

Employment Agreements



Presented by

Lisa Stam &
Evaleen
Hellinga

Spring LAW

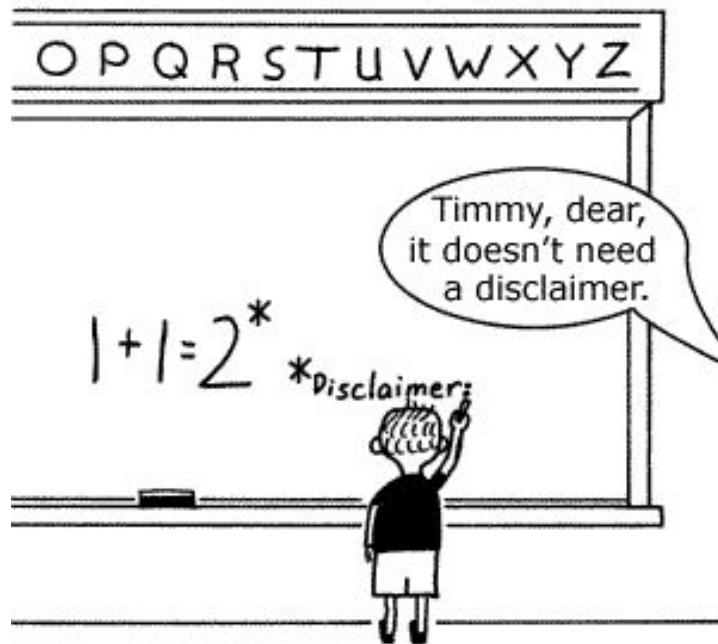


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Timmy
doesn't need
a disclaimer
but we do...



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Presentation Roadmap

- What is an Employment Contract?
- Types of Workers:
Employees vs Independent Contractors
- Top 5 Ways to Reducing Risk through your Contracts
- Tips for Your Employment Contracts Audit

What is an Employment Contract?

**CONTRACT OF
EMPLOYMENT**

The Employee

Last Name:

Name:

Address:

Phone:



What is an Employment Contract?

- Every Canadian employment relationship is governed by a contract - whether express or implied
- Implied contract: the common law rules
- Express contract: the contract rules (with a few caveats)
- Typically includes basics around compensation, role, terminations
- No at-will terminations in Canada

Benefits of a Written Contract

- Provides certainty to parties
- Sets clear expectations to refer back to when issues arise
- For an employer, it can address key concerns or liabilities for the business (ex. Confidentiality and IP, solicitation of clients, termination entitlements)

Types of Workers: Employees vs Independent Contractors



Types of Workers: Employees vs Independent Contractors

- Type of worker or contractor arrangement dictates contract to use
- Your workers are either:
 - Employee (fulltime, part-time, fixed-term, indefinite); or
 - Independent Contractor

“Contractors”

- “Contractor”: Independent Contractor or Fixed-Term Contract Employee?
- Colloquial terms sometimes cause confusion
- An employee may be on a contract for a fixed period of time and still be an employee (not an IC)!

Independent Contractor Terms

- No benefits and protections under the Employment Standards Act
- Invoice the business for their work and make their own remissions to the government — Income tax, HST etc.
- Can provide services to multiple clients at one time

Independent Contractor Terms cont'd

- Provide own tools and equipment
- Design own working arrangements, can hire own workers and can control the way in which they provide services
- Central question: is the person performing services as “a person in business on their own account” (Sagaz case)

Employee (vs IC) Terms

- Paid wages with payroll deductions such as CPP, IE and Income Tax taken by the employer
- Paid a salary or wages
- Employer provides all tools and equipment required to do the job
- Constrained in how they carry out their duties by the direction of the employer
- Loyalty requirements and restrictions on competing during employment

What's the Big Deal?

- Independent contractors have no entitlement to Employment Standards Act benefits or protections
- Our law is very protective of employees
- Courts heavily scrutinize Independent Contractor agreements
- Improper classification = employment relationship with no contract
- Also potential CRA implications

Top 5 Ways to Reducing Risk Through Your Contracts



Low Risk



High Risk

#1 - Termination clauses

- **Termination clauses** can provide some certainty with respect to how much it will cost an employer to terminate an employee

#2 - Restrictive Covenants

- **Restrictive Covenants** (i.e. Confidentiality and Non-Solicitation Clauses) can limit a former employee's ability to solicit clients or employees from the business
- Effective October 25, 2021, **non-competition clauses** are now illegal in Ontario
- Except: C-suite executive or sale of business
- Don't try to sneak in non-compete terms into your non-solicit section

#3 - Work ownership and confidentiality clauses

- **Work ownership and confidentiality clauses** can help ensure the business' key contacts, IP, and work product remain with the business

#4 - Company Data and Property

- Identify company vs personal property that must be returned on termination
- Set out data protection requirements

Specify Governing Documents

- If equity or other variable compensation, be crystal clear which documents govern the contract term
- Reference policies that impact contract terms

Tips for Your Employment Contracts Audit



Tip #1:

- Provide “fresh consideration” to make your employment contracts enforceable

Tip #2:

- Have employees sign employment contracts **BEFORE** the first day of work

Tip #3:

- Don't deliberately or inadvertently contract out of any minimum standards

Tip #4:

- Contain your greatest liability with an enforceable termination provision

Tip #5:

- Regularly audit and refresh templates & integrate customized legal advice when complex or tricky terms

Key Takeaways

- Pro-active investments in contracts save time and cost on exits
- Know the exact type of role the contract is for
- How you roll out contracts is as important as what you offer

Need Contract Help?

- Visit the [Legal Tools](#) on our website to DIY your employment contract
- Or give yourself a head start with our online template and contact us for legal customization



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**New Employer
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**Annotated
Employment
Contract Template**

Questions?

To learn more about our team:
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To connect with our legal team:

- Marnie Baizley - mbaizley@springlaw.ca
- Matt Chapman - mchapman@springlaw.ca
- Evaleen Hellinga - ehellinga@springlaw.ca
- Danielle Murray - dmurray@springlaw.ca
- Hilary Page - hpage@springlaw.ca
- Emily Siu - esiu@springlaw.ca
- Lisa Stam - lstam@springlaw.ca
- Tiffany Thomas - tthomas@spring.ca
- Gaya Murti - gmurti@springlaw.ca
- Lindsay Koruna - lkoruna@springlaw.ca

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