

Legal Corner

LEGAL CORNER

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Employment: Hiring and Firing – Negotiate the end at the beginning!

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While a job offer is being considered, it is prudent to consider carefully the terms of the termination clause included in the written job offer.

Job Offer: Termination Clauses beneficial to an Employer

During the hiring process, it is highly unlikely that the employer will raise the prospective employee's rights on termination of employment. Instead, the employer usually includes a termination clause in the written job offer. Unfortunately, it is a rather common scenario that the employer will provide the shortest possible notice of termination of employment - that being the minimum amount of notice required to be provided under the Employment Standards Act, 2000 (the "ESA"). Specifically, this means the prospective employee will not receive any notice if fired during the first three months of employment, one week notice between 3 months and 1 year of service, and two weeks' notice of termination in the event the prospective employee is terminated between 1 and 3 years of service. With this kind of termination clause, an employee is entitled to an abysmally short notice of termination if terminated during their initial 3 years of employment. The maximum notice the prospective employee is entitled to receive under the ESA is 8 weeks, even if the employee has worked for 20 or more years for the employer.

This is problematic for a number of reasons including the fact that it can take months to obtain a new job while the termination pay provided is only for a few weeks. The employee may still receive employment insurance payments but these payments are small.

Job Offer: No Termination Clause

In some instances, the offer of employment does not indicate what happens on termination of employment. With this omission, the prospective employee is entitled to reasonable notice of termination. This can vary for short-term employees from a few weeks to six or more months. For long-term employees, it can extend to two years. This level of uncertainty may lead to litigation and the legal costs associated with this litigation can exceed the termination pay an employer may be ordered by a judge to pay the employee at trial.

Job Offer: The Employee Friendly Termination Clause

A good approach is always to negotiate beneficial changes to the termination clause in favour of the prospective employee at the time of hiring. This is especially so if the prospective employee is currently employed elsewhere, balancing competing job offers, possesses specialized skill sets and/or experience, or is required to move location for the position. As an employee, make sure that your exit clause is a good one and a fair one.

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