A Primer on Employment Law
FOR PARALEGALS

CHAIRS

Daniel Lublin
Whitten & Lublin Employment Lawyers

Karimjee Greene LLP

November 1, 2016

Continuing Professional Development
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A Primer on Employment Law for Paralegals

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A PRIMER ON EMPLOYMENT LAW FOR PARALEGALS

Chair: Daniel Lublin, 
Whitten & Lublin Professional Corporation

Co-Chair: Allison Greene 
Karimjee Greene LLP

November 1, 2016
1:30 p.m. – 4:30 p.m.
CPD Hours = 2 h 15 m Substantive + 45 m Professionalism

The Law Society of Upper Canada
130 Queen Street West
Toronto, ON

CLE16-01103

Agenda

1:30 p.m. – 1:35 p.m. Welcome and Opening Remarks

Allison Greene, Karimjee Greene LLP

Daniel Lublin, Whitten & Lublin Professional Corporation

1:35 p.m. – 1:55 p.m. Retainer Agreements

George Brown, George Brown Professional Corporation

Dorian Persaud, Persaud Employment Law
1:55 p.m. – 2:00 p.m.  Questions and Answers

2:00 p.m. – 2:30 p.m.  Initial Client Interview

Abdul-Basit Khan, *WeirFoulds LLP*

Andrew Hall, *Hall Labour Relations Services Professional Corporation*

Jennifer Mathers McHenry, *Teplitsky Colson LLP*

2:30 p.m. – 2:40 p.m.  Questions and Answers

2:40 p.m. – 3:00 p.m.  Employment Contracts

Sunira Chaudhri, *Levitt & Grosman LLP*

Priya Sarin, *Whitten & Lublin PC*

3:00 p.m. – 3:05 p.m.  Questions and Answers

3:05 p.m. – 3:25 p.m.  Coffee and Networking Break

3:25 p.m. – 3:55 p.m.  Termination Disputes

Abdul-Basit Khan, *WeirFoulds LLP*

George Brown, *George Brown Professional Corporation*

Dorian Persaud, *Persaud Employment Law*
3:55 p.m. – 4:00 p.m. Questions and Answers

4:00 p.m. – 4:20 p.m. Making a Settlement Agreement, Considering the Tax Issues

Andrew Hall, Hall Labour Relations Services Professional Corporation

Jennifer Mathers McHenry, Teplitsky Colson LLP

4:20 p.m. – 4:30 p.m. Question and Answer Session

4:30 p.m. Program Ends
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TAB 1c  Sample Retainer Agreement ................................................ 1c - 1 to 1c - 3

George Brown, George Brown Professional Corporation
Dorian Persaud, Persaud Employment Law

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TAB 2b  Memorandum Re Mitigation .................................................. 2b - 1 to 2b - 2

Abdul-Basit Khan, WeirFoulds LLP
Andrew Hall, Hall Labour Relations Services Professional Corporation
Jennifer Mathers McHenry, Teplitsky Colson LLP

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TAB 3b  Checklists for Employment Contracts ................................. 3b - 1 to 3b - 2

Sunira Chaudhri, Levitt & Grosman LLP
Priya Sarin, Whitten & Lublin PC
<table>
<thead>
<tr>
<th>TAB</th>
<th>Section</th>
<th>Pages</th>
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<tbody>
<tr>
<td>4a</td>
<td>Sample Demand Letter</td>
<td>4a - 1 to 4a - 2</td>
</tr>
<tr>
<td>4b</td>
<td>Constructive Dismissal Primer</td>
<td>4b - 1 to 4b - 3</td>
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<tr>
<td></td>
<td>Abdul-Basit Khan, <em>WeirFoulds LLP</em></td>
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<td>George Brown, <em>George Brown Professional Corporation</em></td>
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<td>Dorian Persaud, <em>Persaud Employment Law</em></td>
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<tr>
<td>5a</td>
<td>Settlement Agreement Scenario</td>
<td>5a - 1 to 5a - 1</td>
</tr>
<tr>
<td>5b</td>
<td>Sample Memorandum of Settlement</td>
<td>5b - 1 to 5b - 5</td>
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<td>Andrew Hall, <em>Hall Labour Relations Services Professional Corporation</em></td>
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<tr>
<td></td>
<td>Jennifer Mathers McHenry, <em>Teplitsky Colson LLP</em></td>
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Contingency Fee Retainer Agreements

George Brown
George Brown Professional Corporation

Dorian Persaud
Persaud Employment Law

November 1, 2016
When we met, we discussed options for retaining XYZ Law Firm ("XYZ") to assist with negotiating a fair and reasonable severance package for you, and, if necessary, commencing a claim against your employer for wrongful dismissal (the “Claim”).

You have indicated a desire to enter into a contingency fee arrangement. The foregoing contains the terms of the contingency fee arrangement that XYZ is prepared to enter into with you. In signing this letter, you agree to be bound by the terms contained herein. Understand that all of the usual protections and controls upon retainers between a solicitor and client, as defined by the Law Society of Upper Canada and the common-law, apply to this agreement.

**RETAINER:**

1) I, (enter name) (hereinafter referred to as “I”), retain XYZ to represent me in connection with the Claim.

**FEES:**

I agree to pay XYZ for fees, 33% of any amount recovered from your employer, including damages of any kind (the “Improvement”), plus H.S.T.

