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# EMPLOYMENT AGREEMENTS: WHY HAVE THEM?

## Key Features:

- ▶ are used to outline many of the rights, responsibilities and obligations owed by the employer and the employee;
- ▶ outline employer's expectations;
- ▶ help avoid future disputes; and
- ▶ outline which, if any, obligations survive the termination of the employment relationship.

## Common Features of Employment Agreements:

- ▶ **title, responsibilities and term**
- ▶ **compensation**
- ▶ **vacation entitlement**
- ▶ **intellectual property and invention rights**
- ▶ **non-competition, non-solicitation and/or confidentiality clauses**
- ▶ **employer's use of employee's personal information**



# THE TERMINATION CLAUSE



# CHARACTERIZING THE WORKING RELATIONSHIP: EMPLOYEE OR INDEPENDENT CONTRACTOR

## Indicia of IC Relationship

### The person:

- ▶ has significant control over his or her work
- ▶ has the ability to profit from the work
- ▶ uses his or her own tools to work
- ▶ risks suffering financial loss if the job is not performed on time or to specification.
- ▶ has the ability to work on multiple contracts at the same time

## Risks of Mischaracterizing Relationship

### To Employer

- ▶ worker may later claim to be employee to receive notice or severance entitlements
- ▶ CRA may hold employer liable for worker's unpaid taxes or other statutory remittances

### To Worker

- ▶ CRA may find the worker to be an employee and re-assess tax deductions and credits
- ▶ worker may have significant unexpected tax liability
- ▶ worker may receive no benefit for incorporation or other "business" costs





# EMPLOYEE SHARE/STOCK OPTION PLANS: HOW TO MAKE THEM WORK

## Consider Alternatives:

- ▶ **Phantom Plans**
- ▶ **Profit Sharing Plans**
- ▶ **Annual Bonuses**