The Risks Of Fixed-Term Contracts: Why Employers Should Avoid Them



Fixed-term contracts can seem like a convenient solution for employers looking to fill temporary positions or meet short-term business needs.

However, these contracts carry significant legal and financial risks that can outweigh their perceived benefits. In this blog, we explore the key risks associated with fixed-term contracts and why employers should consider alternative employment arrangements.

What Is a Fixed-Term Contract?

A fixed-term contract is an employment agreement with a predetermined end date or duration. Unlike indefinite contracts, which continue until terminated by either party, fixed-term contracts automatically end on the specified date or upon the completion of a specific project.

While fixed-term contracts can be useful in certain situations—such as covering for an employee on leave—they are not without challenges.

Key Risks of Fixed-Term Contracts

1) Early Termination Liability

One of the biggest risks of fixed-term contracts is the potential financial liability if the contract is terminated before its end date.

Under Ontario law, if an employer ends a fixed-term contract early and there is no termination clause in the agreement, or the clause that does exist is deemed unenforceable, the employer may be required to pay the employee the full value of the remaining term. For example, terminating a two-year contract after six months could leave the employer responsible for 18 months of pay—significantly more than what an employer would be forced to pay to terminate an indefinite term employee after six months of employment.

2)Lack of Termination Clauses

Many employers fail to include termination clauses in fixed-term contracts, assuming the contract’s end date provides sufficient clarity. However, without a termination

clause, the employer has little flexibility to end the contract early without incurring substantial costs.

A well-drafted termination clause can limit liability by specifying the notice or pay in lieu of notice required for early termination. Without one, employers are exposed to significant financial risk.

3)Misclassification and Repeated Renewals

Using fixed-term contracts repeatedly or renewing them multiple times can create the legal perception of indefinite employment. Courts in Ontario have found that employees working under successive fixed-term contracts may be entitled to the same rights and entitlements as permanent employees.

This misclassification risk undermines the very purpose of fixed-term contracts and can lead to claims for severance, termination pay, or even wrongful dismissal.

4)Employment Standards Compliance

Fixed-term employees are entitled to the same protections under Ontario's *Employment Standards Act, 2000* (ESA) as indefinite employees, including vacation pay, public holiday pay, and statutory benefits.

Employers who fail to comply with these obligations risk legal claims, penalties, and reputational damage. Misunderstanding these entitlements can lead to costly disputes, even if the fixed-term contract is properly executed.

5)Limited Flexibility for Changing Business Needs

Business needs can change quickly, and fixed-term contracts limit an employer's ability to adapt. For example, if a project is delayed or canceled, or if financial constraints arise, the employer is still bound by the terms of the fixed-term agreement.

In contrast, indefinite contracts provide more flexibility to manage workforce adjustments, with the ability to terminate employees with reasonable notice or pay in lieu of notice.

Alternatives to Fixed-Term Contracts

Given the risks, employers should consider alternative employment arrangements, such as:

- **Indefinite Employment with Probationary Periods**: Hiring an employee under an indefinite contract with a probationary period allows for a trial period without the long-term liability of a fixed-term contract.
- **Temporary Staffing Solutions:** For short-term needs, consider hiring through a temporary staffing agency, with experience in handling the logistics of short-term staffing. However, always ensure you review any contract provided by an agency as your company may share joint liability for certain employment entitlements.
- **Project-Based Employment with Clear Clauses**: If a fixed-term arrangement is necessary, ensure the contract includes robust termination clauses and clearly define the terms and scope of the project.

How Nelligan Law Can Help

Navigating employment contracts requires a careful balance of meeting business needs

while minimizing legal risks. At Nelligan Law, our employment law team can help you:

- Draft clear and enforceable employment contracts.
- Review existing contracts to identify and mitigate risks.
- Develop strategies for workforce management that align with your business goals.

Contact us today to ensure your employment practices protect your business while fostering a positive workplace environment.

Conclusion

While fixed-term contracts may appear straightforward, they come with significant risks that can lead to costly disputes and liabilities. By understanding these risks and exploring alternative arrangements, employers can better protect their business and avoid potential pitfalls. If you're considering using fixed-term contracts, consult an employment lawyer to ensure you're making the right decision for your organization.

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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