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## **EMPLOYMENT CONTRACTS FOR CHARITIES AND NON-PROFIT ORGANIZATIONS**

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### **A. INTRODUCTION**

The relationship between an employer and each of its non-union employees is contractual, which contract of employment may be either verbal or written. Sometimes, only some of the contract terms are in writing. Increasingly, employers and employees of charities and non-profit organizations are recognizing the benefits of having a written employment contract in place that set out all of their respective rights and obligations during both the tenure of employment and upon termination of employment. The purpose of this *Charity Law Bulletin* is to discuss the benefits of written employment contracts from the standpoint of both the employer and the employee of charities and non-profit organizations.

### **B. THE BENEFITS OF A GOOD EMPLOYMENT CONTRACT**

A written employment contract offers the benefit of clarity concerning the rights and obligations of each party at the outset of the employment relationship. With a well written employment contract, settling disputes regarding an employment situation should become a much simpler and less expensive proposition for both sides. As with any other form of contract, if there is a dispute involving a matter pertaining to employment, the contract can be reviewed to confirm the rights and responsibilities of each side. Therefore, a written employment contract can go a long way to avoiding expensive, time-consuming litigation.

Many of the employment disputes that do end up in court involve situations where there is no written employment contract. In such situations, the parties may have very different recollections concerning what

may have been agreed to with respect to some of the basic conditions of employment. In the absence of a written contract, a judge hearing the case will be forced to make decisions based on the credibility of the oral evidence of the parties, which becomes a very risky all-or-nothing proposition for both the employer and the employee.

For small organizations, the prospect of drafting a written employment contract may be daunting. However, an employment contract does not have to be long and difficult. While contracts for executives may be more complex and detailed than for staff employees or a middle manager, it is a worthwhile exercise in taking the time to reduce the contract to writing for every employee regardless of their position.

### **C. COMPLIANCE WITH THE *EMPLOYMENT STANDARDS ACT*, 2000**

In drafting the contract, care must be taken to ensure that provisions do not violate any of the minimum standards set out in the *Employment Standards Act*, 2000 (the “ESA”). These minimum obligations on employers in Ontario touch on number of issues, such as minimum wage, overtime pay, vacation entitlements, statutory holidays, leaves of absence and termination and severance obligations. The ESA specifically provides that these minimum requirements cannot be lessened, even by agreement. Further, courts will not enforce employment contract provisions that do not meet minimum statutory requirements imposed by the ESA.

### **D. TERMINATION PROVISIONS**

Some employers do not wish to enter into employment contracts, as they believe such contracts may unduly constrain their ability to manage their workforce, including terminating employees when required. However, this is not the case. Employees can still be terminated even if they have a written contract of employment. However, employers must still provide proper notice, or pay in lieu of notice of termination in cases of termination without reasonable cause. Without a contract specifying the notice to which an employee is entitled, courts will determine how much notice is reasonable under the circumstances. These common law notice periods are often significantly greater than the minimum standards mandated by the ESA, and as such the lack of a written termination clause can expose the employer to significant liability in the event of a termination of an employee without cause. Contractual notice provisions will generally be enforced by the courts so long as they meet the statutory requirements of the ESA and are not in violation of any other law, such as the *Ontario Human Rights Code*.

Employers are often surprised at the amount of common law “reasonable notice” that an employee may be entitled to receive in the absence of an enforceable written termination provision in a contract. An enforceable termination provision in a contract can fix termination costs and will avoid the uncertainty and expense of a wrongful dismissal lawsuit where the sole issue is that of reasonable notice.

## **E. OTHER KEY PROVISIONS**

Both the employer and the employee should consider including the following additional key terms in the contract:

- ◆ the position being offered and accepted, as well as a job description;
- ◆ the compensation that will be paid, including the right to receive any bonuses or commissions and the formula of determining these forms of compensation;
- ◆ whether the employment is for a set length of time or is indefinite;
- ◆ specifics regarding vacation time and sick leave and whether such time accrues from year to year;
- ◆ whether there will be a probationary period after hiring;
- ◆ possible changes in job or location; and
- ◆ protection of the employer’s intellectual property and confidential information and whether there will be any post-employment obligations (non-competition, non-solicitation clauses).

A written employment contract can also be used to incorporate by reference the employer’s personnel and policy manual which will specify such matters as eligibility for benefit plans, the repayment of expenses and the employer’s policy regarding e-mail and internet use, amongst other policies. However, in order to incorporate such policies by reference into the written employment contract, there needs to be a clause in the contract specifically doing so. Also, the employer should provide a copy of the policies to the employee prior to that employee commencing work. If this is not done, it is possible that a court may find that the particular policies and procedures do not form part of the employment contract.

## F. CONCLUSION

First and foremost, a written employment contract protects promises made by both parties at the time of hiring. Both the employer and the employee benefit by the clarity and certainty that a written employment contract brings to the relationship. Therefore, employment contracts are good for everyone. If your organization does not have a policy requiring written employment contracts, this may be a good time to consider the benefits that written employment contracts may offer to your organization, and its employees.