**Example of Fee Calculation:**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
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<tbody>
<tr>
<td>Improvement</td>
<td>$50,000.00</td>
</tr>
<tr>
<td>Legal Fees Awarded</td>
<td>$10,000.00</td>
</tr>
<tr>
<td><strong>Total Recovery</strong></td>
<td><strong>$60,000.00</strong></td>
</tr>
</tbody>
</table>

**Total Fee Payable:**

<p>| | |</p>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>33% of Improvement</td>
<td>$19,800.00</td>
</tr>
<tr>
<td>H.S.T.</td>
<td>$2,574.00</td>
</tr>
<tr>
<td><strong>Total Fee Payable</strong></td>
<td><strong>$22,374.00</strong></td>
</tr>
</tbody>
</table>
**DISBURSEMENTS:**

2) I understand I am responsible for paying all disbursements, plus HST. I understand disbursements are the expenses of conducting the Claim including, by way of example, but not limited to, expenses related to obtaining medical information, transcripts, court fees, photocopies, long distance telephone charges, long distance facsimile charges, etc.

3) XYZ may pay my disbursements and collect interest from me in accordance with the Solicitors Act, R.S.O. 1990 c.S.15 on disbursements carried by XYZ, at XYZ’s discretion. I understand and agree that disbursements are usually paid at the end of the Claim but that XYZ retains the right to either bill me for disbursements on an interim basis, prior to the end of the Claim, including requiring me to pay in advance for anticipated disbursements. If disbursement accounts are rendered I agree to pay immediately. Disbursements are due and payable regardless of the outcome of the Claim.

**COSTS:**

4) In the event that the Claim proceeds to trial or at a motion relating to the Claim, I understand that costs may be assessed against me and I agree to pay those costs immediately.

5) In the event that the Claim proceeds to trial or at a motion relating to the Claim, I understand that costs may be assessed against the defendants and that XYZ will be entitled to 33% of any costs awarded as outlined above.

6) In the event the Claim is settled prior to a motion or trial, I understand that XYZ will be entitled to 33% of any costs paid by the defendants.

**PAYMENT OF FUNDS RECOVERED:**

7) I authorize and direct that all money recovered shall be paid to XYZ in trust. The order of payment shall be: (a) XYZ’s fees; (b) HST; (c) disbursements; (d) repayment of advances made by the firm; and (e) the balance to me.

**APPEALS:**

8) I understand that this Agreement covers all steps leading up to and including the trial of this matter, but does not include fees relating to any proceeding in any Appeal Court, whether this be an appeal of a final decision or a pre-trial ruling.

**TERMINATION OF THIS AGREEMENT BY CLIENT OR FIRM:**

9) If I misrepresent a fact; or if I fail to co-operate with XYZ in any reasonable request; or if I refuse to accept XYZ’s legal advice; XYZ may cease to act for me and charge me for services rendered at an hourly rate at the rate of $enter per hour, plus all disbursements incurred up to that time.
10) I understand that at all times prior to judgment or settlement, I shall have the right to terminate XYZ’s services upon written notice. In the event I elect to terminate XYZ’s services, I agree to pay XYZ a fee based upon an hourly rate at the rate of $enter per hour for the services performed to the date of the termination. I also agree to pay XYZ’s full disbursement account promptly upon delivery, following my termination of XYZ’s services.

11) For the purposes of paragraphs 10 and 11 above, I hereby agree to make available, and irrevocably direct any subsequent lawyer acting on my behalf in this matter to make available to XYZ any and all information regarding the carriage and/or outcome of this matter including the amount of settlement or award, immediately upon XYZ’s written request.

12) If either I or XYZ end this Agreement before my case is completed, I agree that XYZ has the right to retain my file and its contents until I have paid XYZ’s account or provided security acceptable to XYZ for the fees and disbursements.

These hourly rates are subject to revision.

**OTHER TERMS OF THIS AGREEMENT:**

13) XYZ is authorized to take whatever proceedings and to employ such counsel, agents, medical and other experts as XYZ deems necessary.

14) I acknowledge that:

a) XYZ’s fees may be lesser or greater than fees charged by other lawyers for similar claims;

b) Before signing the agreement, I had the opportunity to consult with another lawyer to review and comment on this agreement but has either declined, after fair opportunity to do so, or has in fact consulted another lawyer;

c) XYZ has advised that there are different options for paying solicitors which include a fee based solely on an hourly rate and that hourly rates may vary between solicitors and I can speak with other solicitors to compare rates;

d) I have chosen to retain XYZ by way of a contingency fee retainer agreement; and

e) I understand that all the usual protections and controls upon retainers between a solicitor and client as defined by the Law Society of Upper Canada and the common-law, apply to this agreement.

15) All accounts are due when rendered and any account shall be deemed to be rendered upon the date of its being mailed.

16) Accounts that are overdue 30 days from the date of such account being rendered shall bear interest in accordance with the Solicitors Act, R.S.O. 1990, c. S15, as amended. The interest rate applicable
to the account will be posted at the end of the account. Interest will be automatically included in
accounts that are not paid within 30 days of the due date set out on the account. In order to avoid
interest charges, I acknowledge that all accounts should be paid when rendered. Interest will
continue to accrue on each account at the rate set out therein until paid in full by me.

Yours truly,

XYZ

IN WITNESS WHEREOF, I have executed this Contingency Fee Retainer Agreement on this ___, day
of ___, 2013, in the presence of the witness whose signature is subscribed below.

SIGNED, SEALED AND DELIVERED

in the presence of

__________________________
WITNESS SIGNATURE

Witness Name (Please Print)

Witness Address

Witness Telephone Number
Sample Confirmation of Retainer Letter

George Brown
George Brown Professional Corporation

Dorian Persaud
Persaud Employment Law

November 1, 2016
We wish to thank you for contacting us in relation to your recent employment situation. We take this opportunity to confirm that we will charge you a one-time flat fee of (enter) plus HST in order to negotiate an improvement of your severance package. This fee assumes that a lawsuit will not be required. Should the matter require a lawsuit, we will discuss and agree upon an appropriate fee arrangement for the lawsuit.

