



RUDNER LAW

EMPLOYMENT / HR LAW & MEDIATION

So You Just Got a Job Offer...

Employment Contracts:

What You Need to Know

You've just been offered your dream job, and your new employer has handed you a contract that must be signed if you want the job. Should you sign? What difference can it really make?

The short answer: **Signing an Employment Contract, or even an offer letter, can cost you tens of thousands of dollars (or more) and expose you to unwanted changes in your duties, compensation, and even location of work.**

Contrary to popular belief, every employee in Canada has a contract. However, most are verbal, with a number of "implied terms". Those implied terms are intended to protect employees, but written contracts can remove many of those protections. You need to understand what they mean before you sign.

Whether it is a one page letter or a lengthy legal document, your contract sets out the fundamental terms of your relationship. You may be excited about the new job prospect, but "look before you leap" is good advice in this context. Signing an employment agreement is not something to be taken lightly.



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Employers are becoming more aggressive in their use of contracts. If an organization wants you to sign an agreement, it is usually because they have something to gain.

It is critical that you understand what you are giving up before you agree, particularly if you are being lured away from your previous organization, or if you have been provided with a contract containing extensive terms and conditions. Signing without understanding will undoubtedly come back to haunt you later on.

Imagine if you were to find out, years from now, that your severance entitlement was a few weeks, rather than months or years.

Unfortunately, it is all too common for us to meet with an individual who has recently been dismissed and is baffled by the minimal severance they have been offered, and we have the unfortunate duty of advising them that this is because of the contract they agreed to when they were hired.

Signing an employment agreement should never be treated as a formality; it can dramatically impact your legal rights.

Check the Termination Clauses

By default, all employees are entitled to “reasonable notice” of dismissal. That can be extensive, especially if you are older, or were lured away from prior employment, or are in a niche industry. However, this entitlement can be displaced by a termination clause, which can dramatically reduce your entitlement at the most critical time: when you lose your job.

It is a sad reality that we routinely meet with people that have been let go and are shocked to realize what they agreed to back when they accepted the job offer.



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Watch out for clauses that try to limit your entitlement to the minimum amounts required by employment standards legislation.

In some cases, it can be the difference between 8 weeks of Termination Pay (if you signed a bad contract) or two years of severance.

Look for a Probationary Clause

This one is quite simple: if there's a probationary clause in your contract, whether it's three months or more, try to have it removed. Otherwise, you have absolutely no protection in the first few months.

If the termination clause limits your entitlement to the minimum amounts required by employment standards legislation, the result is the same: you can be dismissed without any notice or severance in the first few months.

Particularly if you are being recruited away from secure employment, you should be entitled to more security, not less.

Make sure Compensation is Clear and Not Discretionary

Sometimes, people are told their compensation package will be worth \$x, but the contract provides for a lot of variable compensation that is not guaranteed. Watch out for bonuses or other payments that are purely discretionary, because that means the company can simply decide not to pay them.

You should also make sure that the contract does not provide that you must be "actively employed" when bonuses or other compensation are paid out. Otherwise, you will not be entitled to them during any severance period, which will further reduce your severance entitlements.



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What's not There can be as Important as What Is

It is also crucial that you consider what is not in the contract, and that the contract is consistent with verbal discussions and with your expectations. You may have discussed and agreed on certain terms, but if they are not explicitly set out in the agreement, then you should not assume they will be in place.

We are often retained by individuals that were promised things like a certain bonus, or the ability to work from home a few days a week, a car allowance, or a promotion or pay raise after six months. However, sometimes they are told that these are not "standard" and can't be mentioned in the contract, although they are told not to worry - it will be honoured. Unfortunately, this is not the right time to accept "trust me".

This is particularly important because most contracts include an "entire agreement" clause which means that unless it is stated in the contract, it is not part of your agreement – any other discussions or agreements are meaningless. Even if you have a separate email message confirming a signing bonus, or that you can work from home two days each week, you will probably not be able to enforce it. What they promised you doesn't matter; what matters is what is written in the agreement.

Look out for Changing Duties and Other Terms

By default, employers cannot unilaterally impose significant changes into key terms of the contract, such as your role, duties, or compensation.

However, some contracts contain language that allows the employer to change your title, duties, reporting relationships, location of employment and other key terms at their discretion. Imagine being told that as of next week, you have effectively been demoted, or that you have been transferred from Toronto to



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Winnipeg. Unless you want to run this risk, make sure any discretion to change the terms of employment is limited and reasonable.

See an Employment Lawyer

This may sound self-serving, but it is critical that you receive legal advice from someone with expertise in Employment Law **before** you sign a contract that may dramatically limit your rights. An employment lawyer will be able to point out any potential pitfalls that you may not be able to see. A termination clause is a perfect example of this.

We understand that legal advice costs money. However, there is truth to the old adage that it is unwise to be “penny wise and pound foolish”. You may save a little money by not seeing a lawyer before you sign the agreement, but it can cost you and your family a lot more in the long run. This is your career and your livelihood; do not blindly sign away your rights.

How We Can Help

Our lawyers have reviewed hundreds of employment contracts, and we will provide you with advice based on this experience. We will:

- review all the terms of your contract, even some that may outlast your term of employment, such as non-competition and non-solicitation clauses,
- make sure you understand them, and
- help you understand the consequences of each one.

You need to make informed decisions. That’s where we come in. We can explain how the law applies to your situation, discuss the options and strategies



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available to you, and the pros and cons of each. You can then take all of that into account, and decide what makes sense for you.

We will then work with you to develop an effective strategy. We can negotiate on your behalf where it is appropriate, or we can guide you while remaining in the background.

At the end of the day, you will either end up with a better contract, understand enough to reject a bad contract, or at the very least, enter into a contract knowing the impact on your legal rights.

We want to be your Trusted Advisors



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