notice of the termination
- Be provided with a safe and respectful work environment
- Not be subjected to discrimination in executing assigned duties
- Be provided the necessary tools to adequately perform the job
- Have the terms and conditions of employment arbitrary changed

Enforceability of Written Contracts

Written contracts can be challenged on the following grounds:

1. Failure to comply with the Labour Laws violates the constitution or accepted employment practices and procedures
2. The signing of the contract after employment has begun
3. Misunderstanding of the terms of the contract of employment
4. The employer places the employee under duress

Execution of Contract

1. Discuss and have an agreement on all terms and conditions of service
2. Avoid handshake agreements. Provide an employment letter.
3. Identify dispute resolution mechanisms and procedures
4. Ensure that all changes in contract are initiated by both the employee and the appropriate officer of the company
5. Additions to the contract as accepted by both parties should be placed in an addenda to the contract
6. Always respond in writing to any proposed changes to the contract
7. Reframe from providing life time contracts
8. It is best to have the employee sign the contract

Changing of an Employee's Contract

- Negotiation is the preferred approach
- Before changing a contract, know what was in the original
- Consequences of imposed changes
(BREACH OF CONTRACT)

Termination of Employment

- An employer can terminate the employment relationship at any time

Grounds for Termination

- Just Cause (No grounds for termination needed)
- Theft
- Failure to adequately perform duties
- Lies and deception/Falsification
- Tardiness/Chronic absenteeism
- Insubordination
- Failure to follow instructions
- Incompetence

Reasonable Notice of Termination



It is intended to bridge the period between termination and obtaining a replacement employee.

What The Courts Consider As Reasonable Notice

- The Character of the employment (*i.e.*) the level of responsibility attached to the job
- The age of the employee
- The length of the employment

Responsibility of The Employer

- To provide reasonable notice of termination of employment
- Not to provide a severance package
(Only if the employer fails to give adequate notice)
- Compensation to be paid is based on the earnings the employee would have earned if given adequate notice

ALTERNATIVE TO THE WRITTEN CONTRACT

- It may not be necessary - or desirable - to draft a formal written employment contract if the details are otherwise already covered by:
- Your written Employee Handbook
- State law (as is often the case with working hours, minimum age of employees, working conditions and some benefits requirements)

SUMMARY

- An employment contract is an agreement of the terms and conditions of employment agreed by both the employer and employee.
- The employment contract may not cover all aspects of the employment details but should outline all of the important terms and conditions.
- An employment contract spells out the conditions of employment including wages, hours, and type of work. Depending upon the level of employment, the responsibility of the new employee, and the nature of the business
- The conditions of employment should be detailed regarding the following elements:
 - Terms of employment.
 - Duties of the employee including general and specific responsibilities and performance of duties.

SUMMARY

- Compensation including monthly salary, automobile expenses, relocation and moving expenses, and a one-time bonus inducement if used. Details such as bonus or incentive plans, stock options, salary deferment plans, disability benefits, and health and retirement plans may or may not be spelt out.
- Confidentiality is required of the employee regarding the employer's operating expenses, pricing formulas, procedures, trade secrets, and proprietary information. This confidentiality extends to employee lists, customer lists, or prospective customers who become clients of the organization during the individual's term.

SUMMARY

- Provisions for termination including a violation of responsibility, an inability to perform duties, reorganization, or low company profits. Higher-level employees frequently have a clause included in the contract to state a certain amount of money, often from six to twelve months' salary, that will be paid to the employee in the event of termination by disagreement or dispute.
- Any item not covered in the original employment contract falls under common-law rights. Therefore, an employee owns the rights to all ideas, inventions, or discoveries unless he or she was specifically hired to develop those ideas or inventions. If the idea or invention is the incidental result of employment, then the rights belong to the employee unless otherwise specified in the employment contract.