

Ask An Expert: Reviewing the Contract

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Question: How much time is appropriate to allow for a new hire to look over an employment contract or seek legal advice before signing? What should an employer do if the employee wants to sign right away?

Answer: While there is no hard and fast rule, three business days is generally accepted as a fair and reasonable amount of time.

There are a few purposes served by giving a potential employee time to review an employment contract.

First, and perhaps fundamentally, it's the fair thing to do. However, it is also wise to do so from a business perspective. Canadian courts have long recognized the relationship between an employer and prospective employee is typically not one of equal bargaining power. As such, if an employer seeks to rely on the terms of a written employment contract – often at the time of termination – the employer must demonstrate the contract is lawful and that the employee entered into it freely, voluntarily and with an understanding of its meaning, having had time to seek advice as to its meaning.

Allowing an employee time to carefully review a contract can be critical to demonstrating the employee either understood the contract or had the chance to obtain advice as to its meaning. This is why it is also often prudent to include in the contract a statement that the employee was afforded the opportunity to and was encouraged to seek independent legal advice.

At a minimum, three business days is a reasonable time frame for a potential employee to avail him or herself of the benefit of a contract review (whether by the employee and/or with independent counsel).

Should an employee wish to sign the contract immediately, without the benefit of a review period, the employer should resist this and consider ways to encourage slowing down the process. In appropriate circumstances, this might include making a financial contribution towards the employee having the contract reviewed by independent counsel. Particularly where the potential liability would be significant if the employer was later unable to rely on the contract language. A financial contribution might be a small price to pay toward solidifying the enforceability of the contract.

Finally, it is important to have the contract signed by the new employee before the employee commences his or her first day at work. If the contract is signed after work has already commenced it is possible the employee could later argue he or she was not given anything identifiable in exchange for signing the contract (i.e., 'consideration') since the employee was already in possession of the job before signing the contract. As such, execution of the contract

prior to the commencement of work is an important element of ensuring it is later enforceable for the employer.

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