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OFFER LETTERS AND EMPLOYMENT AGREEMENTS

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INTRODUCTION

The purpose of this section is to help provide foundational knowledge around two important HR documents: offer letters and employment agreements. The key elements discussed here are aimed to offer a basic framework that will allow you to create inviting offer letters that are an extension of a remarkable candidate experience, and well structured employment agreements that protect your interests as an organization while meeting your legal obligations as an employer in British Columbia.

OFFER LETTERS

An offer letter should exist as a separate document from the employment agreement. This is the first official communication you will be sending to your prospective new hire, and it sets the tone for the relationship they can expect to have working with you. This is a momentous document as it signifies your invitation for them to take the next step of their career at your organization, to become part of your team and to grow with your team presumably for years to come. This letter should at once convey your excitement in extending the offer and elicit their excitement in accepting it.

Unlike an employment agreement, the offer letter doesn't have to be very formal at all. This is a great opportunity to be creative, think outside the box and have some fun with it. Inject your brand voice and values, to get the candidate excited about joining your organization. For example, your offer letter can be a slide deck with images, graphics and even videos instead of a text document to make it more visually appealing. This is a great opportunity to showcase the fun side of your organization and also reinforce your employer brand.

Like with most other invitations, the content of an offer letter should be short and sweet. Include key details such as the position title, start date, etc., but other than that the focus should be on the things that are the most important to your candidate at this point – i.e. what's in it for them. Leave out other things that are secondary at this point in time and would be much better reflected in elaborate paragraphs on the employment agreement anyway.

What to include in an offer letter: Job title, position type (e.g. Full-time, permanent), who the position reports to, start date, end date (if applicable), work hours, work location, flexible work options, salary, bonuses, vacation entitlement, extended benefits including dental and vision (if applicable) and any additional perks.

What not to include in an offer letter: Job description, probation period (unless it's not the typical 3 months), termination clauses, HR policies, or anything else that would be much better reflected on the employment / contract agreement.

Offer Letter Best Practices

Add details where it matters - Your candidate may be weighing multiple offers against each other, so the details could become deciding factors. For example, if you offer RSP matching, include the max amount or percentage; if you offer an education fund, include the annual amount; if you regularly organize team activities outside of work, include examples. Anticipate what kind of details your candidate would want to know at this point and include them so as to avoid going back and forth with clarifying questions.

Be clear about sign back requirements - Specify the date and time by which a candidate must send back the signed offer letter and to whom, to indicate their acceptance.

Include important conditions of the offer - For example, criminal record check (note: policy in this area is a mandatory element of being a PSO), reference checks, etc. Indicate that the full employment terms and conditions are in an employment agreement, so that the candidate understands a separate, formal employment agreement would follow.

For inspiration, see this [sample offer letter](#) or download the [template](#).

EMPLOYMENT AGREEMENTS

The employment contract establishes the key terms of the employment relationship, including the employer's obligations and the employee's rights. The contract clarifies expectations around key terms such as a start date, salary or hourly wage, benefits, hours of work and termination pay.

This document outlines basic terms in employment contracts in *non-unionized* workplaces for employees covered by the *Employment Standards Act* ("ESA").

Compliance with Applicable Laws

The terms in an employment contract must comply with the requirements of applicable laws. While numerous laws apply, employers need to be particularly conscious about requirements under the ESA, *Human Rights Code* and occupational health and safety legislation.

For example, employers must provide their employees with *at least* the minimum benefits prescribed by the ESA. Some of these requirements are referenced below.

Consideration

A contract is formed any time two parties mutually agree to exchange something of value. The legal term for this "something of value" is called "consideration". The parties to a contract can be individuals, companies or other types of organizations.

An employment contract is generally reached when an employee agrees to work in exchange for getting paid from their employer. In this scenario, both the employer and the employee are receiving something of value (i.e. consideration). The employer

receives the benefit of the employee's labour, and the employee receives compensation.

