

Ask the Expert

Worst Mistakes Made with a Letter of Offer



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Q | *What have you found to be the five worst mistakes made with letters of offer?*

A | **1) The letter of offer is provided after the parties already came to an agreement**
In the *Hobbs v TDI* case (in which I acted), this is exactly what happened. The parties made an agreement. Then the letter of offer (which the employer wished to rely upon) was sent and signed. The court noted that since the employee received nothing new in return for this new offer, it was totally unenforceable. Even if the original agreement was oral, if that oral agreement could be proved to the satisfaction of the Court, a later letter of offer is of no significance.

Letters of offer which employees see and sign on their first day of work are unenforceable because the employee would not have come to work if they had not already had a deal. Also, it might have been a deal very different from that letter of offer.

2) The offer contains terms which are illegal

My last column provided examples of what such illegal terms could be, but they are those same terms which would render an employment contract unenforceable.

3) The employer is careless in drafting the offer

Sometimes employers use standard form offers which are different from the actual discussions between the parties. Those new terms could come back to haunt the employer as the employee will insist that the accepted offer is actually their agreement, not what had been pre-negotiated. If the employer can clearly show, preferably from written evidence, that the contract which they drafted is not what was agreed to, the court might set it aside based on the doctrine of rectification. Note that it is an uphill battle for any employer.

A good example is putting the wrong salary into the offer. I have seen too many cases where that occurred.

4) Including any term in the offer which violates the human rights code

This could be showing any preference or making requirements which disproportionately impact on disability, age, gender, etc. You should all be aware of this already as that has been HR's bugaboo for decades.

5) Not having the employee agree to the letter of offer

If an unequivocal offer is made and the employee commences employment on that basis, the employer has a good argument that the employer accepted the terms of that offer by commencing employment. However, the employee may claim that they never saw the letter or that they were relying upon other representations and agreed to the job on that basis. Make sure employees sign their letters of offer.

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Ask the Expert continued

Employers often have employees execute elaborate contracts, but, at law, a letter of offer is a contract and suffices legally. As well, employees are often much less nervous and resistant to agreeing to a letter of offer than a more formal employment contract. Note that legally, it has the same impact. More employers should use a letter of offer instead of a contract.

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