

Why You Need A Written Employment Agreement



The most important reason to have written agreements in place is to provide certainty regarding your expectations and to govern how you will interact during the relationship, but they are also critical to establishing your respective obligations on termination of the relationship. This certainty alone can provide considerable peace of mind and cost savings by avoiding disputes and unnecessary litigation.

Minimize Liability

Besides certainty, a written employment agreement can serve to minimize an employer's obligations upon termination. Many employers are surprised to learn that without a written agreement to the contrary, an employee is entitled to "reasonable notice" on termination, and that such notice can be up to 24 months or more of the employee's gross salary and benefits – an amount that far exceeds the notice required by Ontario's Employment Standards Act.

However, it is possible to craft an agreement that satisfies an employer's obligations under the Employment Standards Act, but avoids the common law obligation to provide "reasonable notice" a concept that by its very nature is vague and uncertain. This is because what notice will be reasonable depends on the individual circumstances of the employment relationship, including,

- Character of the employment;
- Length of service by the employee;
- Age of the employee; and
- Availability of alternative employment given the employee's training, qualifications and training.

Careful Drafting is Essential

The Courts regard written employment agreements very critically. That is, before an employment agreement will be considered valid and enforceable, rebutting the presumption of reasonable notice, it must be clear and unambiguous, and must not violate any provision of the Employment Standards Act, or it will be considered null and void exposing the employer to considerable liability.

As a result, we encourage you to obtain professional assistance in preparing these agreements, and if you already have agreements in place, we recommend that you have

them reviewed/updated by legal counsel to ensure they meet the higher standards that have recently been set by the Courts.

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