Disbursements, such as courier and copying charges will be charged separately and shown as such on your account.

Thank you for selecting Whitten & Lublin to assist you with your employment situation.

Please do not hesitate to contact us at any time should you have questions.

Yours truly,
Whitten & Lublin
Employment Lawyers

Daniel A. Lublin

cc: File
A Primer on Employment Law
FOR PARALEGALS

Sample Retainer Agreement

George Brown
George Brown Professional Corporation

Dorian Persaud
Persaud Employment Law

November 1, 2016
SAMPLE RETAINER AGREEMENT

Reply to:

[Name of Paralegal]
[Name of paralegal’s firm]
[Address]

November 1, 2016

PRIVATE & CONFIDENTIAL

VIA E-MAIL

[Client Name]
[Client address]

Dear [Mr./Ms. [Client Last Name]]:

Re: Retainer Agreement

Thank you for selecting us to represent you. We confirm that you have retained us to [scope of work, e.g. “draft a Statement of Claim and negotiate a better severance package with ABC Company”, or “represent you with respect to your wrongful dismissal claim against ABC Company”]. The purpose of this letter is to summarize and confirm the terms of your engagement with us.

Our hourly rate for working on your file is $[X]. We charge separately for disbursements are office charges allocated to your file and include long distance calls, postage, copying, printing, facsimiles, courier fees, and all other reasonable out of pocket expenses and office charges. We also charge a closing fee of $[X], which, as the name suggests, covers the costs associated with closing your file.

Our invoices are issued monthly and are non-negotiable. Payment is due on all accounts when rendered. If any account is not paid within 30 days, interest will be charged on the outstanding balance at a rate in accordance with the Courts of Justice Act from the date of the account, until paid.

Before we begin work on your behalf, we require a retainer in the amount of $[X]. The retainer will be placed in our trust account and will serve as a source of payment for all or part of our invoices when rendered. Please note that this retainer is not an estimate of the cost to complete work on your file. As such, depending on the time required to complete the necessary work, you may be asked to replenish the retainer. Any unused portion will be returned to you upon the completion or termination of our services.

As discussed during your initial consultation, there are certain limitation dates of which you should be aware, including [Date (the relevant date may be two years from the date of termination of employment)]. In the event that this matter is not resolved beforehand, it is important that you file a Statement of Claim or application before this date to ensure you are be able to advance your claim and recover damages.
In order to meet any applicable deadlines, we will require your cooperation and instructions to complete the necessary legal work. In doing so, we request that you advise us if you will be unavailable to provide instructions at any time. This will allow us to make any necessary arrangements in order to complete all necessary legal work and receive your instructions well in advance of the approaching deadline.

If the above terms are acceptable to you, please sign and return an original copy of this letter, together with a retainer in the sum of $[X]. If you decide that you do not want us to proceed on your behalf in this matter, please inform us promptly.

We would like to thank you again for your interest in working with our firm. Please do not hesitate to contact us at any time should you have questions about this or any other matter.

Yours truly,

[PARALEGAL’S FIRM]

[Paralegal Name]
RETAINER AGREEMENT

I, __________________, confirm that I have reviewed and understand the terms of the retainer of [Paralegal's Firm], set out herein. In signing below, I confirm acceptance of these terms.

____________________________________   ________________________________

Date         [Client Name]
A Primer on Employment Law
FOR PARALEGALS

Sample Initial Client Interview Worksheet

Abdul-Basit Khan
WeirFoulds LLP

Andrew Hall
Hall Labour Relations Services Professional Corporation

Jennifer Mathers McHenry
Teplitsky Colson LLP

November 1, 2016
Sample Initial Client Interview Worksheet

**Part 1: Client Information**

<table>
<thead>
<tr>
<th>Date:</th>
</tr>
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<tbody>
<tr>
<td>Name:</td>
</tr>
<tr>
<td>Address:</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Telephone numbers (indicate if message can be left):</th>
<th>H:</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>M:</td>
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<table>
<thead>
<tr>
<th>Email:</th>
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</thead>
<tbody>
<tr>
<td>Fax:</td>
</tr>
<tr>
<td>Referral by:</td>
</tr>
<tr>
<td>Age:</td>
</tr>
<tr>
<td>Date of Birth:</td>
</tr>
<tr>
<td>Does client have a spouse with benefits of employment to which he or she has or can get access?</td>
</tr>
<tr>
<td>Does client have dependants using his/her benefits?</td>
</tr>
<tr>
<td>Education level:</td>
</tr>
</tbody>
</table>

