

How Contract Pitfalls Undermine Enforceability of Employment Concessions

written by vickyp | September 16, 2021



HR directors don't generally go to law school. So, I sometimes think it's unfair to expect them to navigate the legal intricacies so many HR operations entail.

[Employment contracting](#) is a perfect example.

Scenario: In the wake of [COVID-19](#), you need to restructure an employee's compensation package by shifting base salary to contingent bonus payments. To avoid the risk of constructive dismissal, you incorporate the new terms into a revised employment contract which includes boilerplate language from the original agreement indicating that the employee's obligations are "[in consideration of employment](#)."

Question: What did you do wrong?

Answer: Your contract provides no real consideration.

Explanation: Contracts Law, 101. Promises aren't legally binding unless the promisor receives "consideration," or something of value in return for making them. Providing employment is valid consideration when contracting with a new employee. But that's not the case with current employees since you've already provided them with employment. Result: Concessions contained in revised contracts must provide the existing employee some kind of new consideration.

Of course, it's not just constructive dismissal. From protecting intellectual property to [limiting termination notice](#), hidden contract law pitfalls can undermine just about any initiative HR directors undertake. If you want an excellent overview of these contractual issues from a seasoned HR lawyer, Lisa Goodfellow, come to our 90-minute [webinar on September 29](#).