

Whitten & Lublin is a team of legal experts who provide practical advice and advocacy for workplace issues.

ENFORCING WRITTEN EMPLOYMENT CONTRACTS

Many employers include language in their employment contracts that deal with employee terminations. This is a recommended practice that helps alleviate uncertainty with respect to how much it will cost to terminate an employee.

Now more than ever, courts are holding employers to a very strict standard with regard to enforcing these clauses. Courts will not hesitate to disregard contractual language that is poorly drafted or non-compliant with legislation.

When crafting termination language in a contract, employers must take great care to ensure that the contract clearly sets out exactly what an employee will receive. If there is any doubt or confusion about the entitlements set out in the contract, a court may not apply it.

A contract should also ensure that the minimum statutory entitlements are respected. This is where most contracts fail. If termination language in an employment contract does not provide an employee with the minimum of what he or she is already entitled to under provincial or federal legislation, then a court will strike it down. Unfortunately, crafting this language is often easier said than done. For example, failing to reference health benefits in employment termination language has been held as a reason not to apply the clause.

In order to ensure that termination language is worth the paper it's written on, follow these steps:

- Keep it simple: The clause must clearly set out the specific amount of notice and/or pay that the employee will receive. A complex clause risks having more than one possible interpretation, which could invalidate the entire clause.
- Know your jurisdiction: In order to comply with minimum employment standards, the employer must know what statute applies. Some employers are provincially regulated (every province has a different statute), and some are federally regulated (i.e. the *Canada Labour Code*).
- Know the applicable minimum standards and how they apply: Familiarity with minimum statutory obligations in all potential circumstances will help ensure that a clause is compliant with them at all times.
- Close the door on more damages: The clause should be written in a manner that does not permit an interpretation that additional payments, aside from those prescribed, could apply.
- Recommend independent legal advice: Prior to having the individual sign the contract, recommend that they seek independent legal counsel. Ideally, include this in the contract, which will help defuse an argument that the person was forced to sign under duress, or that they didn't understand what

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CONSULTATIONS

For a consultation please call us at 416-640-2667 or submit your online request [here](#).

HR MANAGER'S GUIDE TO INDEPENDENT CONTRACTORS IN THE WORKPLACE



Available for purchase from [Carswell's store](#).

they were signing.

Great care and attention should be given to the drafting of employment contracts, and particularly to termination clauses. As the law evolves, it is important that termination provisions reflect the current state of the law in order to ensure enforceability.

LATEST NEWS

[Daniel Lublin](#) appeared on [CTVNews](#) where he was interviewed regarding the Ray Rice investigation by the National Football League. His interview can be watched [here](#).

UPCOMING EVENTS

On Friday, September 26, 2014, [Aaron Rousseau](#) will be presenting a live webinar for the [Human Resources Professionals Association](#) entitled "Overtime and the Salaried Employee". For more information on this program, please visit the [HRPA's website](#).

Save the date! [David Whitten](#) will be speaking about employment agreements at the [Human Resources Professionals Association's](#) Annual Conference taking place in 2015 from Wednesday, January 21 - Friday, January 23 at the Metro Toronto Convention Centre, Toronto, ON. For more information please visit [HRPA's website](#)

LAW BLOG

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