**Part 2: Employment Information**

<table>
<thead>
<tr>
<th>Employer (indicate whether conflict check done):</th>
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<tbody>
<tr>
<td>Address of employer:</td>
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<table>
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<tr>
<th>Type of business:</th>
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<tbody>
<tr>
<td>Jurisdiction (Federal or Provincial)?</td>
</tr>
<tr>
<td>Payroll over $2.5MM?</td>
</tr>
<tr>
<td>Start date:</td>
</tr>
<tr>
<td>Termination Date (if applicable):</td>
</tr>
<tr>
<td>Years of Service:</td>
</tr>
<tr>
<td>Title at Termination:</td>
</tr>
<tr>
<td>Managerial responsibilities?</td>
</tr>
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1 This document is not intended to be used as a template for every interview. While we hope it will serve as a useful guide to obtain some of the basic information most often needed, every client and situation is different.
<table>
<thead>
<tr>
<th>Description of role:</th>
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<tr>
<th>Reports to? (Name, title)</th>
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<table>
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<tr>
<th>Inducement? (yes, no, or maybe)</th>
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<tr>
<th>If inducement, what were circumstances of inducement, who was previous employer, for how long?</th>
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<table>
<thead>
<tr>
<th>Is there a signed employment contract?</th>
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<table>
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<tr>
<th>If a contract, when was it signed? Before or after start date? Was there consideration?</th>
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<table>
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<tr>
<th>Is the employment fixed term or indefinite duration?</th>
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<table>
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<tr>
<th>Does the contract contain a termination provision?</th>
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<table>
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<tr>
<th>Is the termination provision valid and enforceable?</th>
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<table>
<thead>
<tr>
<th>Restrictive covenants which apply?</th>
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<table>
<thead>
<tr>
<th>Compensation information:</th>
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<table>
<thead>
<tr>
<th>Salary:</th>
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<table>
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<tr>
<th>Bonus? If yes, is it discretionary or formulaic?</th>
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<table>
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<tr>
<th>Details:</th>
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<tr>
<th>Options, deferred compensation, etc?</th>
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<tr>
<th>Commission?</th>
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<tr>
<th>Profit Sharing?</th>
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<tbody>
<tr>
<td>Information relevant to bonus quantum (how is company performance, what was personal performance evaluation, etc)</td>
</tr>
<tr>
<td>Are there plan or other documents containing terms which govern or purport to govern entitlement to bonus or other compensation?</td>
</tr>
</tbody>
</table>
| Employment benefits | ( ) Life insurance  
( ) Health  
( ) Dental  
( ) Car  
( ) Pension  
Vested? Yes ( ) No ( )  
( ) DB or ( ) DC?  
( ) Vision  
( ) Employee savings or stock plan  
( ) Club Memberships  
( ) Executive Medical  
( ) Professional or other fees/memberships  
Other: |

**Part 3: Termination Information**

Wrongful or Constructive Dismissal?

Has employer made an offer in writing?

Reason for Termination (indicate whether provided by employer or assumed):

Warnings or PIP?

Bad Faith Conduct? If yes, attach description with details.

**Part 4: Severance Package**

Working notice (# of weeks)?

Pay in lieu of Notice (# of weeks)?

Lump sum offer/option?
### Mitigation?

<table>
<thead>
<tr>
<th>Pay over notice period based on?</th>
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<tr>
<th>Bonus or other compensation paid or offered to the date of termination?</th>
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<tr>
<th>Appropriate quantum of compensation paid to the date of termination?</th>
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<th>Legal Fees?</th>
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<tr>
<th>Relocation assistance or outplacement?</th>
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</table>

<table>
<thead>
<tr>
<th>References to be provided?</th>
</tr>
</thead>
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<td></td>
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</table>

<table>
<thead>
<tr>
<th>ESA minimums paid?</th>
<th>( ) Yes ( ) No</th>
</tr>
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</table>

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<tr>
<th>Release required?</th>
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<tbody>
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</table>

<table>
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<tr>
<th>Review by a lawyer recommended?</th>
<th>( ) Yes ( ) No</th>
</tr>
</thead>
</table>

### Other questions to keep in mind/explore:

1. What are the client’s job prospects/plans for mitigation?

2. What are the client’s priorities? (Most cash, most security, a positive reference, a lump sum?)

3. Is there a basis for punitive or aggravated damages?

4. Is there a Human Rights Issue?

5. When did key incidents occur and are there limitation periods applicable or approaching?

6. If a constructive dismissal, is there evidence of consent to changes or condonation?

7. Is there evidence of mental distress beyond what is typically associated with job loss?
A Primer on Employment Law
FOR PARALEGALS

Memorandum Re Mitigation

Abdul-Basit Khan
WeirFoulds LLP

Andrew Hall
Hall Labour Relations Services Professional Corporation

Jennifer Mathers McHenry
Teplitsky Colson LLP

November 1, 2016
MEMORANDUM RE MITIGATION

TO: **Press F11 to insert (TO)**

FROM: **Press F11 to insert (FROM)**

Mitigation

You will recall our discussions respecting the importance of mitigation in a wrongful dismissal action. The law will compensate you for your actual out-of-pocket losses during a reasonable period of time following dismissal, but you are obliged to attempt to mitigate those losses by making reasonable efforts to obtain alternate employment. Defendants invariably plead that the plaintiff has failed to mitigate and, if they are successful in proving that at trial, it will afford a partial, if not a complete defence to our damage claim.

This is a pitfall which is actually quite simple to avoid.

You will recall that we suggested that you go out and purchase an exercise book and that you cut out all employment ads or notices to which you respond and paste those into your book, together with a copy of the letter which you send to the prospective employer, and any enclosures including a resume. You should note the date of the ad and these should be maintained in chronological order in “scrap book” style. We also want you to note in this book any contacts which you make in pursuit of a job. This includes telephone calls to prospective employers, registrations with head hunters or other employment agencies, conversations with friends or business associates concerning employment, and so on and so forth. The idea is to compile an ongoing and complete record of any and all efforts which you make to obtain new employment. In addition, we want you to keep copies of any receipts which you have, since the expenses which you incur in mitigating your losses are recoverable in the litigation. We suggest that those receipts be pasted into the scrap book, along with all of the other material.

If you will take these simple steps and if you will be sure to make your entries at the time of the event, we will have a complete defence to any plea of failure to mitigate, provided of course that the efforts which you make are in fact reasonable. We have never had a client who has taken these steps successfully challenged on the issue of mitigation at trial.

