

The BC Dental Hygienists' Guide to Employment Contracts



Increasing the ability of the Dental Hygienist to enter into employment contracts.

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British Columbia Dental Hygienists' Association

www.bcdha.com



Preamble

This guide will focus on employment contracts that are between an employee and his or her employer. Simply put, an employee is a person who receives or is entitled to wages for work performed for an employer. An independent contractor is a person who is considered to be self-employed – they are in business for him or herself. If you are interested in working as an **independent contractor** or have been asked by your employer (or prospective employer) to work as such, this guide is **NOT** for you. Please visit www.bcdha.com and www.cdha.com for information and guidelines about working as an independent contractor.

Unionized employees cannot enter into individual employment agreements. Therefore, if your employment setting includes a collective agreement and you have questions about your union contract, you should consult with your local union representative.

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2.0 INTRODUCTION



If you are starting a new job, being asked to sign an employment contract, or are currently working without a written contract and wish to have one in place, this guide is for you. An employment contract governs the relationship between you and your employer. Keep in mind that any agreement you reach with your employer, oral or otherwise, will be your “employment contract.” Ideally, the terms of your employment should be put down in writing. A well written employment contract makes the terms, benefits and obligations of your employment clear, secures your position, and reduces the chance for future confusion and uncertainty.

When presented with an employment contract, you are advised to not sign anything that you don’t thoroughly understand. However, contracts tend to be filled with legal jargon, often making them intimidating and difficult to comprehend. They can be as simple as a one-page document or as meticulous as a thirty-page thesis. Furthermore, when excited about starting a new job, you may not feel inclined to worry about a few unclear details; or perhaps you feel pressured to act quickly for fear of losing the job! It can be extremely difficult to question a potential employer if you really want the job. But remember, the employer just spent significant time and energy to find, interview, check references, then decide you were the one they want to hire. It is unlikely that they will retract the job offer if you ask for time to review the employment contract. In most cases, it is advisable to seek legal counsel when asked to sign an employment contract. A lawyer will explain terms that sound unclear and will ensure that all the necessary obligations and entitlements of both the employer and the employee are addressed. Asking for time to seek legal advice before signing is entirely reasonable.

Alternatively, the employer may not ask for anything in writing; no written agreement that defines the employment conditions, compensation or benefits provided. This situation can be fraught with uncertainty and confusion. A sample employment agreement is included in this guide (Appendix A) that may assist with the implementation of an employment contract in the case where one is not already in place.

This guide will outline and discuss a variety of topics that are offered for consideration. There is no one employment contract that is ideal for everyone, nor can this guide be used to replace good old-fashioned common sense or a consult with a lawyer to outline your options. A lawyer who has experience with employment and contract law will be able to explain any unclear terminology and advise you about entitlements or benefits that might need further negotiation with the employer.

Important! This guide is not a substitute for legal advice. BCDHA stresses that before signing any employment contract you should consult with a lawyer. See page 26 about legal advice resources.

3.0 SUGGESTED ELEMENTS OF AN EMPLOYMENT CONTRACT

3.1 THE BASICS

3.1.1 Start & End Dates

You should ensure that your employment contract has a mutually agreeable start date. An end date is only required if your employment contract is for a fixed term.



It is important to be aware of the difference between a fixed-term and an indefinite-term contract as this can influence the potential damage awards that are available to the employee in the event of termination. Generally speaking, in a fixed-term contract, the employment relationship is intended to last for only a specific length of time. Normally, an employer is not required to provide the employee with notice of termination since the employment relationship comes to a predetermined end. This end date must be clearly shown on the contract.

In contracts of an indefinite duration, employment is assumed to be one of continuous service with no specified or foreseeable end to the employer-employee relationship. This type of contract is accompanied by several rights and obligations, mostly the right to reasonable notice upon termination. See section 3.3 for termination protocols and contract considerations.

3.1.2 Legal Names & Contact Information

It is important that the contract be clear on who is entering into the agreement. Use your legal name and the legal name of the employer. If the employer is licensed as a corporation or limited company, include this information. Be sure to include all available contact information (e.g. physical address of the practice, mailing address, email, phone and fax numbers).

3.1.3 Job Title & General Duties of Employment

Be sure to include your job title and a description of your job, including a list of duties and obligations. This list should be comprehensive and detailed so that the employer's expectations are clear. For example, some offices may require that you work at the front desk if your patient cancels; or you may be asked to fill in for another employee in their absence. Although not every contingency can be included in this section, both you and your employer should put some thought into what is expected of you. If there are dental hygienists who already work in the practice, it might be wise to ask what is expected of them on a daily basis. Keep in mind that most employers will view your query about job duties positively and see it as a sign of interest and engagement on your part.

