

Small Business Information Kit:

How User-Friendly Employment Agreements & Workplace Policies Can Help Your Business Thrive

By Kate Ross, Associate



***Disclaimer:** The Barteaux Durnford Small Business Information Kit is intended for informational and educational purposes only and does not constitute legal advice. Accessing this document does not create a solicitor-client relationship with Barteaux Durnford or any of its partners or associates. This document applies to labour and employment law issues in Atlantic Canada. It is current and accurate as of **September 2018** and may become outdated as laws and policies change. Like all areas of law, labour and employment matters are highly fact-specific. Please contact Barteaux Durnford if you require clarification or specific legal advice.*

Introduction

Small, entrepreneurial workplaces are unique

There's a popular misconception that small businesses don't need employment contracts or workplace policies. When you're an entrepreneur leading a close-knit team, you develop strong personal relationships with your employees. In many cases, your employees are long-time friends or even family members. It's easy to cross your fingers and hope that you'll be able to manage problems as they come up.

Myth: your personal relationship will prevent HR issues

The reality is that while good personal relationships can be a strength when things are running smoothly, they can become an added stressor when dealing with workplace conflicts. Suddenly, there is a potential conflict between your role as a boss and your relationship as a friend or family member.

The best time to address workplace conflicts and other prickly subjects is before they come up, and the best way to do that is by clarifying roles and expectations in written employment agreements and workplace policies.

The benefits of user-friendly employment agreements and policies

- Set clear expectations for you and your employees – communicating what is expected is half the battle and promotes consistency and fairness in the workplace.
- De-personalize performance issues – focusing on the business reasons why standards and procedures must be followed protects your personal relationships as much as possible.
- Prepare your team to help grow your business – when you communicate your business needs to your team, they will be in a better position to help the business reach its goals.

In the **Barteaux Durnford Small Business Information Kit**, we'll explore how to head off potential headaches and liabilities using the following key documents to add workplace structure in a user-friendly way:

1. Employment Agreements;
2. Workplace Policies
 - a. Drug & Alcohol;
 - b. Technology & Social Media;
 - c. Respectful Workplace;
 - d. Attendance Management;
 - and
 - e. Diversity & Inclusion



1. Employment Agreements

Upgrade from the “handshake agreement”

The traditional “handshake agreement” may feel easy in the moment but managing as you go has its drawbacks. When your only reference point for making decisions about your relationships with your employees is “the way it’s always been done” you’re simply not prepared for change or new situations.

What: a flexible agreement that reflects your relationship with the employee

Employment Agreements are not one-size-fits-all. Depending on your business needs, the right Employment Agreement for you and your employee might be anything from a short, common sense contract to a more complex agreement which protects your company’s intellectual property and your business interests in the event that a former employee takes a position with a competitor.



Why: limit your liability

Many employers do not realize that simply complying with the minimum obligations set out in the *Labour Standards Code* is not always enough. For example, in the event of a termination, an employer’s obligation to provide notice or pay in lieu of notice can be far greater than the minimum set out in the *Code*. Depending on the situation, this can become a significant liability for the employer. In Nova Scotia, this is especially true if the employee has been with you for ten years or more. A properly drafted Employment Agreement can help limit this liability.

How: continuing employees vs. new hires

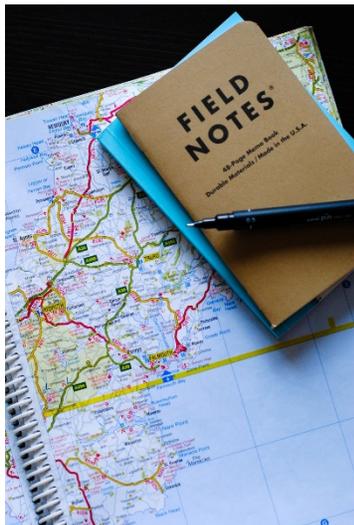
The best practice is to have employees sign employment agreements (and any other workplace policies) before their first day of work.

If you have employees already on board who do not have written contracts it is still possible to implement written Employment Agreements by providing what is referred to as “fresh consideration” in order to ensure the contract is fair and binding. A good time to do this is when promoting an employee or giving an employee a raise. Depending on the circumstances, this may satisfy the “fresh consideration” requirement.