For a contract to be valid and legally enforceable, the consideration needs to be “fresh” i.e. something of value that is *new* to which the party is not already entitled. By signing onto a new contract, the employee is agreeing to new terms of employment. This holds true for employees that are already working for an employer. If they agree to new terms of employment, e.g. signing onto a new employment agreement, they need to be provided with something of value that is also new (for example, a one-time bonus paid upon signing the contract). Note that a performance bonus that was already promised, earned or paid will not be new, because it is something the employee was already entitled to receive.

Basic Terms in Employment Agreements

Position – The specific role that the employee is being hired for. This term may include who the employee will report to.

Term – There are at least three components to this:

1. When the contract becomes binding: a contract is entered into when both parties agree to it,
2. The employees first day of work, often called the Start Date, and
3. When the employment ends.

Regarding the third, most employment contracts are for an indefinite duration. Fixed-term contracts are sometimes used for temporary assignments and for senior level employment.

In all instances, the contract should provide the employer and employee the right to terminate the employment earlier (see Termination below).

Duties – The specific duties and responsibilities that the Employee must perform in their position.

Conflicts of Interest – Conflicts of interest exist when an employee's personal interests could influence their decisions or ability to act in the best interest of their employer. Because all employees have a duty of loyalty, good faith and fidelity to their employers, conflicts of interests (both perceived and actual) should be avoided. To what extent will often vary by the employee's position and the nature of the conflict.

Hours of Work – How many hours the employee must work under the contract. This includes scheduled breaks and if / how overtime will be paid.

Under the ESA, there are rules that regulate hours of work. Some examples include:

- Standard work hours are 8 hours in a day and 40 hours in a week. A week is from Sunday to Saturday.
- Employees must be scheduled for at least 2 hours of work. They must also be paid if they report to work as scheduled and there is no work for them to do.
- Employees who work over 8 hours in a day or 40 hours in a week must be paid time-and-a-half or double-time for overtime hours worked.

Compensation – The remuneration an employee will be paid and how the employee will be paid e.g. hourly, weekly or monthly.

Under the ESA, there are rules that regulate compensation. Some examples include:

- All employees must be at least paid minimum wage.
- Employers cannot deduct business costs from employee wages.
- Employees must be paid twice per month, and pay periods cannot be longer than 16 days.
- All money earned, including overtime and statutory holiday pay, must be paid within 8 days after the end of the pay period. Annual vacation pay and wages in an employee's time bank need not be paid within the pay period.

Vacation – How much time off an employee will receive.

Under the ESA, there are rules that regulate vacation time off and vacation pay. Some examples include:

- Vacation Pay: After five calendar days of employment, employees are entitled to vacation pay on all wages: Employees must receive at least 4% of their total wages for vacation pay until they have been employed for five consecutive years, at which time they must receive at least 6% vacation pay.
- Vacation Time Off: Employees earn vacation time during the first year they're employed. After 12 months, they get two weeks of annual vacation. After 5 years, they get three weeks of annual vacation. Employees are supposed to use the vacation pay they have earned before their vacation time off to pay for their vacation. Vacation must be taken within 12 months of being earned. Employees cannot skip taking vacation time and just receive vacation pay.

Benefits – Employers may provide additional benefits to employees, for example a benefit plan that may include extended health and other benefits such as life, accidental death and disability, and disability benefits.

Expenses – The parameters under which an employee will be reimbursed for out-of-pocket expenses they incur on behalf of their employer.

Confidential Information – A definition of what the employer considers to be confidential information, and the employee’s obligations regarding this confidential information.

Termination – The ways that the employment may terminate, and the employer/employee obligations when this happens. This will include:

1. By the employer:
 - a. For just cause, immediately, with no advance notice provided,
 - b. Without cause, with the advance notice of termination or payment in lieu of this advance notice
2. By the employee (resignation) with the advance notice agreed to in the employment contract.

Whether an employer has “just cause” to terminate an employee is a question of law that requires a case by case analysis.