It may be important to include details about your work setting or location. For example, some employers may own more than one practice and expect you to be able to work at different locations, or provide coverage at another location when required. This negotiation is particularly important in situations where an employer or corporation owns multiple practices.

Details about your work schedule should also be included. This may include regular work days, times and number of hours per week you can expect to work. If there are specific days or times that you are not willing or able to work, make sure this is noted. Ordinarily, the employer cannot significantly change the working conditions that have previously been agreed to. If you are concerned that your work schedule will change if, for example, the practice extends their hours of operation or business is slower than usual, you can include a clause in your employment contract to deal with these changes. Request that your written consent be required if there are to be significant changes made to your work schedule, or any other terms of your employment agreement. See section 5.0: NOTIFICATIONS OR MODIFICATIONS TO THE AGREEMENT for more information about making changes to employment contracts.

3.1.4 Signatures, Dates & Witnesses

Both you and your employer (or the signing authority for the employer) must sign the contract. Include the date of signing, as well as one or more witnesses.



3.2 THE EMPLOYMENT STANDARDS ACT & CONTRACT CONSIDERATIONS

This section discusses contract considerations for employment issues that are addressed in the **Employment Standards Act**. The Act stipulates the minimum that an employer is legally required to provide their employee. **Anything above these minimum standards is negotiable**. Since dental hygienists commonly receive more than these minimum entitlements (ie. wages), the contract should include all negotiable issues that are relevant to the position. Issues for which the entitlements stipulated by the Act are adequate and acceptable do not need to be addressed in the employment agreement. Also, it is important to remember that an employment contract cannot contravene or override the Act.

The Employment Standards Act

The British Columbia Government has enacted the *Employment Standards Act* (the Act) which outlines a minimum for wages and working conditions in most workplaces in British Columbia. The Act applies to non-union employees, regardless of whether they are employed on a part-time, full-time, temporary or permanent basis.

The purpose of the Act is to ensure that employees receive at least a basic standard of compensation and working conditions and to promote fair treatment between employers and employees. The Act is intended to protect as many workers as possible, stipulating the minimum standards that the employer is obligated, by law, to provide their employees. An employer is not allowed to contract outside the law. For instance, an employer cannot abdicate their responsibility to pay for statutory days required by the Act simply by indicating in an employment contract that they deviate from this requirement. The employer is always required to meet the ***minimum*** outlined in the BC Employment Standard Act and cannot ask you to sign away these rights through an employment contract or through any other measure.

Remember: The Act only stipulates the ***minimum requirements that an employer is legally required to do***... ..as a professional it is common for the dental hygienist to negotiate more than the minimum... ..especially when it comes to salary and employment conditions.

3.2.1 Remuneration (Wages or Salary)

The Act

The minimum wage in BC, as of June 1st, 2018, is \$12.65 per hour. Minimum wage applies to all employees regardless of whether they are paid hourly or on a salary or commission based agreement. ([Gov't of BC, Minimum Wage Fact Sheet,2018](#))

An employee who reports for work must be paid for at least two hours, even if they work less than that. If scheduled for more than eight hours, the employee must be paid for at least four hours. If work stops for any reason that is completely beyond the employer's control, the employee must still be paid for two hours or the actual time worked, whichever is greater. An employee who reports to work but is unfit to do their job, or is not in compliance with WorkSafe BC occupational health and safety regulations only has to be paid for the time actually worked.

Contract Considerations

Most dental hygienists will be paid more than minimum wage; however, there are a variety of payment methods, including:

- Hourly wage: a dollar amount per hour of work (e.g. \$40/hour)
- Weekly/Yearly salary: a dollar amount per week or per year (e.g. \$1,500/week)
- Commission: a percentage of profits or dollar amounts billed (e.g. 50% of billings)
- Salary + commission: a dollar amount plus a percentage of sales (e.g. \$45,000/year + 5% of profits) (LawDepot, 2017).

The employment contract should specify the payment method as well as the pay period (e.g. once or twice per month, on fixed days, bi-weekly, or every week).

When negotiating your wage it is also important to think about things like staff meetings and other times when you are expected to work in a capacity that might not be directly related to patient care. For instance, will you be paid your regular wage during an appointment where a patient does not show; or for time spent doing required sterilization, office maintenance or cleaning? These scenarios should be included in your employment agreement so that wage expectations are clearly understood by both employer and employee.

CDHA Job Market and Employment Survey

Every two years, CDHA conducts a compensation survey to gauge employment trends in Canada, and collect and analyse data on key aspects of the profession. This is a good place to find information about national trends as they relate to compensation and benefits of Dental Hygienists across Canada ([CDHA, 2017](#)).

