

## Employers: Stop Using Offer Letters

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It is common practice for many employers to provide new hires with an initial offer letter setting out only a summary of certain key terms followed by a more detailed employment agreement to govern the employee's employment. This is not a practice that we recommend, as demonstrated by a recent British Columbia case.

The Supreme Court of British Columbia (the Court) in *Adams v. Thinkific Labs Inc.*, 2024 BCSC 1129 (*Adams*) confirmed that where an offer letter sets out the substantial terms of employment and is accepted, the offer letter will be a binding employment agreement. This means that any subsequent employment agreement will require fresh consideration to be enforceable.

In *Adams*, the employee accepted an initial offer which set out certain terms of her employment, such as her compensation, benefits and vacation entitlements (Offer Letter). The Offer Letter did not include any provisions governing the employee's entitlements on termination of employment.

After accepting the Offer Letter, the employee was asked to sign an employment agreement which included additional substantive provisions that were not in the Offer Letter, including a termination provision which purported to limit her severance entitlements on termination to oust common law entitlements (Employment Agreement). The employee signed the Employment Agreement.

Approximately 20 months later, the plaintiff's employment was terminated, and she commenced a wrongful termination claim. The plaintiff argued that the Offer Letter constituted a full and binding employment agreement and since the Offer Letter did not include language to oust her common law severance entitlements, she was entitled to more severance because of her termination. The employer resisted the wrongful termination claim by arguing that the Employment Agreement was binding and had replaced the Offer Letter. On that basis, the employer argued that the termination provision in the Employment Agreement limited the amount of severance that the plaintiff could claim to the statutory minimums in employment standards legislation.

The Court confirmed that the Offer Letter constituted a binding agreement and that the subsequent Employment Agreement was a separate agreement which required fresh consideration to be enforceable, especially since the terms of the Employment Agreement were less favourable than those of the Offer Letter. Since the employer did not provide fresh consideration for the Employment Agreement, the Court held that it was not enforceable. The employer therefore could not rely on the termination provision in the Employment Agreement to limit the employee's severance entitlement on termination and the employee

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was accordingly entitled to common law reasonable notice.

To avoid a situation like this one, employers should streamline their offers of employment into one document. This document should contain all terms of employment and most importantly, an enforceable termination provision. We would be happy to assist employers with this process to ensure that all terms of employment are captured and enforceable.

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