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## Having employment contracts makes parting easier

Presented by



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Employment contracts are not new to many senior level employees but companies should consider having them for all levels of workers.

To be valid, employment contracts must be signed before an employee starts a job, but where they prove their worth is at the end of the relationship when the employee is terminated, saving a company thousands of dollars in litigation costs and

compensation.

"It's not very difficult to sell clients [on employment contracts] especially when a new client will come in to get advice on a wrongful dismissal," says Dan Condon, managing partner at Markham, Ont.-based Wilson Vukelich LLP. "The former employee might be entitled to 12 to 15 months notice but, had an employment agreement been in place, it could have been as little as eight weeks."

He recommends clients ask all employees, from senior management to entry level staff, to sign an employment contract prior to starting. "[With an agreement in place] you can get certainty around termination, you can get agreement that all the employer is obligated to do is provide the statutory notice and in the majority of cases for entry level or less senior employees it's very rare that anyone balks at that."

Even when an employment contract specifies more than the statutory minimum especially for a senior executive, an employer will still save money because it won't have the legal costs involved in trying to negotiate a settlement when the relationship ends.

"Why so many employers are using employment contracts and why we recommend them is that it sets down at the beginning of the relationship what the parties' expectations are at the end of the relationship if you have to terminate it," says Janice Rubin, cofounder and managing director, Toronto's Rubin Thomlinson LLP.

"It removes the primary source of employment-related litigation [which is] 'what is the severance I am entitled to?' For even the most junior employee, [the employer can say] 'we think it's preferable at the time of termination pursuant to your contract, that you receive X dollars. Thanks so much for your

contribution.' It just makes the whole process less painful for everybody."

Employment contracts also can address, through the use of restrictive covenants or clauses, potential post-employment issues such as the former employee soliciting former clients and even former colleagues while setting up a business or going to work for a competitor. They can also help prevent the disclosure of confidential information to a competitor, the experts say.

However, smaller companies prefer the less formal, detailed job offer letter, which technically are employment contracts. "We have letters of offer that outline the employee's benefits, salary and who they are going to report to and we attach to that a job description," says Marjorie Calibaba, vice-president in human resources at Oppenheimer Group, a fresh produce company in Coquitlam, B. C.

"I think that the work most companies do right now, moves very quickly and so we don't rely on job descriptions the way we used to; we rely on people doing whatever it takes to keep our customers happy."

When it comes time to terminate one of its 300 employees, Oppenheimer relies on Employment Standards legislation and current case law "to pay people fairly for their years of employment based on criteria such as age, years of service and the amount of salary," Ms. Calibaba says.

Cummins Western Canada, a distributor of diesel engines and generators based in Surrey, B. C., also doesn't rely on employment contracts. "I employ 550 people and I don't have one employment contract," says Gottfried (Guff) Muench, president of the company.

Employees receive a document that defines various terms including compensation, the incentive program, and sometimes what will occur when the relationship fails. When terminating an employee, the company consults with its labour lawyer to determine a reasonable compensation

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in lieu of notice. Cummins Western Canada has never faced a wrongful dismissal suit, Mr. Muench says. "You want the employee to be treated fairly."

From the employee's viewpoint, only top earners really benefit from having an employment contract because they are frequently in a position to negotiate the terms of the agreement, says Barry Kuretzky, senior partner at Toronto-based Kuretzky Vassos Henderson LLP.

"At a more senior level there's a trend to employment contracts. It's very unlikely an employee at a mid-management or lower level can really benefit from an employment contract. I'd define senior as someone whose income is in excess of \$200,000."

Canadian employers should use caution when asking high-earners to sign an employment contract because anything that is too restrictive or punishes them too severely at termination can send them

running into the arms of competitors, Mr. Kuretzky says.

At the senior level, he says, individuals can change the terms of the contract and there is a back and forth, as both parties negotiate. "I'd take a look at the contract and I'd strongly recommend we'd remove clauses that are unfair or unreasonable and sometimes the company is going to respond [positively] when an individual pushes back because though this person wants the job, the corporation is just as eager to make the hire," Mr. Kuretzky says.

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