BCDHA also publishes an *Employment Survey of BC Dental Hygienists - Executive Summary*, based on the CDHA survey, which summarizes the BC trends. For resources on the wages and compensation of dental hygienists in BC, please visit our website at ([BCDHA, 2018](#).)

I started a new job several years ago and in the interview, the employer indicated I would be paid \$43 per hour. When I received my first pay advice several weeks later my pay was only \$42 per hour. I brought this to my employer's attention and she only remembered offering me \$42. I had no proof of our discussion in the interview. This cost me several thousand dollars in the first year alone. I wish I had taken the time to develop an employment agreement in writing.

RDH, 2017

3.2.2 Deductions

The Act

The Act stipulates that an employer may only make deductions from wages as permitted by law (e.g. income tax, Employment Insurance (EI), Canada Pension Plan CPP.) An employer is not permitted to deduct any of the employer's business costs from wages; this includes cash shortages, breakage, and damage to property or company equipment.

At the end of the year, the employer is required to provide an employee with a T-4 slip verifying a record of your pay and your deductions.

Contract Considerations

An employee may request that certain amounts be deducted from their wages to be paid directly to a third party. These might include medical premiums; extended health or dental coverage; charitable donations or pension plan contributions if the amounts are tax-deductible.

Before this can occur, written permission from the employee must be provided. Therefore, the employment contract should include any payments, besides those stipulated in the Act, that are deducted from wages. See section 3.4.2: Health & Extended Benefits for more information about benefit options.

3.2.3 Overtime

The Act

If an averaging agreement is **not** in place, the following criteria are used to calculate overtime:

Daily overtime

After working 8 hours in a day, an employee must be paid time-and-a-half for the next four hours worked, and double time for all hours worked in excess of 12 hours. This applies even if the employee works less than 40 hours in a week.

Weekly overtime

An employee must be paid time-and-a-half for any time worked over 40 hours in a week.

Additionally, an employee is entitled to have 8 hours off between shifts and should not work excessive hours or hours harmful to the employee's health or safety ([Gov't of BC, Hours of Work and Overtime Factsheet, 2017](#)).

A factsheet including examples of how over-time is calculated may be found at: <http://www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/employment-standards/factsheets/hours-of-work-and-overtime>.

Contract Considerations

Ensure your employment contract does not contravene the Act. If an **Averaging Agreement** is proposed, carefully review all information on the following section (3.2.4: Averaging Agreements).

3.2.4 Averaging Agreements

The Act

As mentioned above, the standard workday is 8 hours and the standard work week is 40 hours, and when either of these is exceeded, overtime is generally enforced. The Act allows employers and employees to enter into “Averaging Agreements” which are agreements that permit hours of work to be averaged over a period of one, two, three or four weeks. This means that an employee could work up to 12 hours a day, averaging up to 40 hours a week, without being paid overtime. The Act stipulates that in order to be valid and enforceable, an Averaging Agreement must:

- Be in writing;
- Specify the number of weeks (one to four) over which hours will be averaged;
- Specify the work schedule for each day covered by the agreement;
- Specify the number of times the agreement may be repeated;
- Specify a start date and an end date (if applicable) for the agreement; and
- Be signed by the employer and the employee before the start date.

The total number of hours scheduled must not average more than 40 hours per week. The employee must receive a copy of the averaging agreement before it takes effect ([Gov't of BC, Averaging Agreement Factsheet, 2017](#)).

Details about what constitutes a valid Averaging Agreement are available at:

<http://www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/employment-standards/factsheets/averaging-agreements>

Contract Considerations

Here is an example of a typical Averaging Agreement: The dental hygienist will work 11 hour shifts every Monday, Tuesday and Wednesday. The Averaging Agreement would therefore specify a regular work schedule of 11 hours per day for 3 days per week. In this instance, overtime would only be required if the employee works more than 11 hours in one of these scheduled days. Overtime is not required if they work on an additional day unless they work over 8 hours on this additional day or exceed 40 hours for the week.

If asked to sign an Averaging Agreement, you may wish to renegotiate your hourly wage/salary. Here's what one hygienist had to say:

“During my first year of employment as a dental hygienist, I was asked by my employer to sign an averaging agreement. I agreed, however, I negotiated a significantly higher hourly wage... In the end it was much more beneficial for me because I was making a higher hourly wage... when I moved to part-time in the same practice I still received the higher hourly salary!”

In addition to these criteria, there are stringent rules regarding overtime, rest periods, statutory holidays, variances and how to change averaging agreements. Be sure to review the factsheet (provided above) before entering into an Averaging Agreement.

