

CHECK LIST FOR EMPLOYMENT AGREEMENT

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1. Titles, duties and responsibilities, including, perhaps, reporting relationships

- The purpose here, from the company's point of view, should be to make the description as general as possible providing for considerable flexibility in order to prevent a successful constructive dismissal action when an employee is asked to assume new duties. Another matter which should be considered under this heading is whether the company will have the right to require the employee to change locations at the company's request.

2. Pre-hiring Representations

- It may be that the employee represents himself/herself as having certain skills and abilities. If so, these skills and abilities should be set out. (This can tie into the probationary issue referred to below, if appropriate). Another possible concern is if the employee is coming from a competitor where he was governed by a restrictive covenant and/or confidentiality agreement and/or has confidential information. In such case, appropriate covenants, undertakings and indemnities should be included in the agreement. This will help protect you from attack by the former employer.

3. Remuneration

- Starting salary and any agreed-to review procedures should be set out. Again, it is wise, from the company's point of view, to keep this as general as possible.

4. Incentive Compensation

- If the individual is to be compensated on some basis other than salary, particulars of how this compensation is to be calculated should be set out in order to avoid later confusion and controversy. It should also indicate whether any such incentive compensation is to form a part of the remuneration payable on severance.

5. Benefits

- The nature of the available benefits and when the benefits become applicable to the individual should be set out. It may be appropriate to indicate that the benefits are set out in an enclosure such as an Employee Handbook which the employee acknowledges will be subject to change from time to time.

6. Full Time and Efforts Clause

- Normally an employment agreement sets out that the individual must devote his full time and efforts to his employment. If there are any exceptions, they should be set out in the agreement. Also consider what overtime requirements may exist and how the employee will be compensated, keeping in mind provincial statutory requirements.

7. Probation

- If the employment is probationary, this concept should be fully explained in the agreement. In other words, the purpose of the probationary period, the rights of the employer during the probationary period and what happens if the probationary period is not successfully completed should be clearly spelled out.

8. Term

- If the agreement is for a specific period of time, this should be set out. The normal practice is for an employment contract to be of an indefinite duration with rights of termination on applicable notice.

9. Termination

- The agreement may spell out under what circumstances either party can terminate the agreement and what notice period would be applicable. If such a provision is included, the agreement should distinguish between termination for cause, including defining same, and termination for other than cause, in each case setting out applicable notice provisions, if any, keeping in mind that the applicable provincial minimum must be adhered to in each case.

10. Confidentiality

- Each employee should be asked to recognize the fact that he or she will, as an incident of employment, gain confidential information about the employer, its method of doing business, its finances, and its customers. The employee should agree to keep confidential such information both during and after his or her employment. It may be appropriate to list examples of confidential information specific to your business.

11. Restrictive Covenant

- In some cases, it will be appropriate for the company to require the individual (depending upon position) to refrain from “competing” with the employer subsequent to termination for a particular period of time in a particular geographic area. Under this heading, it is important to carefully consider the definition of “competition”, any geographical limitations to the prohibition against competition and the appropriate time frame for the restrictive covenant to last. If the restrictive covenant is overly broad in any of these respects, it will likely be unenforceable.

12. Performance Reviews

- If the company conducts regular performance reviews then it may be appropriate to specify this in the agreement. This should be carefully considered. If these performance reviews are not conducted on a regular basis and practice, it will be the defence of a wrongful dismissal action based upon incompetence that much more difficult.

13. Ownership of Work and Inventions

- For some employers, it is important to specify the employee's work product during the period of time he or she is employed will belong to the employer.

14. References and Criminal Records Check

- Some employers make offers of employment conditional upon a satisfactory reference and criminal records check. Ensure that this is clear in the letter and the appropriate consents and directions are obtained from the employee. Where possible perform checks before the offer goes out.

15. Industry or Employer Specific Requirements

- Consider what particular issues are specific to the employer, like licensing, training, safety, travel and anything else that has presented past issues or obstacles and deal with them up front and in writing.