If you have any questions about what it is that we want you to do in this regard, please give me a call, as we regard this as a matter of central importance to the success of your case.

Re-Employment

Any income from employment or self-employment will impact on the damage claim that you have against your former employer. As a result, it is imperative that you let us know once you have any serious potential for re-employment and before you accept any offer of employment so that we can revise any existing offers to settle, if appropriate.
**Life Insurance**

As part of your benefits with your former employer, you may have life insurance coverage. The life insurance coverage portion of your benefits likely terminates shortly after the termination of employment. If you are unable to obtain alternate life insurance coverage as a result of existing health problems or for any other reason, please be aware that most group life insurance policies often provide for a right to convert to an individual policy. You may wish to consider converting to an individual policy if you are unable to obtain alternate coverage.
A Primer on Employment Law
FOR PARALEGALS

Sample Employment Agreement

Sunira Chaudhri
Levitt & Grosman LLP

Priya Sarin
Whitten & Lublin PC

November 1, 2016
THIS AGREEMENT, made as of the 1st day of July, 2011

Between:

(hereinafter referred to as "the Employer")

OF THE FIRST PART

-- and --

OF the City of Toronto
in the Province of Ontario

(hereinafter referred to as "the Employee")

OF THE SECOND PART

WHEREAS the Employee and the Employer wish to enter into an employment agreement governing the terms and conditions of employment:

THIS AGREEMENT WITNESSETH that in consideration of the premises and mutual covenants and agreements hereinafter contained, and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by the parties hereto), it is agreed by and between the parties hereto as follows:

1. Term of Employment

The employment of the Employee shall commence the date hereof, shall be contingent upon continued funding by the Government of Ontario to the Employer, and shall otherwise continue for no longer than the expiry date of the Grant Agreement, unless terminated in accordance with the provisions of this agreement, and.

2. Compensation and Benefits

In consideration of the services to be provided by her hereunder, the Employee, during the term of her employment, shall be paid a base rate of $30.80 per hour on a bi-weekly basis, in arrears, less applicable statutory deductions, inclusive of 8% vacation pay, and, conditional on the continuance of funding to the Company.

The general assumption is that this will represent approximately 30 hours per week.

3. Duties and Responsibilities

The Employee shall be employed in the capacity of Program Administrator the current duties and responsibilities of which are set out in Schedule "A" annexed hereto and forming part of this agreement. These duties and responsibilities may be amended from time to time in the sole discretion of the Employer, subject to formal notification of same being provided to the Employee.
4. Reporting Relationship

The Employee shall report to the President and Executive Director of the Employer.

5. Termination of Employment

The Employer may terminate the employment of the Employee at any time:

a. for just cause at common law, in which case the Employee is not entitled to any advance notice of termination or compensation in lieu of notice;

b. without just cause, in which case the Employer shall provide the Employee with advance notice of termination or compensation in lieu of notice equal to:
   - 2 weeks per year of completed service with the Employer, to a maximum of six (6) weeks.

The Employee may terminate her employment at any time by providing the Employer with at least four (4) weeks advance notice of her intention to resign.

6. Ownership of Intellectual Property

The Employer shall own all intellectual property resulting from the work of the Employee. If the Employee wishes to re-use any of her files or content for non-competitive applications, she may request this in writing, and the Employer shall not unreasonably withhold permission. The Employee specifically waives moral rights with respect to copyright.

7. Restrictive Covenant

Following the termination of the employment of the Employee by the Employer, with or without cause, or the voluntary withdrawal by the Employee from the Employer, the Employee shall, for a period of two years following the said termination or voluntary withdrawal, within the Province of Ontario refrain from either directly or indirectly soliciting or attempting to solicit the business of any client of, customer of, or organization funded by the Employer for her own benefit or that of any third person or organization, and shall refrain from either directly or indirectly attempting to obtain the withdrawal from the employment by the Employer of any other Employee of the Employer having regard to the same geographic and temporal restrictions. The Employee shall not directly or indirectly divulge any financial information relating to the Employer or any of its affiliates or clients to any person whatsoever.

8. Confidentiality

The Employee acknowledges that, in the course of performing and fulfilling her duties hereunder, she may have access to and be entrusted with confidential information concerning the investment opportunities and accredited investors that contact or are contacted by the Employer, the disclosure of any of which would be highly detrimental to the interests of the Employer. The Employee further acknowledges and agrees that the right to maintain the confidentiality of such information constitutes a proprietary right which the Employer is entitled to protect. Accordingly, the Employee covenants and agrees with the Employer that she will not, during the continuance of this agreement, disclose any of such confidential information to any person, firm or corporation, nor shall she use same, except as required in the normal course of her engagement hereunder, and thereafter she shall not disclose or make use of the same.
9. Assignment

This agreement shall be assigned by the Employer to any successor employer and be
binding upon the successor employer. The Employer shall ensure that the successor
employer shall continue the provisions of this agreement as if it were the original party of
the first part. This agreement may not be assigned by the Employee.

10. Severability

Each paragraph of this agreement shall be and remain separate from and independent of
and severable from all and any other paragraphs herein except where otherwise
indicated by the context of the agreement. The decision or declaration that one or more
of the paragraphs are null and void shall have no effect on the remaining paragraphs of
this agreement.

11. Notice

Any notice required to be given hereunder shall be deemed to have been properly given
if delivered personally or sent by pre-paid registered mail as follows:
   a. to the Employee: [redacted]
   b. to the Employer:

and if sent by registered mail shall be deemed to have been received on the 4th business
day of uninterrupted postal service following the date of mailing. Either party may change
its address for notice at any time, by giving notice to the other party pursuant to the
provisions of this agreement.