3.2.5 Statutory Holidays

The Act

The ten statutory holidays in BC are:

- New Year's Day
- Family Day
- Good Friday
- Victoria Day
- Canada Day
- BC. Day
- Labour Day
- Thanksgiving Day
- Remembrance Day
- Christmas Day

In order for an employee to qualify for statutory holiday pay, they must have been employed for at least 30 calendar days and have worked on at least 15 of the 30 days before the statutory holiday. Employees who worked under an Averaging Agreement at any time in the 30 days before the statutory holiday do not have to meet the 15-day minimum.

If you qualify for statutory holiday pay you must be paid an average day's pay, or if you work on the statutory holiday, you must be paid time-and-a-half for the first 12 hours worked and double-time after 12 hours. ([Gov't of BC, Statutory Holidays, 2018](#)).

Contract Considerations

Some employers will pay for additional holidays (e.g. Easter Sunday, Easter Monday and Boxing Day) however, these are not statutory holidays so employers are not obligated to compensate employees. All holiday pay above the minimums stipulated above should be specified and agreed to in your employment contract.

3.2.6 Vacation Pay

The Act

After completing one year of employment, an employee is entitled to two weeks' vacation, with vacation pay being at least four percent of the employee's earnings over the previous year. After five years, an employee is entitled to three weeks' vacation, and vacation pay increases to six percent. If employed for less than one year, the employee is not entitled to take a vacation, but must be paid four per cent vacation pay on termination of their employment. Vacation pay is not payable if a person is employed for five calendar days or less. ([Gov't of BC, Vacation Pay, 2018](#)).



The Act: does not permit an employee to forego an annual vacation and only receive the vacation pay. Employers are required to ensure that employees take time off for their annual vacation, and receive their vacation pay.

Contract Considerations

The percentages indicated in the Act are the minimum that is required by law and you may be able to negotiate a higher vacation pay rate. If the salary you are offered is slightly less than what you would have preferred to accept, try to negotiate a higher percentage of vacation pay; it might work out in your favour in the long run. Also, be sure to discuss and include in your employment contract, the intervals when you can expect an increase in your vacation pay; for instance, will you receive a higher percentage of vacation pay after two or three years vs. five years, as required by law.

Another issues regarding vacation include whether there are blackout periods when your employer won't permit you to take holidays, or whether you are allowed to work when your employer is away from the office. Many dentists take significant time off and often staff are required to take this time off without pay, or to take holidays during this time. You may find that this is inconvenient or does not coincide with your family plans.

Another consideration is whether unused holidays can be rolled into the following year or do they need to be used or paid out before the start of a new year.

3.2.7 Unpaid Leave / Illness / Personal Time

The Act

Employers are required to grant the following types of unpaid leaves:

- Pregnancy leave
- Parental leave for birth and adopting parents
- Family responsibility leave
- Bereavement leave
- Compassionate care leave
- Jury duty
- Reservists' leave

An employee does not need to work for a specified period to qualify for leave. Employees are, however, expected to give their employers as much notice as possible, and provide sufficient information for the reason for the leave. This notice does not have to be in writing or disclose personal or private information.

An employee on any of these leaves is considered to have continuous employment for the purpose of calculating annual vacation and termination entitlements, as well as for pension, medical or other plans of benefit to the employee. When the leave ends, an employee must be returned to his or her former position or to a comparable position.

[\(Gov't of BC, Leave from Work, 2018\).](#)

Contract Considerations

Although the requirement is for the employer to provide **unpaid** leave for the reasons listed above, there is nothing that would preclude an employment agreement from including paid time for some or all of these types of leaves.

Another consideration is sick leave and personal days; these are employment benefits in the form of paid time off for illness or to deal with a personal matter. Since most employees occasionally need time off, it is a good idea to discuss these situations prior to starting your job. A sick day is self-explanatory and could be used for everything from a common cold to a more serious illness or injury that requires you to take significant time off work. Only 19% of dental hygienists indicated having paid sick days as a benefit [\(CDHA, Job Market & Employment Survey, 2017\)](#). Personal days can cover things like the illness of a child, a death in the family or religious holidays.

3.2.8 Breaks

The Act

An employee must not work more than five hours in a row without a 30-minute unpaid meal break. If that employee is required to work or be available for work during a meal break, they must be paid for the meal break. Employers are not required to provide coffee breaks. ([Gov't of BC, Meal Breaks, 2018](#)).

3.2.9 Uniform Allowance

The Act

If an employer requires an employee to wear a uniform or special clothing, the employer must, without charge to the employee, provide, clean and maintain this clothing. Special clothing includes garments with a company logo or unique colours. Employers and employees can agree that the employer will reimburse employees for cleaning and maintaining the special clothing. ([Gov't of BC, Interpretation Guidelines Manual, 2017](#)).

