

Employers Facing Uncommitted Customers, Competition, and Cost Pressures Looking to "Outsource" Labour Supply, or Secure Written Employment Agreements

Date: March 05, 2012

Lawyers You Should Know: William Anderson

Original Newsletter(s) this article was published in: Blaneys on Business: March 2012

High technology notwithstanding, wages, salary and benefits remain among the largest costs that businesses must meet. The effective management of these costs remains a key to profitability.

During the last five years, businesses have been warier about labour costs than at any time since the Second World War. Instead of making continuing commitments to full-time staff, employers have increasingly been turning to "independent" contractors. When employers *do* make the decision to commit to a full time position, they have been more prone to setting out their requirements, and the employee's obligations, in a formal, written employment agreement.

Blaney McMurtry's Employment and Labour practice group hosted a seminar for clients recently entitled "HIRING AND FIRING: What you need to know." It included presentations on what to watch for when you retain outside suppliers or prepare to enter into a written employment agreement with a new hire.

Here are some of the basic ideas discussed:

INDEPENDENT CONTRACTORS

- Independent contracting can be attractive for both the employer and the contractor.
- Employers can get a job done without engaging in a permanent employment relationship, all the while conserving cash (no obligations under the *Employment Standards Act*; no regular

remittances required for employment, health and worker safety insurance) and saving on HR administration.

- Contractors can enjoy greater freedom, cash flow and net income.
- The key for employers is to make sure that the contractual relationship does not constitute an employer-employee relationship by another name.
- The essential question in making the distinction is, who owns the contractor's business? In other words, who decides what is to be done, the way it is to be done, the means employed in doing it, and the time and place where it shall be done?

For specific guidance on any independent contracting interest or issue that you may have, please contact Barry Prentice, 416-593-3953, bprentice@blaney.com.

For more detailed general information, please see Barry's presentation, THE RISK AND REWARDS OF ENGAGING INDEPENDENT CONTRACTORS, at <http://www.blaney.com/articles/risk-and-rewards-engaging-independent-contractors-powerpoint-slideshow>.

WRITTEN EMPLOYMENT AGREEMENTS

- The employer typically has only one chance to get a clear and unambiguous employment contract right -- before the employee starts. If the contract is signed after the new hire shows up for work, it is already too late. Implied terms and conditions will have been created.
- The agreement must set out all terms and conditions clearly. In addition to compensation and benefits (that are consistent with the benefits policies), it must address such matters as confidentiality and the ownership of inventions. Titles, reporting relationships, and work location should not be over-described. The employer wants maximum flexibility -- both to facilitate the management of the business and to protect against any future constructive dismissal action.
- The agreement should refer specifically to what the employee has said about his/her skills and abilities "You said you could do...." It must also cover obligations to former employers. "We have told you that we are not interested in confidential information from former employers and we have directed you to stay away from their customers." Overall, you've got to tell the person in the agreement that you are relying on his/her representations.
- The agreement must require, explicitly, that the employee give the company his/her full time and attention and that he/she has no conflicts of interest.
- The purpose and length of any probationary period, the rights of the employer during the probationary period, and what happens if the employee is not successful, must also be set out specifically.
- Performance review -- Think about whether you want it in the agreement. Do not promise it if you are not going to do it. If you fail to follow-through, it will make any dismissal decision based on incompetence that much more difficult to defend.
- A strict, unambiguous termination clause is crucial. The employer needs certainty and predictability regarding the end of the relationship. If the clause must be implemented, the employer can be more generous at the time of exit if it wishes.
- Reference and police record checks -- Make them BEFORE you make an offer. It may seem self-evident, but....

For specific guidance on any employment contract interest or issue that you may have, please contact Bill Anderson at 416-593-3901, banderson@blaney.com.

For more detailed general information, please see Bill's presentation, THE WRITTEN EMPLOYMENT CONTRACT – Minimizing future disputes, at <http://www.blaney.com/articles/written-employment-contract-minimizing-future-disputes-powerpoint-slideshow>.

Hiring and Firing Seminar

Presented by Blaney McMurtry's [Employment & Labour Law Group](#)

The Blaney McMurtry HIRING AND FIRING seminar, which focussed on managing the process of joining and leaving a workplace and the need for flexibility, certainty and predictability in that process, included six presentations. Here is a list of all six, the Blaney counsel to contact for guidance on any specific issue/interest that you may have concerning the subjects, and the links to the presentations themselves:

THE RISK AND REWARDS OF ENGAGING INDEPENDENT CONTRACTORS

[Barry Prentice](#), 416-593-3953 or bprentice@blaney.com, and:
<http://www.blaney.com/articles/risk-and-rewards-engaging-independent-contractors-powerpoint-slideshow>.

THE WRITTEN EMPLOYMENT CONTRACT

[Bill Anderson](#), 416-593-3901 or banderson@blaney.com, and:
<http://www.blaney.com/articles/written-employment-contract-minimizing-future-disputes-powerpoint-slideshow>.

FACEBOOK – FRIEND OR FOE? THE IMPACT OF SOCIAL MEDIA ON HIRING AND FIRING.

[Jack B. Siegel](#), 416-593-2958 or jsiegel@blaney.com; [Catherine Longo](#), 416-593-2998 or clongo@blaney.com, and:
<http://www.blaney.com/articles/facebook-friend-or-foe-impact-social-media-hiring-and-firing-powerpoint-slideshow>.

HUMAN RIGHTS OBLIGATIONS WHEN HIRING OR FIRING

[Elizabeth Forster](#), 416-593-3919 or eforster@blaney.com; [Maria Kotsopoulos](#), 416-593-2987 or mkotsopoulos@blaney.com, and:
<http://www.blaney.com/articles/conducting-effective-interview-dos-and-donts-during-hiring-process-human-rights-perspective>.

HIRING AND FIRING IN THE UNIONIZED ENVIRONMENT

[Mark Geiger](#), 416-593-3926 or mgeiger@blaney.com, and:
<http://www.blaney.com/articles/hiring-firing-unionized-environment-powerpoint-slideshow>.

CAUSE... OR NO CAUSE? THE INS AND OUTS OF TERMINATIONS FOR CAUSE.

[David Greenwood](#), 416-593-2879 or dgreenwood@blaney.com; [Melanie Francis](#), 416-593-4895 or mfrancis@blaney.com, and:

<http://www.blaney.com/articles/causeor-no-cause-ins-and-outs-terminations-cause-powerpoint-slideshow>.

Blaney McMurtry's [Employment and Labour Law practice](#) is rooted in the premise that employees are an employer's most important asset. Blaneys' workplace lawyers support frontline managers and supervisors in their efforts to establish, sustain and enhance the constructive workplace relationships that are the foundation of the most productive and profitable enterprises. While it is impossible to avoid all problems in the employment relationship, sound personnel policies, set out clearly and understandably and applied positively and pro-actively, can reduce conflict significantly.