

Elements of a contract critical thinking examples

[Business](#), [Employee](#)



The Situation

Regarding the chance hypothetically that you enter into a contract agreement with a job it is important to be aware of what this contract is legally binding you to. In this situation the contract in question will be regarding the fabulous hotel that hired a person as a head chef with a two year employment contract. When those two years were complete another job offer at a different hotel is presented to this person but there is one problem, and that is the employment contract at Fabulous hotel that was signed stated in it that, " The below-signed agrees not to work as a chef for another hotel in the same metropolitan area for a period of two years after leaving our employ" (your course). An agreements purpose is to formalize an alliance between two or more people in connection to a specific subject. Contracts can cover a great degree expansive scope of matters, including the offer of merchandise or genuine property, the terms of job or of a self-employed entity relationship, the settlement of a debate, and responsibility for property created as a major aspect of a work for contract (Larson, 2011). This could make taking the position at the new hotel a breach of the contract the person agreed to if all five elements that make up a binding contract are present. That makes it especially important not only to understand the terms of the contract but if it is legally binding because it does in fact possess the necessary five terms to be held up in court if the company should pursue this person legally for breaching the agreement that he/she signed.

The 5 elements of a contract that must exist

There are five elements required in a contract to make it enforceable in a court if a person agrees and breaches said agreement, in this case an agreement not to take a job in the same area for at least two years after leaving the Fabulous hotel. The first of these elements is what is called meeting of minds or mutual consent. What this means is both people who are making the agreement outlined in this contract are aware and of the same understanding of what is required and included in the contract. In this case if the employer is asserting that he/she is offering the position for chef however the employee is given a dishwashing position than this is not a mutual understanding of the terms of the contract meaning there is no “meeting of minds”, this situation would in most cases make it difficult to enforce the contract.

The second element that must be present for validity of the contract is an offer and acceptance. This means that the employer must make an offer to the person they wish to hire and the initial offer must be accepted for a binding contract, not a counter offer if rejected because that means that the original terms were not agreed upon. In the situation with fabulous hotel the hiring manager may offer a person the position as chef at 15 dollars an hour, however the soon to be employee will not accept for less than 20 dollars an hour. After negotiations an agreement is made however the first contract would be void because the person to be hired rejected the initial offer.

The third element present in binding contracts is known as mutual consideration. This is when there is something that is exchanged between the two parties of value. In the case of the Fabulous hotel and the employee

the hotel would be exchanging experience and good pay for work and a promise. This can be considered illusory which is described best as the employee getting only what a job would have to provide and not really a mutual consideration for the fact that they cannot work for another hotel in the area for a period of two years after resigning from fabulous hotel.

However unbalanced it seems this will not protect the employee if he/she breaks the contract because even if the employee is offered a better job elsewhere they legally can't ignore the contract.

The fourth element that needs to be present for a legal and binding contract is the legal capacity of the person entering the agreement by signing the contract. If the person who signs the contract is under any of the following categories the contract could be considered void as said person would be legally incapable of making the decision to enter into such an agreement: mentally impaired persons, a minor, bankrupts, person acting on behalf of a corporation and prisoners.

Last any contract that is illegal and or void is not considered a legally binding agreement. Considering the situation with the fabulous hotel and this particular employee what this would mean is the contract must obey certain statutes set for contracts where this agreement is taking place. Even if the person is not aware that there is an issue with the contract not being covered by the statute the contract would still be considered void and unenforceable if it breaks these guidelines. There is one catch though even if the employer is in breach of these statutes and the contract is void the employee still would have rights to the pay agreement and job position, however the employer could not hold the employee to the terms expected

(Lawhandbook. org. au, 2014). Without all of these elements a contract that is given to the employee of Fabulous hotel would not be considered legally binding nor have any grounds for legal action if said employee were to take a job with another hotel.

How to determine if the contract is governed by common law or UCC

This can be governed by common law or the Uniform Commercial Code (UCC) if it falls into certain set terms of acceptance. To determine this it is necessary to understand the difference between the two. The common law is what considers any changes even minor that are made to a contract a reason to make said contract void and the UCC does not consider minor changes to a contract a reason to void it. The UCC in most cases only handles contracts pertaining to sales of goods and services and the common law would govern this type of contract as it specifically covers areas of employment which in the situation with the Fabulous hotel this is a matter of employment(Denton & Denton, 2013).

Two situations this non-complete agreement would be enforceable

If the employer of Fabulous hotel were to change any of the parts of the agreement in the original contract after hire like the employees rate of pay than the contract would be breeched as the employee entered into a mutual understanding of the amount that he/she would be paid to be the chef for two years at the Fabulous hotel. Another situation that would make this contract void is if the hotel knowingly or unknowingly violated any statutes set by common law which is the governing party of the contract when the

contract was made. What this would mean is that the employee would not be obligated to follow the terms of the contract as it violated one or more statutes set in place for the contract to be legally binding.

Conclusion

If the employee in question took the position and agreed to this contract they would be legally obligated to respect the terms of agreement and decline any positions available in the area for the following two years.

However if the employer violated any of the five elements that are required to make the contract legally binding than the employee could take the job offer and if Fabulous hotel were to pursue any legal actions against said employee than they would have no case as there contract would be considered void out of the lack of ability to provide the elements that are required to make a contract legally binding. The common law statutes must be followed and all five elements must be present to hold the former employee to the terms that were agreed upon when the employee took the position with fabulous hotels.

References

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