Contract Considerations

Be sure to discuss uniform allowances. In the 2017 Job Market & Employment Survey, 43% of Canadian dental hygienists indicated that they receive a uniform allowance ([CDHA, Job Market & Employment Survey, 2017](#)).

If your employer requires you to wear matching uniforms or scrubs, or perhaps a logoed lab coat, they are required to provide this clothing or to reimburse you for this expense. Of course, if they pay for your uniform then they get to decide the colour, design etc. Additionally, the number of uniforms they will purchase and laundry allowance should also be discussed.

3.3 TERMINATION OF EMPLOYMENT

What if you have an employment contract and you want to leave your job?

What are your entitlements if or your employer fires you or lets you go?

What is constructive dismissal and how might I avoid this situation?

While these questions are not something you want to think about when starting a job, they are important issues to consider including in your employment contract.

3.3.1 Termination of Employment by Employee

The Act

If an employee decides to voluntarily quit his or her employment, they are not entitled to written notice of termination or compensation for length of service. You should, however, receive any outstanding wages such as annual vacation pay, statutory holiday pay and overtime paid within six days after your last day of work ([Gov't of BC, Termination of Employment Factsheet, 2017](#)).



TIME TO SAY GOODBYE

Contract Considerations

Some contracts require that the employee give notice to their employer of their intention to leave the job, and may even allow the employer to claim for damages resulting from the employee's sudden unannounced departure. As an employee, it is always best to give your employer some notice when you decide to leave your employment so that they can plan to hire a replacement or run their practice in your absence. If an employer wishes to stipulate a specific amount of advance notice required in the event the employer chooses to leave their employment, or has other requirements on this issue, these should be included in the employment contract.

3.3.2 Termination of Employment by Employer



The Act

In the case of an indefinite-term employment contract, an employer has the right to terminate an employee with or without “just cause”. If the employee is terminated **without just cause**, employers must provide compensation (or advance **written** notice) based on length of service:

- **After three consecutive months of employment – one week’s pay (or notice)**
- **After 12 consecutive months of employment – two weeks’ pay (or notice)**
- **After three consecutive years – three weeks’ pay (or notice), plus one week’s pay (or notice) for each additional year of employment to a maximum of eight weeks.**

An employee can also be given a combination of written notice and compensation equal to the number of weeks for which they are eligible.

No compensation is required if the employee was terminated with just cause (see Just Cause Factsheet: [Just Cause \(PDF, 397KB\)](#)) or in other situations as specified by the Act (see Termination of Employment Factsheet: [Termination of Employment \(PDF, 232KB\)](#))

Contract Considerations

In many cases, **when terminated without just cause**, employees may be entitled at law to more compensation than that stipulated by the Act. In such circumstances, it is important to seek legal advice before signing or agreeing to any notice or salary in lieu of notice.

In certain circumstances, you might expect a severance package that reflects your seniority or dedication to the employer, that may be in excess of notice provided for under the Employment Standards Act. The amount of severance depends upon a number of factors. Therefore, if you are in a situation where you’re being asked to sign an employment agreement after having worked for an employer for a period of time, this is definitely something to consider including. Payouts vary widely and factor in such things as the nature of your position, how long you worked for the employer and the availability of similar jobs in your field. Consult a lawyer in these circumstances.

Finally, if you are terminated without just cause and are presented a termination or severance payment you should seek legal advice. Don’t feel intimidated by a deadline set by the employer to accept the offer as these deadlines are not legally binding and can be extended.

3.3.3 Constructive Dismissal

The Act

Constructive Dismissal is a situation where the employer has not directly terminated employment but has neglected to adhere to the employment contract conditions in significant ways or has unilaterally changed material terms of employment conditions. Examples of changes to working conditions that might be considered constructive dismissal are; significant reduction in pay, change in duties or responsibilities, or the requirement for the employee to relocate to a different city. It is up to the employee to prove that constructive dismissal has occurred. If you think you have been subjected to significant changes in working conditions resulting in constructive dismissal, you are advised to seek legal counsel before taking any action.

Contract Considerations

Having a mutually agreed upon employment contract in place will certainly reduce the likelihood of an employer significantly changing the employment terms without your agreement. Your contract should outline the procedure for making changes to the existing employment agreement. See sections 5.0: NOTIFICATIONS OR MODIFICATIONS TO THE AGREEMENT and 6.0: REMEDIES IF CONTRACT IS BREACHED.



3.4 BENEFITS

The benefits covered in this section are not specifically addressed by the Employment Standards Act, however, a number of benefits beyond those mandated by law have become common entitlements. Be sure to consider both your employment situation and your personal needs carefully when negotiating these contract issues.