12. Interpretation of Agreement

The validity, interpretation, construction and performance of this agreement shall be
governed by the Laws of the Province of Ontario. This agreement shall be interpreted
with all necessary changes in gender and in number as the context may require and shall
enure to the benefit of and be binding upon the respective successors and assigns of the
parties hereto. This Agreement constitutes the entire Agreement between the parties and
may not be changed except by written Agreement of the parties.

13. Dispute Resolution

In the event of any dispute between the parties to this Agreement, the parties shall use
their best efforts to resolve such dispute amicably without resort to arbitration or other
formal proceedings. If the parties cannot resolve the dispute among themselves, it shall
be finally settled under the Rules of Conciliation and Arbitration of the International
Chamber of Commerce by a single independent arbitrator in Toronto, Canada. In any
such arbitration, the substantive laws of Canada and the procedural rules of the
International Chamber of Commerce shall apply and the proceedings shall be conducted
in the English language. Any award shall be made in Canadian dollars.

14. Non-Waiver

Failure to delay by either party on any occasion to exercise any right, power or remedy of
this Agreement shall not be construed as a waiver or relinquishment for the future of such
right, power or remedy.

15. Amendment
No amendment, modification or waiver of any provision of this Agreement shall be effective unless set forth in a writing, excluding email.

IN WITNESS WHEREOF the parties hereto have caused this agreement to be executed as of the 1st day of July 2011.
Checklist for Employment Contracts

Sunita Chaudhri
Levitt & Grosman LLP

Priya Sarin
Whitten & Lublin PC

November 1, 2016
CHECKLIST FOR EMPLOYMENT CONTRACTS

Priya Sarin, Whitten & Lublin PC

1. **Ensure the contract is enforceable**
   - Must be signed before the employee starts working
   - There must be “consideration” for revised or amended contracts (i.e. bonus, promotion, increased vacation entitlement etc.)

2. **Cover the basic terms of employment**
   - Start date
   - Fixed term or indefinite term
   - Job title, duties, reporting relationship and employer flexibility to amend (attach job description if available)
   - Compensation (base salary, discretionary bonus, commissions)
   - Overtime rate (if applicable)
   - Benefits (health, pension, RRSP)
   - Vacation entitlement
   - Incorporate human resources policies by reference

3. **Address conditions for continued employment**
   - Probation clause (with right to extend)
   - Background checks
   - Licensing requirements

4. **Include a termination clause**
   - Notice of resignation
   - Termination without cause
i. Must be clear and unambiguous

ii. Must comply with minimum employment standards legislation
   \((Employment\ Standards\ Act,\ 2000\ or\ the\ Canada\ Labour\ Code)\)

iii. Should provide for notice/pay in lieu of notice, severance pay and benefits continuation during the statutory notice period

iv. Include requirement to mitigate during the notice period

v. Define how ‘pay in lieu of notice’ will be calculated and whether it includes bonus or commissions

vi. Include requirement to sign a release for any payments greater than statutory minimums

- Termination with cause

5. Special Considerations

- Right to temporarily layoff

- Non-Competition/non-Solicitation/confidentiality

- Protection of intellectual property

6. General Clauses

- Governing Law

- Saving Clause (i.e. employee will not receive less than statutory minimums)

- Entire agreement

- Voluntary agreement/opportunity to obtain legal advice
A Primer on Employment Law
FOR PARALEGALS

Sample Demand Letter

Abdul-Basit Khan
WeirFoulds LLP

George Brown
George Brown Professional Corporation

Dorian Persaud
Persaud Employment Law

November 1, 2016
SAMPLE DEMAND LETTER

Reply to:

[Name of Paralegal]
[Name of paralegal’s firm]
[Address]

November 1, 2016

PRIVATE & CONFIDENTIAL

VIA E-MAIL/COURIER

[Name]
[Title, e.g. Human Resources Manager]
[Company Name]
[Address]

Dear [Mr./Ms. [Last Name]]:

Re: [Client Name] v. [Company Name] (“[Short Company Name]”)

We represent [Client Name].

We have reviewed the circumstances of [Mr./Ms. [Client Last Name]]’s employment, including the harassment s/he experienced while employed and the manner in which his/her employment was terminated. We are concerned that [Short Company Name] is liable for damages for wrongful dismissal including aggravated and punitive damages.

As you are aware, [Mr./Ms. [Client Last Name]] is [number] years of age and worked for [Short Company Name] for [number] years, most recently as a [Position Title]. His/her responsibilities included [x]. He/She received a wage of $X/hour at 40 hours per week, amounting to $[amount] per year.

[Description of harassment situation in some detail, which may be several paragraphs.]

As you may be aware, employees are entitled to reasonable notice of termination at common law. Throughout the reasonable notice period, they are entitled to receive all of their remuneration, including wages and benefits. Based on [Mr./Ms. [Client Last Name]]’s age, position, and length of service, the court would award him/her damages for [number] of months of notice.

In addition, in this case, due to the harassment experienced by [Mr./Ms. [Client Last Name]] and [Company]’s failure to investigate or put a stop to the same, [Short Company Name] is liable for significant aggravated and punitive damages.

[Mr./Ms. [Client Last Name]] would prefer to resolve this matter without resorting to litigation. As such, [s/he] is prepared to sign a full and final release in exchange for the following:
1. A lump sum payment in the gross amount of $[X], representing [X] months of [Client Name’s] wages;
2. Continuation of [Client Name]’s participation in the health benefits plan over the notice period of [X] months until [Date];
3. A lump sum payment of $[X] designated as general damages with no deductions for EI or CPP;
4. [List other demands]; and
5. $[X] towards [Client Name]’s legal fees, paid to the undersigned in trust.

