

Common Questions:

I have been offered a job. My new employer wants me to sign an employment contract. Should I sign it?

Legal Information

Most employees are hired without a written employment contract. Of those employees that are presented with a written contract to sign, few are provided with a real opportunity to negotiate terms of a contract. They are simply asked to sign what they are given. However, it is important that employees are aware of how employment contracts affect them, both during their employment and after their employment ends. The following are a number of things that should be kept in mind:

- Employment contracts apply to non-unionized employees. Unionized employees are covered by collective agreements which are entered into between a union and an employer.
- An employment contract should deal with the issue of compensation (i.e. pay). Compensation can take many forms, such as wages and salary, bonuses, vacations, profit-sharing and car allowances. It is important that you understand when you will be entitled to receive bonuses or benefit by profit-sharing, particularly if your employment is terminated.
- Minimum standards of employment are set out in the *Employment Standards Act, 2000*, which applies to almost all employees in Ontario. An employer and employee cannot agree to terms of an employment contract that go against the minimum terms of employment set out in the Act.
- The *Employment Standards Act, 2000* allows an employer and an employee to “agree” to some employment terms that would not otherwise be allowed. Generally, these concern hours of work and vacation entitlement.
- An employer and employee cannot contract out of the *Human Rights Code*, the *Occupational Health and Safety Act* and the *Workplace Safety and Insurance Act*.
- An employment contract may provide for a term under which the employee is probationary, meaning a term during which the employer can terminate an employee without having to show good cause for dismissal. If an employee enters into a contract providing that they are probationary, the employee may have less (although not necessarily no) legal recourse if they are dismissed without good cause during the probationary period. Probationary periods in employment contracts are usually 3 months in length but are sometimes 6 months or longer and sometimes renewable.

- An employment contract may provide that the employee is being hired for a set length of time rather than for an indefinite period. If the employment is genuinely for a set term, this will have an effect on the kind of recovery the employee would make in Court if the employee is dismissed without just cause.
- Another important element of an employment contract relates to the termination of the contract. As a general rule, an employer has the right to terminate the employment of any non-unionized employee provided the employer either
 - Has just cause, or
 - Provides reasonable notice or wages in lieu of reasonable notice.

The courts have said that the main reason an employer must give reasonable notice is to enable an employee to find new employment. The general factors that the courts will consider in assessing a reasonable notice period are the type of employment, the age of the employee, the length of service, and the availability of other work.

However, the above principles will not apply if the employment contract specifically addresses the notice period. As long as the notice period meets the minimum requirements under the *Employment Standards Act, 2000*, then the agreement between the parties will be enforced and the courts will not apply the principles noted above.

- An employment contract that is presented by the employer to the employee after, rather than before, he or she is hired may not be enforceable against the employee.
- An employee asked to sign an employment contract should consider asking for an opportunity to obtain legal advice, but should keep in mind that, unfortunately, if the offer of employment is withdrawn as a result of the request, the employee may not have any legal recourse against the employer.

Further Information is available from:

- **Ministry of Labour:** 1-800-531-5551 or online at www.labour.gov.on.ca/english/index.php.
- **Your Legal Rights** – <http://yourlegalrights.on.ca/common-question-plus/employment-and-work/what-if-employer-wants-me-sign-contract-0>