

Employment Agreements are a Good Investment

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In Canada, 31.2% of all employees are covered by very detailed, comprehensive agreements which govern every aspect of their relationships with their employers - all those unionized workers in Canada who are subject to current collective agreements. It is interesting, however, that a relatively small percentage of those who are in positions senior to the unionized employees, or who work in a totally non-unionized environment, have **written** employment agreements. This deficiency is a result of both resistance on the part of employers and employees to entering into formal written agreements and a failure on the part of lawyers to market the virtues of employment agreements.



The most compelling reason to enter into a written employment agreement is the same reason which causes most other agreements to be recorded in writing - to ensure that the parties are, in fact, in agreement and, most importantly, to attempt to avoid disagreements later as to the relevant terms, by recording them in writing. Notwithstanding these compelling advantages, employers and employees are often hesitant to engage in the process of negotiating written agreements, for three main reasons:

1. The time and anticipated expense involved in doing so;
2. A lack of appreciation of the advantages of a written agreement; and
3. A desire (particularly on the part of the employee) to not appear to be suggesting that there is a lack of trust of the other party.

The reality is that the savings which can be generated by a written employment agreement far outweigh the costs of negotiating and preparing the agreement. From an employer's perspective, a properly worded termination provision addressing what is to be paid to the employee in the event of a termination without cause can result in a very significant saving.

An agreement avoids the costs associated with litigation and, with a long service employee, the saving involved by paying an agreed amount at the lower end of an appropriate range can be in the tens of thousands of dollars, which is a terrific Return on Investment relative to the costs of implementation of the agreement.

Occasionally, I have heard some clients (of other lawyers, of course, never my own) complain about the costs of litigation. In the employment context, there is a simple remedy - use properly drafted Employment Agreements and avoid a trip to the courthouse!

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