Putting it in writing creates certainty and confidence

The bottom line is that a thoughtfully-drafted Employment Agreement that complies with labour standards legislation gives both parties in the employment relationship a level of certainty and confidence in their rights and obligations in the event of a conflict, which is when you need it most.

2. Workplace Policies



“I don’t need policies – I prefer a flexible management style”

Not having a policy is simply choosing to manage without a map. You might have great management instincts that help you resolve problems in the moment, but planning ahead can help to prevent problems before they even arise.

Consider a few of our most commonly-requested policies and what they might add to your workplace:

a. Drug & Alcohol Policies

As employers prepare for the legalization of cannabis, many are thinking about how recreational use of this drug might impact the workplace. From an employer perspective, addressing impairment due to cannabis will likely be similar to addressing impairment due to alcohol, though there may be exceptions.

It is a good idea to address all types of impairment in the workplace before they become an issue. This is especially true if you have employees who work in dangerous or safety sensitive environments. In fact, not implementing and following a reasonable policy regarding drug and alcohol use in the workplace could open your business up to liability in the event of a workplace incident.

A Drug & Alcohol Policy can also assist employers with fulfilling their duty to accommodate when addiction issues impact the workplace. Addiction is considered a disability under the *Human Rights Act* which means as an employer, you have a duty to accommodate an employee experiencing addiction, up to the point of undue hardship. A well-drafted policy may even encourage employees who are dealing with addiction issues to come forward and seek help knowing that there is a procedure in place.

b. Technology & Social Media Policies

In the era of social media, it is a common misconception that freedom of expression means an unqualified right to express oneself online.

In Canada, our right to freedom of expression comes from the *Canadian Charter of Rights and Freedoms* which is part of the *Constitution Act, 1982*. The *Charter* guarantees the right to freedom of expression, but importantly, the Charter only applies to government actions and not to interactions between private parties. This means that the government is not allowed to limit freedom of expression or punish forms of expression, except where such limits are justified in a free and democratic society (for instance, hate speech).



It is therefore not a violation of an employee’s constitutional right to freedom of expression for an employer to set out expectations for public behavior and expression on social media to ensure such behaviour doesn’t reflect badly on the employer’s company or organization. A technology policy can also set expectations for the use of personal devices in the workplace and anti-phishing procedures to ensure your team is educated about the risks of email and financial fraud.

Social media and technology are powerful tools that should be working for your business, not against it. A policy that educates employees on how to use these tools minimizes the risk of potential misuse (intentional or accidental) which could have high personal and professional costs to data and financial security, productivity, and reputation.



c. Respectful Workplace Policies

Employers have a statutory obligation under provincial occupational health and safety legislation to respond to known or suspected issues of workplace bullying and harassment.

This obligation has taken on new urgency in the era of #MeToo. It is simply not good enough to wait for a complaint to deal with bullying and harassment. Implementing and following a fair, consistent policy

can help limit your liability and protect against human rights complaints, but more importantly it is the right thing to do.

Having a Respectful Workplace Policy is particularly important for a small workplace in which relationships are both professional and social. Keep in mind that certain power dynamics might be less visible to you as “the boss”. Don’t make the mistake of assuming your workplace is immune.

An effective Respectful Workplace Policy:

- Complies with the *Human Rights Act* and the case law around discrimination complaints;
- Has a procedure for reporting and investigating complaints, including criteria for when internal or external investigations will be more appropriate; and
- Ensures employees understand this procedure and to whom they can bring a complaint if the person who typically handles the process is the subject of the complaint.



d. Attendance Management Policies

Absenteeism costs your business. The solution? Tracking attendance. Keeping a record of sick days, approved vacation days, and personal time

gives you important information about operational and staffing requirements.

If you are experiencing an issue with attendance, a record kept pursuant to a policy can de-personalize the issue so that you are not perceived to be targeting a particular employee. A policy that provides for progressive steps to notify employees of attendance issues and works to resolve them is an essential part of your management tool kit. In addition, attendance management policies can help you manage an employee who may be struggling with a family matter or health issue requiring an accommodation in a way that is compassionate to your employee and doesn't impact your bottom line.