3.4.1 Continuing Education or Professional Development Allowance



An important consideration for many dental hygienists is whether your employer will contribute to the cost of attending continuing education courses, conferences or workshops. Forty-one percent of Canadian dental hygienists report receiving professional development benefits ([CDHA, Job Market & Employment Survey, 2017](#)). In order to fulfill their professional responsibilities for licensure with the *College of Dental Hygienists of BC* (CDHBC), practicing hygienists must attain 75 continuing competency credits as well as complete the Quality Assurance Program (QAP) Assessment Tool every 5 years ([CDHBC, 2017](#)). Meeting these professional obligations can incur significant costs, such as course registration fees, conference fees, travel costs and assessment fees. Many employers will consider paying for some or all of these costs, so suggesting this be included in your employment contract may be beneficial.

3.4.2 Health & Extended Benefits

Does your employer include payment of your Medical Services Plan (MSP) premiums and do they offer extended health benefits? Approximately 22% of Canadian dental hygienists receive health insurance or extended health benefits, 54% receive dental care, 10% receive dental insurance, and 19% receive sick leave benefits ([CDHA, Job Market & Employment Survey, 2017](#)).

Extended health benefits are an important consideration for some hygienists, especially those with young families. Costs for such things as prescriptions, orthodontic care, chiropractic treatment, physiotherapy and other auxiliary healthcare are often unexpected and quite expensive. Also, consider the availability of short-term and long-term disability insurance, which would provide salary protection in the event that you are unable to work for a period of time due to sickness or injury.

3.4.3 Licensing and/or Professional Fees

Does your employer cover any or all of the costs associated with your license fee to CDHBC or your professional association dues? These are fixed yearly costs that either stay constant or increase modestly from year to year. Some employers will cover part or all of these fees since without them you would be unable to practice. As a member of CDHA and BCDHA, you have professional liability insurance that is a benefit to your patients and to the practice where you work. Your license provides you with the ability to practice dental hygiene which is a benefit to your employer. Additionally, if your employer covers these costs they may be considered a business expense which can allow them to consider them as a write off come income tax time. these fees may be considered a business expense, which might make them eligible as a deduction for income tax purposes.

Benefits

3.4.4 Other Benefits

Other benefits to consider include retirement savings plan contributions, life insurance, daycare, tuition reimbursement, profit sharing, student loan contributions, parking, and disability & critical illness insurance (coverage in the event you are unable to work due to serious illness or long-term disability). Benefits are an important part of your remuneration and this aspect of your employment should not be overlooked. Be sure that all negotiable benefits and their costs are included in your contract. For example, if your employer provides a life insurance plan in your benefits package but deducts the cost of the plan from your pay cheque, you are, in fact, the one who is financing the benefit. So, be sure to determine the cost of all benefits. Even a matter as straightforward as the cost of parking can turn into an unpleasant surprise if you don't clarify who's paying this expense before you sign the employment agreement.

Disability Insurance & Critical Illness Insurance (information to consider)

It is suggested that hygienists look after their own financial destiny by purchasing their own disability and critical illness policies. Various plan options are available through the professional associations and through private agencies. When a dental hygienist purchases their own plan, they are the owner of the policy; therefore, they can select the specific policy that suits their particular needs and they pay the premium. If a claim is made, the benefits would be paid out to them tax-free (this is a very important issue when comparing benefit plans).

Occasionally (although uncommon), a dentist employer may offer disability or critical illness insurance benefits. In this case, there are several risks that must be considered:

- The owner of the policy is the employer, which means that the employer controls the policy. It can be cancelled at any time by the employer and cannot be carried through to another employer (if, for instance, the hygienist decided to leave the practice). If there has been a change in health, the hygienist may not qualify for another policy.
- If the premium is paid for by the employer, it is considered a taxable benefit for the employee if a claim is paid.

Jeannie Haslett, CHS, (personal communication, Nov 17, 2017).

Income protection is an important part of your financial planning and every professional should seek the advice of a reputable insurance advisor with regards to this topic. Every person presents with differing income and financial situations that need to be taken into account when planning for financial stability. This guide is not intended to address this specific part of professional financial planning so please consult an insurance professional when considering income protection for you and your family.

“A hygienist is a professional and has invested significant time and effort into their career. Handing over control of their financial destiny to an employer does not make good professional sense. Most dentists purchase personal policies and to me, a hygienist has an expertise that cannot be grouped in with the receptionist, office manager and dental assistant’s skills.”

Jeannie Haslett, Certified Health Insurance Specialist (CHS), personal communication, Nov 18, 2017).

