Warning To Avoid “Two-Step Offers” With Successful Job Applicants

A recent case from the BC Supreme Court serves as a warning to employers regarding the pitfalls of providing applicants with detailed job offers and then subsequently providing applicants with their employment agreement for signature.

In *Adams v. Thinkific Labs Inc.*, the employer sent an email to Ms. Adams, the successful job applicant, on August 19, 2021, setting out a “detailed and extensive” offer of employment (the “**August 19 Email**“). The August 19 Email included details regarding Ms. Adam’s compensation, stock options, benefits, certain bonus entitlements, vacation entitlements, and the employee’s work schedule. In the August 19 Email, the employer requested Ms. Adams respond with her full legal name and desired start date and indicated that upon receipt of that information, the employer would provide Ms. Adams with her official employment agreement.

Ms. Adams responded the following morning, accepting employment with the employer and providing her name and desired start date. Hours later, the employer followed up via email with a written, formal, six-page document titled, “Protection of Corporate Interests” (the “**August 20 Agreement**“). The August 20 Agreement included restrictive provisions regarding termination and non-competition that were not addressed or mentioned in the August 19 Email. The August 20 Agreement also stated that it replaced any prior oral or written agreements between the parties.

Ms. Adams signed the August 20 Agreement and returned it to the employer. Ms. Adams commenced employment on September 20, 2021, and was terminated approximately 20 months later, on May 23, 2023. Ms. Adams claimed she was wrongfully terminated, taking the position that the August 19 Email constituted a full and binding employment agreement, which contained no termination clause and therefore entitled her to common law notice, or pay in lieu.

The employer took the position that Ms. Adams knew that she would not be working for the employer unless and until she signed a formal employment agreement, which facts Ms. Adams’ confirmed during her examination. The Court in this case found that although Ms. Adams had not yet commenced work, she had accepted the offer of employment as set out in the August 19 Email and hours later new onerous and detrimental terms were “imposed” upon her in the August 20 Agreement, terms which were not contemplated by the August 19 Email.

Ultimately, the Court concluded that the August 19 Email and Ms. Adams’ acceptance of

it formed a complete agreement between the parties and that the employer failed to establish that Ms. Adams received adequate consideration for signing of the August 20 Agreement. Therefore, the August 20 Agreement was unenforceable and Ms. Adams was entitled to common law notice in the amount of five months' pay in lieu.

This case serves as an important reminder to employers that they may need to provide additional consideration if they wish to introduce new terms to the employment relationship, even in situations where the employee has not yet commenced work, if it can be deemed that the applicant had previously accepted any form of job offer. Employers are advised to ensure that any correspondence sent to successful applicants should make clear that prior to accepting the job offer, the applicant should first review any written agreements in respect of the position and be encouraged to seek independent legal advice.

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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