We believe the amounts outlined above reflect [Client Name]’s legal entitlements in the circumstances.

This offer remains open until [Date], at which time [Client Name] will consider filing a Statement of Claim. Please do not hesitate to contact the undersigned should you wish to discuss this further.

Yours truly,

[NAME OF PARALEGAL’S FIRM]

Paralegal Name
A Primer on Employment Law
FOR PARALEGALS

Constructive Dismissal Primer

Abdul-Basit Khan
WeirFoulds LLP

George Brown
George Brown Professional Corporation

Dorian Persaud
Persaud Employment Law

November 1, 2016
CONSTRUCTIVE DISMISSAL PRIMER

WHAT IS CONSTRUCTIVE DISMISSAL?

A constructive dismissal occurs when an employer makes a unilateral and fundamental change to a term or condition of an employment contract without providing reasonable notice of that change to the employee. Such action amounts to a repudiation of the contract of employment by the employer whether or not he intended to continue the employment relationship. Therefore, the employee can treat the contract as wrongfully terminated and resign which, in turn, gives rise to an obligation on the employer’s part to provide damages in lieu of reasonable notice.

(Quoted in Farber v. Royal Trust Co., [1997] 1 SCR 846)

Constructive dismissal includes:

1. A single unilateral act that breaches or substantially alters an essential term of a contract

2. A series of acts that, taken together, show that an employer no longer intends to be bound by the contract

(Potter v. New Brunswick Legal Aid Services Commission, 2015 SCC 10)

EXAMPLES

• Pay decrease
• Demotion
• Relocation
• Workplace bullying
• Withholding work (i.e. suspension)
• Assigning more work
• Failure to pay bonus

CASES

Potter v. New Brunswick Legal Aid Services Commission, 2015 SCC 10
• The Plaintiff, Executive Director of the New Brunswick Legal Aid Commission, received a letter while on sick leave saying he should not return to work until further notice
• He continued to be paid but his powers were delegated to another person
• He claimed constructive dismissal and the Commission said he resigned
• The Supreme Court found that Potter was constructively dismissed as he was indefinitely suspended, he was not given any reasons for the suspension, the evidence showed that the Commission was trying to fire him and he was replaced. Suspensions must be reasonable and justified. Employers must be honest and forthright about the suspension.

_Damaso v. PSI Peripheral Solutions Inc._, 2013 ONSC 6923

• An employee who acted as I.T. administrator had increased responsibilities over time. He repeatedly asked for a raise and indicated that he was overwhelmed by the workload. The employer refused to give the employee a raise, hired an independent contractor to take over some of his duties, and changed his network passwords. Then the employer gave him 12 months’ working notice of termination and listed his duties during the notice period as his original duties plus the ones that had been added over time, such as system administration which required network passwords
• The employee went on sick leave and claimed constructive dismissal
• The Ontario Superior Court of Justice found that the employee had been constructively dismissed. The employer was entitled to make changes to the employee’s job, but not to insist that the employee perform all of the additional duties over the notice period. The employee was overburdened and could not handle the job, and had indicated that. The employer was hostile towards the employee and humiliated him by taking away his network access, which was a demotion

_Piron v. Dominion Masonry Ltd._, 2013 BCCA 184

• The British Columbia Court of Appeal found that the employer and employee had an oral agreement to negotiate bonuses based on the employee’s responsibilities on a project. The employee had a contractual right to the negotiation process.
• In not paying the employee a bonus, the employer had made a unilateral substantial change to the employment contract which constituted constructive dismissal

_Wronko v. Western Inventory Service Ltd._, 2008 ONCA 327
• The employer gave Wronko two years’ notice that it intended to reduce his entitlement on termination to 30 weeks’ pay. Wronko did not accept the change and continued to work.
• Employer did not advise that refusal to accept change would result in dismissal.
• Two years later the employer stated that the new contract was in effect and asked that Wronko sign it, stating further that if Wronko did not wish to accept the new terms “then we do not have a job for you”.
• The Ontario Court of Appeal found that Wronko was wrongfully dismissed. The employer did not put Wronko on notice that it intended to treat his objection to the change as grounds for dismissal.
• An employer must clearly give notice to an employee that refusal to accept a change will result in termination.
Settlement Agreement Scenario

Andrew Hall
Hall Labour Relations Services Professional Corporation

Jennifer Mathers McHenry
Teplitsky Colson LLP

November 1, 2016
Settlement Agreement Scenario

John is a 55 year old individual who was terminated without cause after 2 years of employment as a sales associate in a big box retailer. He believes his termination was related to medical issues he has following a car accident.

After several months of negotiations, the parties have agreed that the employer will pay John 12 months’ severance to settle all matters concerning his termination. John has raised the human rights issues in his negotiations but he has not filed a human rights application.

You have received a proposed settlement agreement and release. What should you consider to ensure the documents do not overreach and adequately and properly protect your client’s interests?
A Primer on Employment Law
FOR PARALEGALS

Sample Memorandum of Settlement

Andrew Hall
Hall Labour Relations Services Professional Corporation

Jennifer Mathers McHenry
Teplitsky Colson LLP

November 1, 2016
MEMORANDUM OF SETTLEMENT AND RELEASE

BETWEEN

BIG BOX RETAILER

(“Employer”)

- and -

JOHN DOE

(“Employee”)

WHEREAS the Employer terminated the Employee’s employment without cause for operational reasons;

AND WHEREAS the Employee, at the time of termination, alleged the Employer terminated his employment on the basis of discrimination in violation of the Ontario Human Rights Code, as amended;

AND WHEREAS the Employer and the Employee wish to fully and finally resolve this matter and any other disputes related to the Employee’s employment or the ending thereof;

THE EMPLOYER AND EMPLOYEE HEREBY FULLY AND FINALLY AGREE AS FOLLOWS:

[1] The Employer shall within 3 weeks of the date of this Settlement provide to the Employee a lump sum payment of $25,000 of which $10,000 shall be characterized as damages [no withholdings] for alleged discrimination during employment under the Human Rights Code.