Under the ESA, employers must comply with the minimum notice provision when terminating an employee without cause. The amount of written notice and / or pay is based on how long an employee has been employed:

<i>Amount of written notice and/or pay required for termination of an individual</i>	
<i>Length of employment</i>	<i>Amount required</i>
Three months or less	No notice and / or pay
More than three months	One week of notice and / or pay
More than one year	Two weeks of notice and / or pay
More than three years	Three weeks of notice and / or pay, plus one week of notice / pay after each additional year of employment (to a maximum of eight weeks)

If an employer and employee agree, e.g. in an employment contract, that upon termination the employee will be provided *more* than the ESA minimum amount of notice/pay in lieu, then that employer must honour that agreement.

A third situation arises where an employer and employee do not reach an agreement to limit the amount of notice or pay in lieu of the ESA minimum amount or the agreement between them is not legally enforceable otherwise. In this situation, that employee may be entitled to additional severance at common law. The amount of notice (or pay in lieu) at common law an employee will be entitled to depends on the employee's age, character of employment and availability of similar work, along with other factors.

Under the ESA, there are also additional requirements upon termination including timing of final pay and delivery of an employee's record of employment.

Temporary Layoff – When an employee is temporarily laid off i.e. given less work or no work, with the plan that the employee will return to a regular work schedule.

Under the ESA, there are rules that regulate hours of work. Some examples include:

- If an employee's hours are reduced, they are considered laid off when they earn less than 50% of their weekly wages at the regular rate (averaged over the previous eight weeks that they worked).
- Employers cannot temporarily lay off an employee unless that employee agrees to the temporary layoff in advance e.g. in an employment contract.
- An employee cannot be temporarily laid off for more than 13 weeks in any given 20-week period (about 3 months in a period of 5 months).

Entire Agreement – The employment contract, and any attached documents, constitutes the entire agreement between the employer and employee. This helps ensure there is no dispute about which documents make up the employment contract, and reduces uncertainty.

Compliance with ESA – The employment contract will be deemed to apply with the ESA. If the ESA is amended, then those amended terms will apply to the employment contract.

Governing Law – The law that will apply to the contract. The employment laws that apply are usually the laws of the place where the employee is living and working.

Severability – If one or some terms of the employment contract are found to be invalid, they are “severed” from the employment contract and the rest of the terms remain valid.

Independent Legal Advice – Confirming that the employee has been given an opportunity to obtain independent legal advice before signing the employment contract.

Additional Terms

The following are examples of other terms that employers may include in their employment contracts. Each requires specific wording, including if there are any obligations that continue after the employment ends.

Other Forms of Compensation – For example, commission payments, participation in a pension plan, bonus plans, stock options etc.

Restrictive Covenants – There are two common restrictive covenants. Both types restrict an employee's activities during and *after* their employment ends:

1. non-competition clauses, which prevent an employee from competing against the business of their employer / former employer, and
2. non-solicitation clauses, which prevent employees from soliciting the clients and customers of their employer / former employer for other businesses.

Restrictive covenants will be enforceable only where the employer can demonstrate that the clause is reasonable in the circumstances. Whether a restrictive covenant is reasonable is a question of law that requires a case by case analysis. Relevant factors include the nature of the interest being protected, and the scope e.g. duration and any geographic limitations.

Intellectual Property – To protect the employer's interest in intellectual property and ownership of developments that employees create while working for an employer.

Click here for downloadable employment agreement templates.:

- [Guidance Document](#)
- [Existing Employee](#) ([Full Time Staff](#), [Part Time Staff](#), [Full Time Manager](#), [Part Time Manager](#))
- [New Hire](#) ([Full Time Staff](#), [Part Time Staff](#), [Full Time Executive Director](#), [Full Time Manager](#), [Part Time Manager](#))
- [Independent Contractor](#)
- [Volunteer](#) ([Committee Member](#), [Staff with Language for Minors](#), [Board Member](#))