

Newsletter



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Avocats • Lawyers

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Think of renewing your employment contracts upon expiry!

Three years ago, you hired a sales rep. You drew an employment agreement defining the compensation, working schedule and vacations. Since the rep was to occupy a strategic position in your company, you inserted non-competition and non-solicitation clauses into the agreement. Finally, you stated that the agreement would be limited to a three-year duration, and that its renewal would require an express agreement.

This contract expired last January 29. However, through the hustle and bustle of daily activity, no one paid attention to the fact that the contract had come to an end, and no one was surprised when the rep showed up for work on February 1 and kept doing his job through the week.

It may have been a mere week's work, but the legal consequences are significant:

- By application of art. 2090 C.C.Q., the contract was tacitly renewed for an indeterminate term since the employee con-

tinued to carry on his work for five days after the expiry of the term, without objection from the employer; and

- Following a recent judgment ([Traffic Tech inc. c. Kennell, 2016 QCCS 355](#)), the renewal only applies to the essential elements of the contract, such as compensation, working hours and vacations: accessory conditions, such as non-competition and non-solicitation clauses, are not renewed.

This consequence can have a very detrimental impact for the employer. Without non-competition and non-solicitation clauses, an employee who resigns would only be bound by a duty of faithfulness and honesty under art. 2088 C.C.Q., a far cry from explicit clauses. Your sales rep could then resign and work for a competitor after giving you a reasonable notice of termination.

How can you protect your rights?

Since you and your employee are bound by a fixed-term contract (a contract with predetermined termination date), you must select one of two avenues:



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- **If you wish to keep the employee at your service**, you must renew the contract before it expires, under the terms, if any, that you specified in the contract. You may renew the contract for a duration other than that of the original contract. You may also enter into a contract for an indeterminate term. But you must insert into the new contract all the necessary clauses, such as non-competition and non-solicitation clauses.
 - **If you no longer need the employee's services**, you must end the relationship as soon as the contract comes to its term

by notifying the employee that the contract has expired and that it will not be renewed.

Drafting an employment contract and managing its renewal are operations for which legal advice can avoid many problems. Do not hesitate to consult with a qualified legal advisor before the costly consequences become inevitable.

