

Court Overturns Job Terms Added After Offer Acceptance



The British Columbia Supreme Court ruled against an employer who added restrictive employment terms after an employee had accepted a job offer, finding the new terms unenforceable due to a lack of fresh consideration. The decision highlights the importance of presenting all employment terms upfront and providing new consideration if introducing or revising terms after an offer has been accepted. Employers should ensure transparency and fairness in their hiring practices to avoid legal pitfalls.

A recent ruling from the British Columbia Supreme Court examined the enforceability of restrictive employment contract provisions introduced several hours after an employee had signed an initial offer of employment. The Court found that the employer introduced new terms after the initial employment terms had been accepted and without any new consideration. The continued employment was not considered new or valid consideration for the employee, as they had no choice but to sign the newly introduced terms if they wished to remain employed.

This decision serves as a useful reminder for employer's that presenting terms of employment which are open for acceptance to a new employee are likely going to constitute the basis of the employment contract. It is best to present all employment terms in one comprehensive offer as opposed to introducing new terms later on.

Background

Ms. Adams applied for a job with the Thinkific Labs Inc ("Thinkific"). Upon receiving the news that she had secured a job with Thinkific, Adams received a detailed offer of employment via email. The documentation contained within the offer of employment consisted of 60 pages of material, covering a wide array of employment topics and conditions. Notably, the 60 pages of material did not contain restrictive employment terms such as a termination clause or a non-competition clause.

The email also set out that once the Adams confirmed her full legal name and desired start date with Thinkific, they would provide her with the "official employment contract".

After Adams responded to the first email indicating her acceptance of employment with

Thinkific, the company followed up with her later that same day and sent a formal document entitled "Protection of Corporate Interests". This correspondence was 5-pages long and referred to as a "Letter Agreement" and did include restrictive terms regarding termination and non-competition.

The gist of the Protection of Corporate interests document was to add more burdens, limitations, restrictions and obligations of Adams. These were all new and had not been covered in the original 60-page offer of employment package.

Adams signed the Protection of Corporate Interests document and then worked for Thinkific for approximately 1.5 years. She was later terminated and the employer, Thinkific, relied on the termination clause from the Protection of Corporate Interests document to restrict Adam's termination notice or payment in lieu thereof to statutory minimums and extinguish her common law notice entitlements.

Adams argued the initial email offer of employment which contained **no termination clause** was the **full employment contract** while Thinkific argued common sense should dictate that the more formal Protection of Corporate Interests letter was in fact, the employment contract.

What the Court Said

The Court found there was a sharp distinction between the terms presented in the initial email offer of employment versus the subsequently delivered formal letter, the former painting a positive picture while the latter painted a more restrictive picture. Further, since the initial email offer of employment only required Adams to indicate her desired start date and legal name, these were mere outstanding administrative matters not requiring a substantive change to employment terms.

The restrictive terms sent in the subsequent formal letter were added by Thinkific without consultation and without the offer of further consideration to the employee. The Court found that since Adams was offered terms of employment and had accepted, and then was told hours later she had to agree to further terms, there was no new consideration. The only possible consideration for agreeing to the new onerous and detrimental terms would be that Adams may keep her accepted job if she agrees to the new terms.

Another important factor for the Court's decision was that the formal Letter Agreement did not make reference to the positive benefits outlined in the initial email offer of employment. These positive benefits to employment with Thinkific were presented first and intended to induce Adams to accept the offer. If Thinkific's position was correct, that only the terms from the Formal Letter were binding, then they would not be obligated to provide Adams any of the positive benefits she was initially induced to accept. Adams would only be bound by the employer protective terms of the subsequent formal letter.

Ultimately, since Adams was provided no new fresh consideration for the signing of the Letter Agreement, the terms of the Protection of Corporate Interests document were unenforceable, including the termination clause. The common law principles were then used to calculate the Plaintiff's severance.

Takeaways for Employers

This decision is an important reminder for employers of establishing transparency at the outset of the employment relationship.

- Employers should be mindful when first presenting terms of employment to a prospective employee, which are open for acceptance. These terms are likely to

form the basis of the employment contract. The consideration of prospective and gainful employment can only be used as valid consideration for this initial set of employment terms.

- If an employer wants existing employees to sign a new or revised employment contract, they need to provide “fresh” or new consideration to the employee.
- The Court will have limited patience for an employer who induces an employee to commence employment by presenting them with only positive and employee-favourable terms and then later tries to introduce onerous and employer-friendly terms.
- Termination clauses that seek to extinguish an employee’s common law reasonable notice requirements are already subject to intense judicial scrutiny – attempting to add these clauses after the fact without new consideration will almost certainly render them unenforceable.
- Streamline new employee onboarding by providing a clear and comprehensive employment offer from the start.
- Employers should be aware of the power imbalance between employee and employers that the courts strive to balance. Establish hiring practices that present all employment terms upfront, whether they favour the employer or the employee.

Link to Decision: [Adams v Thinkific Labs Inc., 2024 BCSC 1129](#)

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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