Is Your Employment Contract Worth The Paper It's Written On? Two Simple Rules To Follow.



So, your business is thriving, and you need to hire some help. You've started interviewing candidates, and you've picked your top choice. You're ready to make this person an offer of employment. STOP! There are two rules you should follow:

1. DO NOT offer employment until you have the employment contract ready to be presented;

and

2. DO NOT allow the employee to start working until they have signed the employment contract.

One of the most common mistakes employers make is offering employment to a new employee before having an employment contract to present to the employee.

An employment contract may actually be unenforceable if it is signed after a verbal or informal offer of employment has been made by the employer and accepted by the employee. The same issue arises if an employee signs an employment contract after they start working (even if they sign it on their first day!).

An unenforceable employment contract can lead to various negative consequences for the employer. The employer cannot rely on any of the provisions of the employment contract – most importantly, the termination provision. This would largely defeat the purpose of having an employment contract in the first place. One of the key reasons to have an employment contract in place is to limit the amount of termination pay that must be paid in the event the employment relationship ends. If the agreement limiting the amount of termination pay due to an employee is not enforceable, then the amount owed can drastically increase.

Other important contractual provisions include items such as non-competition and non-solicitation clauses, and layoff provisions.

Sometimes it is important for an employer to communicate their interest in an employee as soon as possible, and employers are eager to let employees know they have been hired. One way for an employer to communicate its intentions quickly, but still protect its rights, is to make it clear the employer will be making an offer,

conditional on signing an employment contract. If it’s clear that signing an employment contract is a condition of any offer of employment (or, better yet, if the entire offer is presented in the contract), then the employer can allow itself a bit of time to get a contract together, while confirming its intentions to the prospective employee.

The prospective employee should have time to read and understand the contract, and receive their own legal advice on the contract if they so choose. As such, employers should be sure to provide a copy of the contract to the prospective employee well in advance of their start date, with time to review and ask questions before signing.