

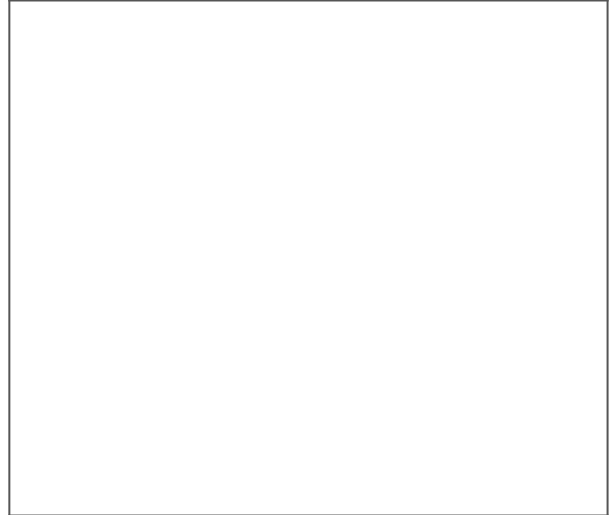
Employment Handbooks are a Good Investment

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In a **previous article**, I expressed my bewilderment at the fact that, although employers in Canada spend hundreds of millions of dollars each year negotiating and administering very detailed collective agreements which cover less than 1/3 of the Canadian workforce, a relatively small percentage of employees who are in positions senior to the unionized employees, or who work in a totally non-unionized environment, have any written employment agreements. In that blog, I urged employers to utilize an “ounce of prevention” and make use of such agreements rather than incurring significant legal costs later.

A companion to the individual written employment agreement which can also be used very effectively to slash legal and other costs is a well-prepared Employee Handbook. In order to be effective, such a Handbook should be an enforceable legal document. Unfortunately, many are not. For some reason that I have never understood, some employers persist in having a disclaimer at the front of the Handbook, proclaiming that it is not a legal document. The reality is, however, that employees rely on the representations contained in the Handbook and are able to utilize those representations in advancing claims in a courtroom, while the employer is barred from doing so by its disclaimer.

On occasion, as I prepare to defend a wrongful dismissal claim on behalf of a new client, the client proudly reports that the employee is limited to a specified period of notice by virtue of the corporation’s Employee Handbook. As I



question the client as to the circumstances surrounding the implementation and use of the Handbook, I often discover that this optimism is misplaced.

An Employee Handbook is only worthwhile, from a legal perspective, if it is binding on the employee. Many employers have received rude surprises when they have attempted to enforce the terms of a Handbook without having taken the necessary steps at the time of its provision to the employee involved.

Simply publishing an Employee Handbook is not sufficient to define the legal relationship between the parties, since the Courts have found that employees cannot be negatively affected by new terms of employment imposed without the employee's consent. For example, in *Starcevich v. Woodward's Limited*, the employer attempted to place reliance on a severance policy which had been distributed in 1987 in defending a wrongful dismissal claim by an employee who had commenced employment with that employer in 1983. In rejecting the employer's position, the Court stated as follows:

"There must be evidence that the policy was accepted by both the employer and the employee as a term of the employment contract, and the onus in that respect rests on the party seeking to rely on the policy as a term of the contract.

If the defendant is correct in saying that the 1987 severance policy became a term of the plaintiff's employment when it was promulgated, then, in my view, the defendant is saying that it had the right to unilaterally impose a new term of employment on the plaintiff long after the initial hiring. I know of no theory of contract law which suggests that one party can unilaterally impose a contractual term on the other unless the other agrees to accept that term as a term of his or her contract."

The answer to this problem is a simple one - when issuing a new Employee Handbook, roll it

out to the employees properly, with appropriate notice, and retain records of the written acceptance by each employee of the terms set out in the Handbook.

If you currently are using Employee Handbooks - great! You should, however, ensure that it is current, review how the current Handbook was implemented and whether you have signed acceptances of the terms set out in the Handbook from each employee. If you did everything properly, it is possible that the Handbook will be useful in significantly reducing your exposure if it is necessary to implement a without cause termination. If not, it would be a good time to explore how you might fix your Handbook implementation - a little effort now can save a significant amount of money later.

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