
**Employment Contracts:
The Twelve Most Common Avoidable Drafting Errors**

**Appendix "A"
Employment Contract Checklist
(Abbreviated)**

- Conditional or Firm Offer – are there reference, background checks, verification of credentials or proof of right to work in Canada issues?**

- Consideration**
 - New employment**
 - Promotion**
 - Raise/Bonus**
 - Third party consideration – i.e. closing of transaction, investment into company which benefits employee and without agreement, no closing/transaction**

- Term (limited time period or task) or Indefinite?**

- Scope of Position**
 - Job Title**
 - Reporting Structure – does employer have right to delegate or change?**
 - Geographic location – does employer have right to shift/change?**
 - Scope of position – does employer have right to assign/re-assign duties?**
 - Executive, management, supervisory, front-line worker**

- Probation Clause**

- Compensation**
 - Base**
 - Bonus**
 - Profit-sharing Plan**

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- Commission**
 - Stock Option**
 - Car allowance**
 - Pension/RRSP**
 - Review Process**

 - Benefits (eligibility for benefits)**
 - When employee becomes eligible**
 - Are there any health or other preconditions?**
 - Premium contributions**
 - Mandatory or not**
 - Conversion upon termination**
 - What happens upon termination?**

 - Confidentiality Clause**
 - Definition of confidentiality**
 - Prohibition on copying/use outside scope of employment**
 - Obligation to return confidential or proprietary materials**

 - Termination of Employment**
 - Notice of resignation**
 - Termination without cause – options include:**
 - Employment Standards Act, 2000 minimums**
 - Fixed amount greater than ESA 2000 minimums**
 - Sliding formula that builds on years of service**
 - Requirement for mitigation**
 - Claw back upon finding alternate employment (employee must always get more than ESA 2000)**
 - Benefits upon termination**

 - Termination with cause**
 - Common-law definition of cause**
 - Any additional definition of cause required due to industry issues**

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- Disability/Absenteeism**
 - Human Rights/Duty to accommodate issues**
 - Death**
 - Definition of compensation if compensation in lieu provided**
 - Ownership of Intellectual Property**
 - Patent**
 - Trademark**
 - Copyright**
 - Moral rights**
 - Cooperation after end of employment relationship**
 - Non-Solicitation/Non-Deal/Non-competition¹**
 - Temporal limits/Geographic scope**
 - Protecting clients**
 - Protecting prospective clients**
 - Protecting employees and independent contractors**
 - Other Matters**
 - Layoffs**
 - Policies**
 - Conflict of interest**
 - Harassment/workplace respect**
 - Expenses**
 - Boilerplate Clauses**
 - Integration/excluding parole evidence**
 - Stipulation as to court/forum/law**
 - Severance of illegal provisions**
 - Preserving minimum legislative requirements in lieu of contractual provisions**

¹ The reader should read the excellent decision of Justice Perell in *Martin v. ConCreate USL Limited Partnership*, 2012 ONSC 1840 (CanLII), which summarizes the entire law on restrictive covenants in a precise and comprehensive manner. The case was overturned on appeal at 2013 ONSC 72, but the underlying analysis was not disturbed. Readers should also

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- **Independent Legal Advice or opportunity to obtain**

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be familiar with the decision of *GasTOPS Ltd. v. Forsyth*, 2009 CanLII 66153, upheld on appeal at 2012 ONCA 134 (CanLII).