3.5 PROBATIONARY PERIOD

Probationary periods are not required or necessary but are usually something that an employer asks for to evaluate your suitability for the job. If you agree to a probationary period prior to signing on the dotted line, make sure that the duration and terms of this period are included in the agreement. Probationary periods are not automatic, and they must be agreed to by both employer and employee. Probationary periods are commonly three to six months long but can be shorter or longer depending on the nature of the job or practice.

The purpose of a probationary period is to provide the employer enough time to adequately assess your performance and to allow you the time to adjust to your new position. Throughout the probationary period, it is expected that your employer provides regular feedback to you regarding your performance. It is preferable to agree to performance review dates so that if there are concerns about your performance they can be addressed, discussed and resolved, giving you the opportunity to make adjustments and demonstrate your suitability for the position.

Your employment contract should stipulate the duration of your probationary period (start and end dates) and stipulate the employer's performance expectations. Ensure that you understand what the final criteria will be, who will decide if you have met expectations, and when that decision will be rendered. Also, keep in mind that it is helpful to allow for a reduced probationary period if you are doing well. Allowing for an extension of a probationary period may work for or against you. If the agreement contemplates an extension of the probationary period, make sure the terms are clearly defined and that your input will be considered.

3.6 PERFORMANCE APPRAISAL & INTERVAL FOR REMUNERATION INCREASES

A performance appraisal, also referred to as a performance review, performance evaluation or a career development discussion, allows for your job performance to be periodically documented and evaluated ([Wikipedia, 2017](#)). This may not seem like a comfortable process, however, I suspect that, your dental hygiene education included a lot of evaluation of your performance by your instructors, so you already have lots of experience in this department.

You should expect and request that your employer evaluate your work on a regular schedule; at least annually. Positive reviews can be used in the future to negotiate better pay and benefits. Reviews will also allow you to become aware of any concerns your employer has with your performance and give you a chance to deal with those concerns before they become a bigger problem.

3.7 YOUR ABILITY TO ACCEPT OTHER WORK

In today's employment market, some dental hygienists may work for more than one employer or office. According to the 2017, [CDHA Job Market and Employment Survey](#), 72% of dental hygiene respondents indicated that they work in only one office, with 27% indicating that they work in two, three or four different workplaces. Keeping your options open to accept other work is always best. If you are considering a section in your employment agreement that dictates when and how you can accept other employment, you are strongly advised to seek the advice of a lawyer to help you understand the long-term ramifications this type of clause could have on your future employment options.



3.8 RESTRICTIVE COVENANTS

A restrictive covenant is a clause in a contract that would prohibit a former employee from competing with a past employer for a certain period of time. Often, a restrictive covenant will take the form of a “non-solicitation” or “non-compete” clause. The goal of a restrictive covenant is to prevent a former employee from using proprietary interests of the employer ([Finbow, 2017](#)). Restrictive covenants are legally binding in Canada, however, depending on their form, a restrictive covenant may be unenforceable. If you are in doubt, it is advisable to seek legal advice before signing any contract that you don't understand or before agreeing to include these types of clauses in an employment contract ([Hanson, Cohen Osler, Hoskins & Harcourt, 2017](#)). If your employer has not indicated that they would like a ‘non-solicitation’ or a ‘non-compete’ clause included in your employment contract, then it's in your best interest to leave these sections out.

3.8.1 Non-solicitation clause

A non-solicitation clause prohibits a past employee from contacting any of the employer's clients for a defined period after the employment has ended. There may also be ethical issues if a dental hygienist is believed to be soliciting clients from a past dental practice. If you are planning on any kind of solicitation or contact of current or past patients you are strongly encouraged to consult with legal counsel and the College of Dental Hygienists of BC ([CDHBC, 2014](#)).

Am I able to place an ad in a local newspaper stating that I am moving to a new practice in order to let my clients from the past 15 years know where I am going?

You are not allowed to solicit clients from your current practice to move to your new practice. However, providing that there are no restrictions in your contract with the employer, you would be able to place an announcement in a local newspaper indicating the new location where you will be practicing. Clients are not owned by a dental practitioner and as such, they have the right to choose where and by whom they receive their dental hygiene care.

(CDHBC, 2014)

3.8.2 Non-compete clause

A non-compete clause almost always benefits the employer and restricts a former employee from competing with their former employer by, for example, opening their own practice or working for a neighbouring dental practice within a period of time. Non-complete clauses need to be very carefully worded to be enforceable and if they are overly broad or ambiguous they are unenforceable.

Like many aspects of employment law, there are no black and white rules when it comes to determining how much an employee's employment can be restricted after the employment relationship ceases to exist. It is best to avoid having yourself subject to a non-compete clause but if you are faced with signing a contract with a non-compete clause it is advisable to consult with legal counsel ([Canadian HR Reporter, 2017](#)).

