



e2r Alert!

Verbal Offer, Offer Letters and Employment Agreements

You have posted for an open position, screened through the resumes, interviewed your top candidates and you are now ready to put out an offer. You chat with the candidate on the phone and they are eager to get more information. You draft an email and/or a quick “offer” letter/confirmation, send it to the candidate and they happily accept. You then draft and send the full employment agreement. The employee signs this agreement and then starts working. You have done everything right... or have you?

To start let us review the distinction between the Verbal Offer, the Offer Letter, the Employment Agreement and what case law has to say.

Verbal Offer: a verbal conversation with a candidate, officially offering them the position and letting them know you will be sending them further information to review.

Offer Letter: a brief email or document that is provided to a candidate officially extending the offer of a job. It summarizes the basic points of your offer, such as job title, start date, pay, vacation and other key information.

Employment Agreement: a legally binding agreement between you and a candidate. It provides a detailed outline of all the terms and conditions of employment, more extensive than the Verbal Offer or Offer Letter.

Case Law

In a 2015 case which made its way to the Ontario Court of Appeal (*Holland v. Hostopia Inc.*, 2015 ONCA 762 (CanLII Mr. Holland accepted a position with Hostopia.com. Prior to starting, he signed an offer letter that indicated the offer was conditional on him signing another employment agreement (at a later date) that would include additional terms. Mr. Holland later signed the employment agreement, and no new or additional consideration was provided at that time. Seven years later Mr. Holland was terminated and Hostopia.com relied on the termination language in the employment agreement. Mr. Holland sued, claiming that without consideration the employment agreement was not enforceable.

The trial judge's decision was that the offer letter and the employment agreement were interrelated agreements and as such sided with Hostopia.com. Mr. Holland appealed and the Ontario Court of Appeal overturned the decision, reaffirming previous decisions indicating that when an offer letter is signed, it is a binding document. The fact that the offer letter and the employment agreement differed in at least one way (additional termination language) confirmed that they were not interrelated documents. As such consideration would have been needed for the subsequent employment agreement to be signed and considered enforceable. Accordingly, Mr. Holland was awarded reasonable notice of termination calculated in accordance with the common law principles.

As this case outlines, the presence of an accepted "offer letter", or even a verbal employment contract (so watch what you say), hinders the enforceability of a subsequent signed employment agreement. The employment agreement provides employers with additional protections (ex. limits termination payments, outlines confidentiality and non-disparagement provisions etc.) that are not typically included in an offer letter. Given this you may want to reconsider the use of offer letters in your hiring process.

It is preferable to simply indicate that you will be making them a written offer of employment that will contain all of the terms and conditions of employment, this should be the actual employment agreement.

If you have any questions about your hiring process, which may include job offers and/or employment agreements, please reach out to ClientCare to schedule a call with an Advisor.