

How long should a new hire have to sign an employment contract?

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 most fundamental, it's the fair thing to do. However, it is also wise 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 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



Brian Wasyliw
TOUGHEST HR QUESTION

the chance to obtain advice as to its meaning. Often, this is why it is also prudent to include in the contract a statement that the worker was afforded the opportunity, 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 herself of the benefit of a contract review (whether by herself 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 she commences her first day at work. If the contract is signed after work has already commenced, it is possible the employee could later argue she was not given anything identifiable in exchange for signing the contract (“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.

Brian Wasyliw is a lawyer at Sherrard Kuzz, a management-side employment and labour law firm in Toronto. He can be reached at (416) 603-0700 or visit www.sherrardkuzz.com for more information.