A good attendance management policy can also help prevent “presenteeism”, or employees attending work when they are sick or should be using leave time to care for themselves or attend to a family issue. Presenteeism can be just as costly as absenteeism, resulting in lower productivity due to burnout, stress leaves, or longer-term illnesses. Employees who feel secure using their leave time appropriately through a well managed attendance policy will be healthier, happier and more productive.

In short, an attendance policy is not about micromanaging your employees. It's about ensuring that business and personal needs are met, and your organization is in a position to thrive and grow.

e. Diversity & Inclusion Policies

Awareness of employment equity issues has been on the rise since the mid-1980s. If your business hasn't already jumped on board, now is the time.

Stating that your company values and strives for diversity contributes to a positive organizational culture for your employees and clients. Even better, research shows that diverse teams are strong teams who serve your clients more effectively: a proven market advantage. In a 2013 study published in the Harvard Business Review, researchers at the Center for Talent Innovation examined two kinds of diversity: “**acquired diversity**”, meaning diversity of experience that can be gained by building expertise on different kinds of projects and in different markets, and “**inherent diversity**”, meaning the traits you are born with such as gender, ethnicity, and sexual orientation. The researchers concluded that businesses that exhibited “two-dimensional diversity” (both acquired and inherently diverse traits) better understood client needs and were 45% more likely to grow and 70% more likely to capture a new market.



The fact is, Diversity & Inclusion Policies are not about “political correctness”, they are about recognizing the inherent value of diverse experiences and how this contributes to building strong teams that understand you clients. Businesses in Atlantic Canada benefit every day from diversity as a result of immigration. A Diversity & Inclusion Policy is an opportunity to state your company's values and to attract – and retain – business and talent.

Additional Resources

- **Barteaux Durnford Blog:**
 - Eric Durnford, Q.C. on [ensuring your employment agreements are enforceable](#).
 - Nancy Barteaux, Q.C. on [upcoming changes to the Workers' Compensation legislation in Nova Scotia and PEI](#).
 - Krista Smith on [Workplace Investigations](#): when to investigate, when to retain an external investigator, and how to manage the process.
- **Nova Scotia Human Rights Commission:** [Free Online Course on Addressing Workplace Sexual Harassment](#)
- **Harvard Business Review:** “How Diversity Can Drive Innovation”, by Sylvia Ann Hewlett, Melinda Marshall, and Laura Sherbin, *Harvard Business Review*, December 2013 (Reprint F1312B), URL: <https://static1.squarespace.com/static/5ae89190aa49a17d6e450047/t/5b0d92c4aa4a99c9a42ddd3c/1527616197302/How+Diversity+Can+Drive+Innovation+_HBR.pdf>

Questions? Contact Us!

[Barteaux Durnford](#) is Atlantic Canada’s only homegrown employment and labour law boutique and is recognized by Canadian Lawyer as one of the Top 10 Labour and Employment Boutiques of 2018-19. We help employers solve workplace issues so they can get on with business.



[Kate Ross](#) is an associate at Barteaux Durnford whose practice includes a focus on small business employment law issues. Whether it's drafting contracts and policies or providing advice during termination, Kate's understanding of the business and the personal side of employment law enables her to find creative solutions that work for her clients. She can be reached at kate.ross@barteauxdurnford.com.

Barteaux Durnford

1701 Hollis Street, Suite L106
Halifax, Nova Scotia, B3J 3M8
Tel: 902.377.2233
Fax: 902.377.2234

Image Credits

Note: All photos are sourced from Unsplash.com and are licensed for commercial use.

Page 2: [Olu Eletu](#), URL: <<https://unsplash.com/photos/E7RLgUjjazc>>

Page 3: [rawpixel](#), URL: <<https://unsplash.com/photos/cnseVhmbA7k>>

Page 4: 1 - [Hello I'm Nik](#), URL: <<https://unsplash.com/photos/YiRQIglwYig>>

2 - [Saulo Mohana](#), URL: <https://unsplash.com/photos/D_kOW7iHNnw>

Page 5: 1 - [Mihai Surdu](#), URL: <<https://unsplash.com/photos/Del2BMIMDFA>>

2 - [rawpixel](#), URL: <<https://unsplash.com/photos/eegWXCzOT94>>

Page 6: [Sara Rampazzo](#), URL: <<https://unsplash.com/photos/GyPwOjMAI1I>>