

Employment Contracts



Peter Straszynski discusses employment contracts including the importance of written contracts of employment, the most important part of a written employment contract, “consideration”, whether termination clauses in written contracts are always binding on employees and what happens if the contract says nothing about termination as part of the Torkin Manes Legal Point Video Series.

Q. Why are written contracts of employment important?

Written contracts of employment can be very important tools in an employment relationship..... contracts set out the essential terms and conditions of the employment..... whether it be start and end dates, compensation and incentives, vacations, termination entitlements, or anything else you can think of... a written contract is an opportunity to simply and clearly set out the terms and conditions of the relationship, hopefully helping to avoid confusion and disputes.

Q. What is the most important part of a written employment contract?

In my view, the most important part of any written employment contract is the termination clause..... When properly drafted, it tells both the employer and employee what their respective rights and obligations are in the event that either party wishes to terminate the relationship..... A well drafted termination clause can help reduce disputes, and expensive wrongful dismissal litigation.

Q. What is “consideration”?

When an employee is asked to sign a written employment agreement, they must receive something of value in exchange.... we call it “consideration” for entering into the contract..... Without it, the written agreement may not be binding.... Let me illustrate for you.... When a new employee is asked to sign a contract as a condition of accepting the job, the new job itself is the “consideration” for the contract. Where an existing employee is asked to sign a contract, they must receive something new of value as consideration. Promotions, raises, or other such benefits are examples of valid consideration.

Q. Are termination clauses in written contracts always binding on employees?

There are numerous circumstances where termination clauses will not be enforced by our courts. The most common reasons would include things like:

lack of consideration.....

poor drafting or ambiguous language.....

or a termination clause that provides for something less than the minimum requirements of the ESA.

These are the types of mistakes that employers can make that would cause judges to say that termination clauses will not “valid” or “enforceable” against an employee.

Q. What if the contract says nothing about termination?

Where a contract is “silent” on the issue of termination, or if a termination clause is not enforceable for any reason, then the “common law” applies..... Under the common law, the employee will be entitled to “reasonable” notice of termination or pay instead, unless of course, there is Just Cause..... If you would like to learn more about entitlements on termination, see our related video on the topic of Terminations Without Cause

Conclusion

Written contracts of employment can be very powerful tools... if they are done right..... Employers who are hiring, or who otherwise wish to introduce contracts into their working relationships, should consult with knowledgeable counsel so that they can rely on these agreement in the future..... Similarly, employees being asked to sign contracts should definitely get appropriate advice, so that they fully understand their rights, both during the relationship and at the time that the relationship may be terminated.

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