

# Looking Ahead: Is It Time To Update Your Employment Contracts?



The start of a new year is the perfect opportunity to address budgetary and other financial decisions, including decisions about employee pay increases. Now is a great time to review and update your employment agreements to ensure they are up-to-date and compliant with the latest legislative and other legal updates.

When offering an employee a new employment agreement, or amending a material term or condition of employment of their existing agreement, it's important to provide your employee with fresh consideration in order for the new terms and conditions to be enforceable. Consideration can take the form of a signing bonus, an increase in pay or some other new employee benefit.

## **BC Supreme Court Case – *Sui v. HungryPanda Tech Ltd.***

In *Sui v. HungryPanda Tech Ltd.*, 2024 BCSC 1856 (the “Sui Decision”), the Supreme Court of British Columbia recently commented that it is up to the employer to show sufficient consideration is passed to the employee in exchange for accepting any new or amended terms and conditions of employment.

In the Sui Decision, the employer and employee initially exchanged emails about the employee's potential employment. The employer then sent an offer of employment which included details about the position, salary, stock options and probationary period, but did not discuss or contemplate termination. The employee agreed to the terms contained in this offer of employment.

Subsequently, a formal employment agreement was sent to the employee which, among other things, included a termination clause. The employee agreed to the terms and returned a signed copy of the employment agreement without issue. However, upon being terminated approximately 18 months later, the employee took the position that the formal employment agreement was not enforceable because it introduced new terms and conditions without providing fresh consideration.

In response, the employer argued that fresh consideration was provided in exchange for the formal employment agreement. This came in the form of group health benefits, an expense account and paid time off. While assessing the adequacy of this fresh consideration, the court noted that in order for consideration to be adequate, there must be some material advantage passing or promised to the employee by the employer.

## **Court decision: No material advantage for employee**

The court concluded that the consideration alleged by the employer was inadequate and, as such, the terms and conditions contained in the employment agreement were unenforceable. In support of this conclusion, the court pointed to the fact that the employee did not receive a material advantage from the expense account or paid time off.

The reasoning was these were statutory minimums that the employee would have been entitled to in any event and that the group health benefits (while presumably constituting a material advantage) had not been specifically linked to the signing of the employment agreement. As such, they were not actually addressed by the employee handbook as contemplated in the agreement.

### **Key takeaways for employers**

The Sui Decision serves as a strong reminder for all employers. To ensure that the new terms and conditions of employment are enforceable, employees must receive a material advantage that they would not otherwise be entitled to, and this material advantage should unambiguously be in exchange for, and connected to, signing the new or amended agreement. In this regard, salary increases and bonuses can often form adequate consideration. As a result, they present an opportunity for employers to couple these material advantages with new or amended terms and conditions of employment.

*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.*

Authors: [Alizeh Virani](#), [Lynsey Gaudin](#)

MLT Aikins LLP