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UNDERSTANDING EMPLOYMENT CONTRACTS IN TEXAS



Understanding Employment Contracts in Texas

As a general rule, Texas is a “right to work” or “employment at will” state, which means that employees and employers are not required to enter into employment contracts. An “at will” employee can end his or her employment for any reason at any time. Likewise, an employer can terminate an “at will” employee’s employment at any time for any reason, so long as the reason is not an illegal reason (such as racial discrimination, etc.). However, even though Texas employers are not required to have a contract of employment when hiring their employees, a growing number are beginning to utilize employment contracts. At first glance, these employment contracts may seem a bit daunting and slightly intimidating. They may be fairly lengthy and contain unfamiliar legal jargon.

Additionally, prospective employees may be afraid to ask questions about the provisions of their employment contract, fearing that any inquiry could jeopardize their potential employment. However when properly explained, it is apparent that many of the provisions in an employment contract provide numerous benefits and protections to both the employer and the employee. Although every contract is different, the most common employment contract provisions are summarized below:

A. Job Description and Duties

The most fundamental part of any employment contract is the identification of the employee’s job description and expected duties. This provision defines the scope of the job, and gives the employee an understanding of what will (and will not) be expected of them. It is designed to help avoid any misunderstandings surrounding the job function, and may also define certain benchmarks of expected performance, such as a productivity requirements or minimum sales quotas. The job description may also limit non-work related activities, such as prohibiting secondary employment outside of working hours. This provision can protect an employee because it limits an employer’s ability to arbitrarily change or expand an employee’s duties once the employment has begun.

B. Compensation and Benefits

Employee compensation is another important provision of an employment contract because it defines the employee’s pay and benefits. This provision details critical items, such as whether an employee will be paid by salary or on an hourly basis, whether overtime will be paid, and whether vacation and/or sick leave shall be accrued, and whether other job benefits will be offered, such as health insurance, life insurance, retirement plans, stock options, etc. The employee compen-

sation provision can also detail employment perks, such as a signing bonuses, performance bonuses, and raises.

C. Drug Testing Program

Depending on the industry, many employers require that their workers abstain from the use of illegal drugs and may require employees to undergo random drug testing. The employment contract should state whether such a program exists, and if so, the employee will be required to sign a medical release authorizing the employer to review the test results.

D. Length of Employment

An employment contract can specify a specific period of time, or term, that the employment is to last. However once that period of time has passed, the employment ends unless both the employee and the employer mutually agree to renew or extend the contract.

E. Termination of Employment

If the employment contract does not provide for a set term of employment, then the contract should address the circumstances in which an employee could be terminated “for cause” and/or “without cause.” In layman’s terms, “for cause” means that an employee is being fired with good reason or justification, whereas “without cause” denotes termination without reason or justification. When an employee has been terminated without cause, the employment contract should provide for additional benefits to the employee, such as severance pay. Other provisions may include an employee’s right to challenge the employer’s termination decision through a legal process called arbitration. Arbitration is a form of dispute resolution that does not involve a courtroom. The employer and employee select an impartial third party known as an arbitrator and agree in advance to comply with whatever decision the arbitrator makes. Both sides then participate in a hearing and can present evidence and testimony. The arbitrator’s decision is typically final and can rarely be appealed.

When an employee decides to leave or quit a job, an employment contract can also impose certain requirements on the employee. For instance, an employment contract may require that an employee provide their employer with advanced notice of their resignation. As a penalty for not giving timely notice, the contract may authorize the employer to forfeit any severance pay and/or recover bonuses or advances previously paid to the employee. Under the contract, an employee is also typically required to return certain property to the employer, including a company vehicle, computers, cell phones, uniforms, ID cards, etc.

F. Confidentiality Agreement

In many businesses, employees are regularly exposed to a corporation's confidential information and trade secrets. A confidentiality agreement is a provision of an employment contract that imposes a duty onto the employee to protect this information, both during the course of employment and after the employment has concluded. A confidentiality agreement can impose a variety of civil penalties on an employee if the confidentiality is breached, including the financial loss incurred by the employer. Issues with employee confidentiality often arise in situations where an employee leaves to work in the employment of a competitor.

G. Covenant Not to Compete/Non-Competition Clauses

A "covenant not to compete," or "non-competition clause," is an employment contract provision in which an employee agrees not to compete against an employer in a particular profession or trade once that person's employment has ended. Employers and employees should recognize that non-compete agreements (also known as covenants not to compete) have legal limits. Under Texas law, non-competition clauses are subject to certain restrictions and must be reasonable in scope, time, and geographical area. Generally, the non-competition clause should not impose a restriction which is greater than necessary to protect the goodwill or other business interest of the employer. Non-compete agreements that do not satisfy these requirements may be found to be unenforceable by a court. To that end, employers who want to include a non-competition agreement in any employment contract should consult an attorney to ensure that they have the appropriate terms to create an enforceable agreement. Similarly, employees should also consider seeking legal advice before signing a non-compete agreement, as it may significantly limit his or her ability to seek future employment.

H. Non-Solicitation Clauses

In addition to a non-competition clause, an employment contract may also include a non-solicitation clause. A non-solicitation clause is an employment contract provision that prohibits an employee from soliciting or recruiting other clients and/or coworkers away from the employer. Such solicitation typically arises in instances where an employee leaves a job for new employment.

I. Teacher Employment Contracts

Educators are one of the most common professions in Texas to utilize employment contracts. Likewise, educator employment contracts also happen to be highly regulated under Texas law. In fact, chapter 21 of the Texas Education Code

specifically requires that all school districts employ each classroom teacher, principal, librarian, nurse, or school counselor pursuant to either a probationary employment contract (generally for new hires), a continuing contract (typically for veteran educators), or a term contract (employment only for a specified period of time). Many of the provisions in those contracts are mandated by state law, including the length of certain contracts, required qualifications, job duties, etc. However, not all educators in Texas are subject to these provisions. Educators working for private institutions, such as religious educational institutions and charter schools, are not subject to the same level of regulation and therefore may have employment contracts that are more or less favorable than state employed educators.

J. Unions and Collective Bargaining Agreements

Often, skilled labor employees in a particular industry may elect to join together as a trade union and collectively negotiate the terms of their employment contracts. These agreements are commonly referred to as collective bargaining agreements. The terms of these collective agreements typically address employee pay scales, working hours, overtime, job training, health and safety rules, grievance mechanisms, and other employee rights. Depending on the particular industry or union, the terms of the collective agreement may vary.

K. Additional Information

For additional information about employment contracts in Texas, contact the Texas Workforce Commission at www.twc.state.tx.us; the U.S. Department of Labor at www.dol.gov; the U.S. Equal Employment Opportunity Commission at www.eeoc.gov; or the Labor and Employment Law Section of the State Bar of Texas at www.laborlaw.org.

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