*LW1210 - Labour and Employment Law*

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*UNIT 2 – Employment Law – CHAPTER 4 - The Employment Contract*

*The Employment Contract*

Written employment contracts are now standard practice in business. Typically an employment contract outlines an employer’s and an employee’s rights, duties and obligations. Such contracts are becoming more complex as employers seek to protect themselves from potential damages should the relationship go sour.

In addition to clearly describing what the employee is going to do for you (the job) and what you are going to do for the employee (the salary), the contract can address many other aspects of the employment relationship, such as:

* duration of the job (one year, two years, or indefinitely)
* information about the employee's responsibilities
* what benefits (such as health insurance, vacation leave, disability leave, and so on) the employee will receive
* grounds for termination
* limitations on the employee's ability to compete with your business once the employee leaves
* protection of your trade secrets and client lists
* your ownership of the employee's work product (for example, if the employee writes books or invents gadgets for you), or
* a method for resolving any disputes that arise about the agreement.

# *Advantages of a Written Employment Contract*

* Reduces the risk of misunderstandings between the employer and employee
* Addresses contentious issues up front so that they do not become a problem later into the relationship
* Reduces uncertainty created by implied terms and informal arrangements

# *Typical problems to avoid from written Employment Contracts*

Lack of Consideration – in order for a contact to stand, it must demonstrate that it has three essential ingredients: An offer made by one party, an acceptance of that offer made by the other party, and consideration given by both parties. Consideration is anything of value promised to another when making a contract. Each offer/acceptance requires consideration, and past consideration is no consideration. It is essential that an employment contract must be signed before work begins or it becomes unenforceable.

Inequality of bargaining power of employee and employer – If the court has it demonstrated that there was an inequality in the bargaining position of the parties to the employment contract the contract can be deemed null and void. To ensure this does not happen each party should discuss and explain the contract with each other and have adequate time to review the terms and conditions of the employment contract before it is signed (possibly with a lawyer).

Contract obsolesce – If since the contract was signed, the work situation has changed, yet the contract has not been updated, it can be deemed invalid. Contracts should be updated regularly and after a change in the job.

No meeting minimum employment standards set out in statute – Contracts cannot contract below the minimum standards set out in the laws of the jurisdiction in which it operates. Any contract provision deemed to offend the statute will be thrown out.

Use of ambiguous/confusing contract language – In the event of ambiguous language, the courts will interpret it against the party that drafted the contract. Be sure to use clear language, give adequate time to consider the contract, sign a fairly negotiated contract, be sure there is consideration and customize the contract to meet your needs.

# *Common contractual clauses found in written Employment Contracts*

* Job Description – Sets job duties and clarifies expectations
* Remuneration/Benefits – must exceed statutory minimums
* Employment Term – must state the term if there is one
* Termination – states notice period
* Probationary Period – states the period of time from the beginning of the contract that the employer can dismiss without cause.
* Work Relocation – allows employer to relocate the employee if necessary
* Restrictive Covenants – main types of RC’s are non-disclosure clauses, non-solicitation clauses and non-competition clauses
* Ownership of intellectual Property – spells out who owns any invention, payment of copyright of material created by the employee
* Jurisdiction – defines the appropriate labour laws that apply
* Corporate Policies – binds employee to the policies of the corporation
* Entire Agreement clause – specifies the binding agreement between the parties and ensures any side deals are not considered to be part of the agreement.
* Service – Defines the total prior service that the employee will be credited for.
* Independent Legal Advice – Allows for legal assessment of contract
* Severability Clause – if the court rules part of the contract void the remaining parts are still deemed to be in force
* Severance Package (Golden Parachute) – defines the payment that goes to the employee in the event the contract is terminated by the employer.

# **Employment Agreement (Sample)**

# THIS AGREEMENT made as of the \_\_\_\_\_\_day of\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ , between [name of employer] a corporation incorporated under the laws of the Province of Newfoundland and Labrador , and having its principal place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(the "Employer"); and [name of employee], of the Town of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_in the Province of Newfoundland and Labrador (the "Employee").

# WHEREAS the Employer desires to obtain the benefit of the services of the Employee, and the Employee desires to render such services on the terms and conditions set forth.

