



Negotiating Your Contract

WHAT YOU NEED TO KNOW

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At the recent OGSA Turfgrass Management Conference in Niagara Falls, attendees were fortunate to gain valuable employment agreement and contract advice from Ernest Coetzee. Coetzee is a highly respected lawyer focusing on labour and employment law with RZCS Law Firm LLP, based in Mississauga. With extensive experience in various areas of law such as collective bargaining, Ontario labour relations and complaints, employment standards branch complaints, pay equity complaints, preparation and negotiation of employment contracts, and wrongful dismissal litigation, he's known for his dedication to justice and client advocacy. Coetzee's background includes a robust education in law and a track record of successful cases, making him a trusted figure in the Canadian legal community.

An employment contract or agreement is like a roadmap that lays out the rules and expectations between an employer and an employee. It's crucial because it helps avoid misunderstandings and protects both parties' rights. For the employer, having a contract ensures that the employee knows their responsibilities, like work hours, job duties, and compensation. It also sets boundaries on things like confidentiality and intellectual property, safeguarding the company's interests. Plus, it can outline terms of termination, protecting the employer from potential legal issues down the line.

On the employee's side, a contract provides security and clarity. It spells out their job duties, pay, benefits, and any other perks they're entitled to. It also outlines the procedures for grievances or disputes, giving the employee a sense of fairness and recourse if something goes wrong. Moreover, it can provide protection against unfair dismissal or mistreatment.

Ultimately, having an employment contract benefits both parties by creating a clear understanding of expectations, rights, and responsibilities, which fosters a more stable and productive working relationship. Without one, disputes and uncertainties can arise, leading to potential legal problems and damaged trust between employer and employee.

Key employees, otherwise known as primary employees, at any large organization in today's world would often be subject to lengthy employment agreements. A successful and fair employment contract should include terms and items such as:

- **Job Title and Description** - Clearly outline the position the employee is being hired for, including duties and responsibilities. Your Direct Reports should be a part of any contract, including responsibilities to your employees. Additionally, both sides should make expectations clear on setting, managing, and meeting budget goals.
- **Compensation** - Detail the salary or wage, payment frequency, bonuses, and any other benefits such as health insurance, retirement plans, or stock options. Coetzee made a point of the benefit of "collective negotiation," where associations can survey employees on their compensation packages to determine what the market value of the superintendent position is in different regions of the province, at different types of clubs, etc. This collective negotiation or sharing of information can be very beneficial to all members when it's time to renegotiate employee agreements. Additionally, how an employee's performance will be measured, if they are eligible for a performance bonus, should be set in advance to avoid any conflict.
- **Working Hours and Schedule** - Specify the expected work hours, including any flexibility or overtime arrangements.
- **Term of Employment** - Indicate whether the employment is at-will or for a fixed term, along with provisions for termination and notice periods. Coetzee encourages employees to resist the fixed term agreement. The employer has no obligation to the employee at the end of such an agreement. Instead, he suggests negotiating an open-ended agreement that provides a reasonable severance option at the end.
- **Benefits and Perks** - List any additional benefits or perks provided to the employee, such as vacation days, sick leave, holidays, use of an automobile and employee assistance programs. Vacation time and when a golf course employee can take their vacation can be a bit of an issue in the golf industry and should be standardized.

- **Confidentiality and Non-Disclosure Agreement (NDA)** - Include provisions to protect sensitive company information and trade secrets.
- **Intellectual Property Rights** - Clarify ownership of any intellectual property created during employment.
- **Code of Conduct and Ethics** - Set expectations for employee behavior, including adherence to company policies and ethical standards.
- **Governing Law** - Determine the jurisdiction and laws that will govern the employment agreement.
- **Severance Package** - Specify terms for severance pay or benefits in the event of termination.

Losing your job can be a very traumatic and stressful event, and

an employer may deem the dismissal was either “with cause” or “without cause.” It is very difficult for an employer to prove a dismissal was with cause, as usually it would have to involve some abhorrent behaviour.

When an employee is terminated without cause, it is in everyone’s best interest to already have in place an employment agreement that establishes a defined severance package with notice, and it should be above and beyond what the Employment Standards Act suggests which are the minimum an employee is eligible to receive. For the employee’s benefit, if the agreement contains an ESA minimum clause, they should negotiate against it.

By being aware of and successfully negotiating these key terms and items, both the employer and employee can ensure a clear understanding of their rights and responsibilities, fostering a fair and mutually beneficial working relationship. ■

EMPLOYMENT AGREEMENT NEGOTIATIONS

Coetzee also offers some good advice for superintendents entering employment agreement negotiations with their club:

1. Contrary to popular wisdom, he suggests making the first offer. And making it a high one!
2. Use concrete salary or wage numbers instead of a salary range.
3. Only talk as much as you need to.
4. Ask open-ended questions and listen carefully.
5. Despite what many believe, the best negotiated agreement lets both sides win.

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