[Note: All information provided in this sample is for general information only, and should not be relied on as legal advice or opinion. No person should act or refrain from acting in reliance on any information found on this sample without first obtaining appropriate professional advice.]
[2] In consideration of the payment in paragraph 1, the Employee is deemed to be permanently laid off. The Employer will issue a Record of Employment (“ROE”) confirming that the Employee was permanently laid off.

[3] The Employee hereby undertakes forthwith to completely and finally withdraw and discontinue on consent of the Employer, which is hereby provided, any claims before courts, administrative bodies, tribunals or other entities with respect to issues relating to the Employee's employment with the Employer or the ending thereof or any matter related to their employment, whether against the Employer or otherwise.

[4] The Employee and Employer acknowledge that the payment of the sum in paragraph 1 is inclusive of and exhaustive of all possible entitlements to pay, pay in lieu of notice, severance pay, damages, penalties, interest, re-employment, or any other claims or entitlements in respect of the Employee's employment and the ending of that employment or related to any issue related to their employment, whether pursuant to tort, common law, equity, contract, the Labour Relations Act, 1995, the Employment Standards Act, 2000, the Human Rights Code, the Workplace Safety and Insurance Act, 1997, the Occupational Health and Safety Act, the Pay Equity Act, other legislation, or otherwise.

[5] The Employee agrees not to disclose the terms of this Settlement to any person, including to employees and former employees of the Employer, except to the Employee’s immediate family, and, as necessary, to the Employee’s legal and financial advisors, and as strictly required by law. The Employer agrees not to disclose the terms of this Settlement to any person, except to the extent necessary to implement the terms of this Settlement and except as strictly required by law.

[Note: All information provided in this sample is for general information only, and should not be relied on as legal advice or opinion. No person should act or refrain from acting in reliance on any information found on this sample without first obtaining appropriate professional advice.]
Primer on Employment Law for Paralegals: Settlement Agreement

SAMPLE MEMORANDUM OF SETTLEMENT

NOVEMBER 1, 2016

[6]  The Employee agrees to indemnify and save the Employer harmless with respect to any claims, charges or demands properly exigible which might be made upon it in respect of the Employee's obligations in connection with this settlement pursuant to the *Income Tax Act* (Canada) or the *Employment Insurance Act*.

[7]  The Employee further confirms that this settlement constitutes the entire agreement between the parties, and that the payment in paragraph 1 is the sole consideration for the release described below.

[8]  In consideration of the payment in paragraph 1, the Employee hereby releases and forever discharges the Employer, its subsidiaries, parents, affiliates, predecessors, and successors and each of their respective owners, officers, directors, employees, and agents [the Releasees] from any and all actions, causes of action, claims, grievances, complaints, demands and proceedings of whatever kind for damages, indemnity, costs, penalty, compensation or any other remedy which the Employee or the Employee's heirs, administrators or assigns had, may now have, or may have in the future arising out of the Employee's employment with the Employer or the ending of that employment, or related to any issue related to their Employment.

[9]  The Employee agrees that they have discussed or otherwise canvassed any and all human rights complaints, concerns, or issues, arising out of or in respect to the Employee’s employment with the Employer.

[10]  The Employee agrees that this agreement constitutes a full and final settlement of any existing, planned or possible complaint or complaints against the Employer under the *Human Rights Code* up to the date of this agreement, arising out of or in respect to the employee’s employment with the Employer.

[Note: All information provided in this sample is for general information only, and should not be relied on as legal advice or opinion. No person should act or refrain from acting in reliance on any information found on this sample without first obtaining appropriate professional advice.]
[11] The Employee and the Employer agree that each of them will refrain from making any statements, whether written or oral, which are disparaging or critical of the other.

[12] The Employee is not to enter upon the premises of the Employer without the prior approval of the Employer. Such approval will not be unreasonably withheld.

[13] The Employer will provide a letter of employment to the Employee as provided for in Schedule A attached hereto and forming part of this settlement. All reference inquiries are to be directed to Employer and will be answered in a manner consistent with the employment letter. Employee’s employment file will be permanently sealed and shall not be accessed for any reason unless required at law.

[14] The Employer and Employee agree that this Settlement is not an admission of liability or wrongdoing by any of the parties, and in fact such liability and wrongdoing is specifically denied.

[17] The Employer and Employee agree that this Settlement is made without prejudice and precedent to any other matter between them, except with respect to the enforcement of the terms of this Settlement.

AGREED TO IN TORONTO, ONTARIO THIS 1st DAY OF NOVEMBER, 2016,
November 1, 2016

To Whom It May Concern,

This letter will serve to confirm that John Doe was employed as a Sales Person on a full-time basis from DATE to DATE with the Employer. Employee was permanently laid off and we wish them the best in all their endeavours.

Yours truly,

Employer

EMPLOYER

[Note: All information provided in this sample is for general information only, and should not be relied on as legal advice or opinion. No person should act or refrain from acting in reliance on any information found on this sample without first obtaining appropriate professional advice.]