An Offer You Can’t Refuse: Offer Letters vs. Employment Agreements—What’s The Difference?



When hiring new employees, it is critical that employers put careful thought into the documents they use to formalize the employment relationship. Among the most common tools are offer letters and employment agreements. These documents are sometimes used together as part of what is called a “two-step” offer.

What Is an Offer Letter?

An offer letter is typically a high-level summary of a job offer, used by employers to outline the basic terms of employment and clearly communicate the offer they are making to a potential employee. While some employers use offer letters to establish the employment relationship, it is more common for them to serve as a preliminary step in the hiring process. Offer letters are often used for new hires but may also be given to existing employees transitioning to new roles.

Offer letters generally include:

- Job title and description
- Reporting structure
- Start date
- Work schedule
- Base compensation and benefits
- Conditions of employment (e.g., background checks, references, etc.)

What Is an Employment Agreement?

An employment agreement, on the other hand, is a comprehensive and legally binding contract that governs the relationship between the employer and employee.

Employment agreements will typically include:

- **Position details**: job title, description, reporting structure, work location, and duties.
- **Compensation details**: base salary, bonuses, commissions, and benefits.
- **Restrictive covenants**: non-competition and non-solicitation clauses.
- **Termination provisions**: notice periods and severance entitlements.

- **Employer protections:** Confidentiality and intellectual property clauses.

You will note that employment agreements include restrictive terms, such as confidentiality and termination provisions, that are not typically found in offer letters. They also provide greater detail about the terms and conditions of employment, offering clarity and precision that help govern the working relationship.

These components are essential to reducing ambiguity and ensuring clarity in the employment relationship. By addressing critical aspects like position details, compensation, and termination, employment agreements protect both parties from potential misunderstandings, help avoid disputes, and protect employers from potential liability.

Two-Step Offers

With apologies to Ciara and her 2004 smash single, "two-step" offers have a tendency to backfire on employers and should be avoided in certain instances. A "two-step" offer refers to instances where an employer provides an employee with an offer letter followed by an employment agreement. This situation arose in a 2024 decision of the BC Supreme Court in *Adams v. Thinkific Labs Inc.*, 2024 BCSC 1129 ("**Adams**"), which serves as a reminder for employers of the potential legal complications this approach can lead to.

In *Adams*, the employer sent a prospective employee an email offering them employment. The offer in the email was extensive and included details and documentation around:

- Work schedule and details
- Compensation, including stock options and vesting
- Bonus and stipend
- Health account
- Vacation and leave entitlements

In sum, the email included sixty pages of information related to the applicant's potential employment. The applicant was asked to respond to the email with their full name and start date and was told that upon receiving a response, the employer would send over the formal employment agreement for them to sign. The applicant responded the following day with their full name and desired start date, and that same day, the employer sent over a document called "protection of corporate interests" (the "**Letter Agreement**"). The Letter Agreement was brief and contained almost nothing but additional burdens, limitations, and obligations binding the applicant. Nevertheless, the applicant signed and returned the document.

The applicant began work but was terminated after twenty months. Upon their termination, they argued that the initial email was a full and binding employment agreement, and since it did not include a termination provision restricting their entitlement to notice or pay in lieu of notice, they were entitled to common law notice. They further argued that the Letter Agreement should be considered unenforceable because the employer did not provide new "consideration" at the time it was signed.

The court determined the initial email was a full and binding employment agreement, and that the worker had accepted it when they responded with their name and start date. The court also found the Letter Agreement implied the initial email was a contract because of the presence of an "entire agreement clause" that referred to prior agreements. Additionally, the court found the Letter Agreement unenforceable, as it imposed new detrimental terms without adequate consideration. The court relied on *Krieser v Active Chemical Ltd.*, 2005 BCSC 1370, which established that the

introduction of new detrimental employment terms requires adequate consideration.

As a result of these determinations, the court held that the worker was entitled to common law notice of their termination and awarded them five months' pay in lieu of notice.

Practical Guidance for Employers

In our view, employers should avoid the use of two-step offers, as they can lead to unnecessary legal complications. *Adams* illustrates that employers are better served by:

- Providing employees with a single well-drafted and tailored employment agreement;
- Proceeding with caution when sending email communications before an employment agreement is provided, particularly when it contains anticipated terms and conditions of employment; and
- Ensuring adequate consideration is provided when changes to employment agreements are made.

Investing in well-drafted, tailored, and enforceable employment agreements is a crucial step in protecting your business and supporting its long-term success. The MT+Co. Workplace Law Group is ready to support you with expert legal advice every step of the way.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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