

SMALL BUSINESS

By Jennifer Haworth



BE AWARE OF EMPLOYMENT LAW

Whether you are starting up or buying a small business, or are, perhaps, already a business owner, you are sure to be busy working on getting your business off the ground or keeping it going, especially in this economic climate. No doubt you will be focusing largely on your target customers and how best to market and sell your products or services to them, while keeping costs at a minimum. An important piece of advice we, as lawyers, give our small business clients is not to cut corners when it comes to your employees. It's important to ensure they have in place well drafted contracts of employment and employee handbooks to safeguard their businesses. Money set aside for legal services in this area will be well spent, especially if an issue or dispute arises.

In our experience with small business clients, the single biggest concern is the lack of a written employment contract. This presents difficulty to employers on two levels. First, it is a violation of the Employment Act 2000 (the "Act") which requires all employers to provide their employees with a Statement of Employment (SoE). Second, in the event of a dispute, the lack of clear, written terms leads to "he said, she said" situations, making it more difficult to prove matters one way or the other.

The Act sets out the minimum requirements for an SoE, such as job title and brief description of the work, the wage to be paid, normal days and hours of employment, length of

notice the employee is obliged to give, etc. Employers would do well to be aware of these requirements. However, the list given in the Act is the bare minimum and we would always recommend a well drafted employment contract covering many other matters which are important in the employment relationship. For example, a probationary period is not required by the Act. We have found that some of our small business clients are reluctant to include a probationary period when hiring a new employee, particularly if the new employee is a family member or close friend, something which is not uncommon in the small business context. Although not required under the Act, we advise our clients to ensure that they include a probationary period in their contracts of employment to give them flexibility to release the employee during the period if the employment relationship does not work out. Failure to include a probationary period means that the employer can only rely on the termination provisions under the Act or risk an unfair dismissal claim being made – something which no employer wants to deal with!

Employment contracts can also contain useful provisions relating to confidentiality which may be applicable in certain business contexts. In addition, restrictive covenants are important tools which are used in employment contracts. Even in a small business context, these contractual terms, which seek to limit an employee's

actions during and after their employment, can play an important role in deterring or preventing an employee from entering into competition with their employer or from taking customers with them when they leave. Unfortunately, we have seen instances where not having these terms in place, especially for management level employees who have access to important customers or know-how, has been devastating to the employer's business.

Employee handbooks are also helpful documents to have. They set out the company's policies for all employees, including matters such as dress code, grievance procedures, data protection policies, etc. A handbook is an invaluable tool that outlines clear policies and procedures for employees, and thus, establishes some level of certainty in the workplace.

Both handbooks and contracts of employment are documents that must grow and adapt with your business. It is important that you review these documents periodically and update them as necessary.

To conclude, if you are a small business owner or are thinking of becoming one, remember to ensure that you have in place well drafted contracts of employment and employee handbooks to safeguard your business. Failure to protect your business may cost you much more in the long run than a simple trip to your neighbourhood employment lawyer!

Jennifer Haworth is an associate on MJM Ltd's Litigation & Dispute Resolution team.