

Sign employee contract when you love the job

Gerry Bellett

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Vancouver – Employment contracts – as prenuptial agreements – are best made in the throes of passion, says lawyer Peggy O'Brien, an expert on labor and employment law with Vancouver's Lawson Lundell.

“Both parties should do it while they are still in love – while the company's courting you and while you're interested in (abandoning) a secure position to join them,” said O'Brien, who in 16 years of practice has also been involved in divorce proceedings when corporations' affections sour.

“It's best to get everything upfront in the event your new position doesn't work out. You should know what you're entitled to if you find yourself out of work six months later,” she said.

Every employee, union or non-union, is covered by an employment contract whether written or not. Government regulations, union contracts or the application of Common Law will determine what an employee is entitled to in the event of job loss.

O'Brien says many settlements include not only salary but accrued benefits, such as earned holiday pay, and would most likely be awarded by the courts under common law in any event. In recent years, the courts have become more sympathetic to the plight of terminated employees and to what constitutes reasonable notice.

“It's all based on age, length of service, status of your position in the organization and opportunity for alternative employment,” said O'Brien.

“Five years ago, the standard was three months pay on termination. Now it's seldom less than six months severance even if you've worked less than six months,” she said. The top end has also been moved, with courts granting 24 months (or even more) to senior, long-serving executives, over 50 years of age who would likely have a difficult time finding a comparable job.

In addition, the celebrated Wallace vs. the United Grain Growers judgment of the Supreme Court of Canada puts companies on notice that they could not humiliate employees when they were dismissed. The ruling has caused companies to have second thoughts about the way they dismissed employees.

The practice of an employee being terminated then escorted by security to their desks for a summary cleanout before being bundled out the door on to the pavement could expose a firm to damages in the event the employee sues.

“That’s an old practice that should never have been allowed,” said O’Brien. “The Supreme Court, in Wallace, was saying that at the time of person is dismissed from their job they are most vulnerable and the employer has a duty to treat them in a forthright and candid way and with respect,” she said.

“If a person loses their job – and it’s for a reason that doesn’t involve misconduct – they don’t suddenly become a bad person that needs to be escorted off the premises. They must be dealt with in as humane and non-humiliating a way as possible.

“Ninety-nine per cent of the (cases) I’m familiar with have been handled in that way with people being told what will happen to them and with services such as relocation counselors being made available.

“For most people, work is one of the most important parts of their lives and their position is very important.”

“A severance package doesn’t replace that. All it does is supply the financial support while you find alternative employment.”