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LABOUR & EMPLOYMENT LAW
DROIT DU TRAVAIL ET DE L'EMPLOI



Building a Strong Foundation: *The Hiring Process & Employment Contracts*

April 22, 2025

Agenda

- Beginning the Employment Relationship
 - Hiring
 - Pre-Employment Training
- Formalizing the Employment Relationship
 - Employment Contracts
- Forms of Employment Relationship
 - Employee vs. Independent Contractor vs. Dependent Contractor
- Case Study



A white twin-engine propeller airplane is shown in flight against a bright blue sky with scattered white clouds. The sun is visible in the upper right corner, creating a lens flare effect. The airplane is positioned on the left side of the frame, flying towards the right. A semi-transparent white rectangular box is overlaid on the right side of the image, containing the title text.

Beginning the Employment Relationship

Hiring – Decision-Making

- Decisions should be objective, uniform, consistent, transparent, fair, unbiased, and comprehensive
 - Consider establishing guidelines for evaluating candidates
- Be forthright with reasons for not hiring someone
- Base the hiring decision on objective criteria
- Subjective decisions, such as a person’s “fit” with the organization are more open to unconscious bias
 - They may also be harder to defend in the event of a complaint or grievance
- Keep documentation relating to the process and decision



Hiring – Best Practices

- Conduct thorough reference checks
 - All previous employers, not just those offered
 - Ask: “if given the opportunity to re-hire this person, would you?”
- Avoid use of offer letters when offering job
 - Risk of creating a contract of employment
 - Impacts enforceability of subsequent employment agreement
- If unionized, follow CBA rules re: job posting process



Pre-Employment Training

- Parts II and III of the *CLC* apply to *employees*
 - Part II: “a person employed by an employer”
 - Part III – no definition, looks at common law principles
- Pre-employment trainees not included in definition
- Question: whether there is a *de facto* employment relationship
 - The longer the training, the more likely there is an employment relationship
 - Trainee cannot be performing ordinary job duties
- Offer of employment should be contingent on completion of training
 - Training should be generic in nature; employee should be able to work for a competitor based on training



Formalizing the Employment Relationship



Employment Contracts

- Every employment relationship is governed by an employment contract
 - Written or oral, formal or informal
- An employment contract is formed with the following elements:
 - 1) Offer
 - 2) Acceptance
 - 3) Consideration (something given in exchange for something else)
 - 4) Independent legal advice – opportunity
- Unionized employees – offer letter, terms and conditions in CBA



Why Have a Written Employment Contract?

- To limit liability, particularly with respect to termination
- To provide certainty about key aspects of the employment relationship
 - Indefinite term or limited term?
 - Reasonable notice of termination?
 - Can you suspend or lay off an employee?
- To ensure exclusive service and reduce conflicts of interest



Clause Checklist – *CLC*

- Names of the Parties
- Job title and description of duties
- Address of ordinary place of work
- Start date and term
- Probationary period, if any
- Hours of work and overtime rules
- Rate of wages, including overtime rate



Clause Checklist – CLC

- Mandatory deductions from wages
- Frequency of pay days and payment of any other form of remuneration
- Description of the necessary qualifications for the position
- Description of required training
- Information on expense reimbursement process

ESDC Form: [Employment statement required under the CLC, Part III](#)



Clause Checklist – Best Practices

- Termination language
- Reference to employer policies
- Restrictive covenants
 - Confidentiality, non-solicitation
- “Entire agreement”
- Independent legal advice



Enforceability – New Employees

- Timing is everything
 - Ensure employee reviews and signs contract **before** starting work
 - Provide opportunity (at least 7 days) to take contract home and review
 - Provide opportunity for independent legal advice



A large commercial airplane is shown in flight, viewed from a low angle, against a dramatic sunset sky. The sky transitions from a deep blue at the top to a bright orange and yellow near the horizon, where the sun is partially obscured by dark, silhouetted clouds. The airplane is white with blue accents on the wings and tail, and is flying towards the right side of the frame.

