

Common Questions:

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

Legal Information

Many 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 you are aware of how employment contracts affect you, both during your employment and after your employment ends.

Here are a number of things that you should keep in mind:

- Employment contracts apply to non-unionized employees. If you are unionized you are covered by your collective agreement that is negotiated between your union and your employer.
- Your employment contract should deal with your compensation. Compensation can be wages and salary, bonuses, vacations, profit-sharing, car allowances and other benefits. It is important that you understand when you will be entitled to receive bonuses or benefits, both during employment and if you are terminated.
- Minimum standards of employment are set out in the *Employment Standards Act, 2000* (ESA) which applies to almost all employees in Ontario. You and your employer cannot agree to terms of an employment contract that go against the minimums set out in the ESA.
- The ESA allows you or your employer to “agree” to some employment terms that would not otherwise be allowed. Generally, these concern hours of work and vacation entitlement.
- You and your employer cannot contract out of the *Human Rights Code*, the *Occupational Health and Safety Act* or the *Workplace Safety and Insurance Act*.
- An employment contract may provide for a probationary period, meaning a term during which the employer can terminate you without notice or having to show good cause for dismissal. If you are on probation you have less (although not necessarily no) legal recourse if you are dismissed without good cause during the probationary period. Probationary periods in employment contracts are often 3-6 months long and sometimes renewable.
- You are entitled to minimum notice or pay in lieu of notice (also called “termination pay”) under the ESA if you are terminated without cause and worked 3 months or more - even if that is part of your probationary period.

- Another important element of an employment contract relates to the termination of the contract. As a general rule, an employer can terminate your employment (non-unionized) if your employer has just cause, for instance because of misconduct at work. If your employer does not have just cause, they must give reasonable notice or wages in lieu of reasonable notice or, if provided for in the contract, the ESA minimum notice (termination pay or pay in lieu).
- Termination for Just Cause (ex. employee misconduct): the contract **cannot** contract out of the ESA protections which provide that termination without notice or severance pay is allowed in only limited circumstances such as where the employee is guilty of "wilful misconduct, disobedience or wilful neglect of duty that is not trivial and has not been condoned by the employer." O. Reg. 288/01
- Termination Without Cause (ex. Business closure, redundancy): If your employment contract specifically addresses the notice you will get if terminated without just cause and the notice period meets or is more than the minimum requirements under the ESA, then the agreement between you and your employer will likely be followed.
- No Termination Clause: If your employment contract does not specifically address the notice you will get if terminated without cause, then you are entitled to reasonable notice under the common law.
Exception: Fixed term contracts which have a specific start and end date or end upon completion of a project or task do not entitle workers to termination pay or notice under the ESA except in limited circumstances. However, the worker may have remedies in court should the employer breach the terms and end the contract early.
- 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.
- Some workplaces are governed by federal laws such as: banks, broadcasting, airlines, cross-border and inter-provincial trucking and some other transportation services. Workers that are subject to federal laws have protection under the Canada Labour Code ("CLC") which sets the minimum standards for employers. Under the CLC, there are different rules, deadlines and remedies that apply and it is a good idea to get legal advice and information about this process.

Further Information is available from:

- **Ministry of Labour:** 1-800-531-5551 www.ontario.ca/page/ministry-labour-immigration-training-skills-development
- **Steps to Justice:** <https://stepstojustice.ca/legal-topic/employment-and-work>
- **CALC's website:** <http://communitylegalcentre.ca/legal-topic/employment-and-work/>

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