# IN CONSIDERATION of the promises and other good and valuable consideration (the sufficiency and receipt of which are hereby acknowledged) the parties agree as follows:

# Employment

# The Employee agrees that he will at all times faithfully, industriously, and to the best of his skill, ability, experience and talents, perform all of the duties required of his position. In carrying out these duties and responsibilities, the Employee shall comply with all Employer policies, procedures, rules and regulations, both written and oral, as are announced by the Employer from time to time. It is also understood and agreed to by the Employee that his assignment, duties and responsibilities and reporting arrangements may be changed by the Employer in its sole discretion without causing termination of this agreement.

# 2. Position Title As a \_\_\_\_\_\_\_\_\_\_\_\_\_, the Employee is required to perform the following duties and undertake the following responsibilities in a professional manner.

# (a)-.

# (b) –

# (c) –

# (d) –

# (e) Other duties as may arise from time to time and as may be assigned to the employee.

# 3. Compensation

# (a) As full compensation for all services provided the employee shall be paid at the rate of \_\_\_\_. Such payments shall be subject to such normal statutory deductions by the Employer.

# (b) (may wish to include bonus calculations or omit in order to exercise discretion).

# (c) The salary mentioned in paragraph (l)(a) shall be review on an annual basis.

# (d) All reasonable expenses arising out of employment shall be reimbursed assuming same have been authorized prior to being incurred and with the provision of appropriate receipts.

# 4. Vacation

# The Employee shall be entitled to vacations in the amount of \_\_\_\_ weeks per annum.

# 5. Benefits

# The Employer shall at its expense provide the Employee with the Health Plan that is currently in place or as may be in place from time to time.

# 6. Probation

# Period It is understood and agreed that the first ninety days of employment shall constitute a probationary period during which period the Employer may, in its absolute discretion, terminate the Employee's employment, for any reason without notice or cause.

# 7. Performance Reviews

# The Employee will be provided with a written performance appraisal at least once per year and said appraisal will be reviewed at which time all aspects of the assessment can be fully discussed.

# 8. Termination

# (a) The Employee may at any time terminate this agreement and his employment by giving not less than two weeks written notice to the Employer.

# (b) The Employer may terminate this Agreement and the Employee’s employment at any time, without notice or payment in lieu of notice, for sufficient cause.

# (c) The Employer may terminate the employment of the Employee at any time without the requirement to show sufficient cause pursuant to (b) above, provided the Employer pays to the Employee an amount as required by the Employment Standards Act or other such legislation as may be in effect at the time of termination. This payment shall constitute the employees entire entitlement arising from said termination.

# (d) The employee agrees to return any property of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ at the time of termination.

# 9. Non- Competition

# (1) It is further acknowledged and agreed that following termination of the employee’s employment with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for any reason the employee shall not hire or attempt to hire any current employees of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

# (2) It is further acknowledged and agreed that following termination of the employee’s employment with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for any reason the employee shall not solicit business from current clients or clients who have retained \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in the 6 month period immediately preceding the employee’s termination.

# 10. Laws

# This agreement shall be governed by the laws of the Province of Newfoundland and Labrador.

# 11. Independent Legal Advice

# The Employee acknowledges that the Employer has provided the Employee with a reasonable opportunity to obtain independent legal advice with respect to this agreement, and that either:

# (a) The Employee has had such independent legal advice prior to executing this agreement, or;

# (b) The Employee has willingly chosen not to obtain such advice and to execute this agreement without having obtained such advice.

# 12. Entire Agreement

# This agreement contains the entire agreement between the parties, superseding in all respects any and all prior oral or written agreements or understandings pertaining to the employment of the Employee by the Employer and shall be amended or modified only by written instrument signed by both of the parties hereto.

# 13. Severability

# The parties hereto agree that in the event any article or part thereof of this agreement is held to be unenforceable or invalid then said article or part shall be struck and all remaining provision shall remain in full force and effect.

# IN WITNESS WHEREOF the Employer has caused this agreement to be executed by its duly authorized officers and the Employee has set his hand as of the date first above written. SIGNED, SEALED AND DELIVERED in the presence of: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Name of employee] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Signature of Employee] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Name of Employer Rep] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Signature of Employer Rep] [Title]