Forms of Employment Relationships

Why Classification Matters

- Employees covered by the *CLC*
 - Independent contractors not covered – commercial relationship
 - Dependent contractors are considered employees under Part I and common law
- Liability for improper classification
 - End of employment relationship
 - AMPs under *CLC*
 - Tax implications



Categories of Employment Relationships

- Employee
- Contractor
 - Dependent
 - Independent
- If the status is debated:
 - Step 1: determine whether the person is an employee or contractor
 - Step 2: if a contractor, determine whether they are dependent or independent



Employee vs Independent Contractor

- One of the most important distinctions in employment law is that between independent contractors (contract for services) and employees (contract of service)
- Incorrect identification can expose the employer to potential liability
- Mischaracterization has grave legal penalties
- Different consequences under different legislation
- Requires an employer to fulfill their obligations
- Can attract large fines
- A finding under one piece of legislation may not result in a finding under another piece of legislation



Employee Characteristics

Employee:

- worker works exclusively for the payer
- payer provides tools
- payer controls duties, whether that control is used or not
- payer sets working hours
- worker must perform services
- payer provides pension, group benefits
- worker is paid vacation pay
- payer pays expenses
- worker paid salary or hourly wage
- worker reports to payer's workplace on regular basis



Independent Contractor Characteristics

Independent Contractor:

- worker may work for other payers
- worker provides tools
- worker decides how the task is completed
- worker sets own working hours
- worker may hire someone to complete the job
- worker does not participate in payers benefit plans
- worker receives no vacation pay and has no restrictions on hours of work, or time off
- worker pays own expenses
- worker is paid by the job on predetermined basis
- worker submits an invoice to payer for payment
- worker may accept or reject work



Third Category – Dependent Contractors

Dependent Contractor:

- worker primarily works for the one employer
- worker is “economically dependent” on the employer
 - near-exclusivity threshold of at least 50%
- workers is subject to control of the principal
 - When, where, how work is performed
- worker has some financial risk



Employee vs Independent Contractor

An **employee** is entitled to:

- Reasonable notice of termination
 - *Also applies to dependent contractors*
- Employment standards minimums
- Workers' compensation
- Bargain collectively

Employers (of employees) must:

- Withhold income tax, CPP, EI
- Remit these amounts to the CRA
- Report employee's income and deductions
- Provide T4 slips
- Incur costs of benefits plans, record keeping and other administrative requirements
- Provide reasonable notice to employees who are terminated without cause





Case Study

Echo Helicopters

- Echo Helicopters hired Anita Job as a helicopter pilot
- Anita Job requested she be employed as an independent contractor
- Anita Job incorporated as a sole proprietor and all payments are made to her numbered company. Additionally, Anita:
 - Invoices Echo Helicopters for services rendered as a pilot
 - Provided a CRA number for GST
 - Is responsible for remittance of EI and CPP contributions
 - Maintains the authority to retain the services of employees of her company
- Echo Helicopters agreed to pay benefit premiums
- The contract states “the parties agree that the Contractor is providing services hereunder as an independent contractor”



Echo Helicopters

- Relevant Facts:
 - Anita was trained by Echo Helicopters
 - Day-to-day operation and duties were provided by Echo Helicopters' Chief Pilot
 - Anita is responsible for advising management if she cannot attend work on a given day
 - Anita is required to complete company flight logs upon returning to base
 - Anita is paid an hourly rate – not a fixed daily rate
 - Anita's income is not linked to the financial success of the company



- **Do you think Anita would be considered an Employee or an Independent Contractor?**
 - Which factors suggest she is an employee?
 - Which factors suggest she is an independent contractor?

QUESTIONS?



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Looking Forward to Seeing You in Our Next Three Sessions!

Session 2

Navigating Workplace Rights: Accommodation & Harassment Prevention

Tue Aug 19 12:00 - 01:00 PM ET

Session 3

Managing for Success: Performance, Feedback & Progressive Discipline

Thu Oct 16 12:00 - 01:00 PM ET

Session 4

Best Practices for Termination & Offboarding

Mon Dec 8 12:00 - 01:00 PM ET



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