3.9 REIMBURSEMENT OF REASONABLE EXPENSES

Although it is unlikely that you would incur many expenses working in a dental practice on a day to day basis, there may be times that this could happen. For instance, your employer asks you to attend an out-of-town course on new software that the practice is implementing. You might incur the cost of the training fees, a flight or vehicle costs for travel, hotel, food and incidentals. It is always best to discuss these eventualities in advance and have any negotiations in writing in your employment contract.

3.10 OTHER CONTRACT CONSIDERATIONS

You may want to include other elements in your employment contract if you think that they are an important part of your employment or working conditions. Here are a few more issues for consideration. Ask yourself what would happen in these situations. If you are unsure or concerned about possible outcomes, it is best to have these discussions early on in the employer/employee relationship:

- How many work days per week are you being promised? Are these days established or could they change from week to week? How much notice would you be provided if a change was occurring?
- How many hours per day, hours per week, or hours per month are you being promised? Can these hours be changed? How much notice would you be provided if a change was occurring?
- If you are paid hourly and your last patient cancels or no-shows, are you sent home early (with or without pay)? (*Note: this is something you should never agree to.*)
- Are you guaranteed a number of paid hours of work each day/week/month?
- Are you expected to stay and assist the other dental staff at the end of the day?
- What is your wage if you are attending a staff meeting?
- What happens if you have a no-show and are assisting other staff members with office duties, such as calling to confirm patients, ordering supplies, cleaning storage areas, etc.? Is your wage or salary the same for any duties that you perform?

3.11 NOTIFICATIONS OR MODIFICATIONS TO THE AGREEMENT



Ideally, the procedure for modifying or changing the employment contract should be included in the original agreement. If your employer suggests or requests modifications to your existing contract, these changes should be provided in writing. You should also be provided time to review these changes. Generally speaking, “reasonable notice” of contract changes is the same amount of time as that required for dismissal without cause. If the proposed changes require additional time or increase your workload, you should ensure adequate compensation is provided and documented in the contract revision. Finally, you are recommended to seek legal advice before agreeing to anything that might be considered a loss of a benefit or a change to your working conditions that you are not in favour of.

3.12 REMEDIES IF CONTRACT IS BREACHED

Remember that an employment contract is a legally binding agreement between you and your employer. A breach of that contract happens when either the employer or the employee breaks one or more term(s); for example, your employer doesn’t pay you overtime or you don’t work the number of agreed to hours per week. Good contracts will outline the process or remedy if the contract has been breached. The remedy for a breach may depend upon the nature and extent of the breach (e.g. non-payment of wages vs. a paycheck that is one day late). It is always best to seek legal advice before acting.

3.13 STATUS OF THE EMPLOYMENT CONTRACT IF THE PRACTICE IS SOLD

Selling a practice can be achieved several ways. Usually, and to avoid having to pay existing employees termination pay, the practice will be sold with the inclusion of all existing liabilities such as employment contracts. When a practice is sold, your status as an employee does not change and all the benefits and obligations of your employment agreement remain valid. The new employer can provide additional benefits but cannot take benefits away.



4.0 NEGOTIATE FOR BETTER TERMS

The best time to negotiate the terms of your employment is prior to signing anything, especially an employment contract. You may find that some of the employment conditions covered by the contract were discussed in the interview. Remember that in an interview, the employer is trying to convince you that this is a great place to work. If the employment agreement seems to contravene what was indicated in the interview, discuss it **now**. For example, don’t think, “Well, I suppose I’m okay with only 2 weeks of holiday even though in the interview the employer said I would get 3 weeks”. Remind them of what was promised or indicated in the interview and ask that the contract be changed accordingly. Also, if you think something is missing that should be included in your contract, ask for it to be added.

5.0 YOU DON'T CURRENTLY HAVE A WRITTEN EMPLOYMENT AGREEMENT

If you are already employed and happy with your working conditions, but don't have a written employment contract, you should ask that these current conditions be put into writing. Note that even though you don't have a written employment contract, you still have a verbal contract, although, as it is verbal, its terms may be uncertain or understood differently by each party. This will avoid confusion about (or the erosion of) your rights in the case that the practice is sold, or a new office manager is hired. It is always a good idea to have something in writing; it can be a simple document that outlines your current working conditions, salary, benefits and the like. Remember, never sign anything that you don't understand and consult legal counsel prior to entering into any kind of written employment contract.

6.0 RESOURCES FOR THE DENTAL HYGIENIST SEEKING LEGAL ADVICE

A quick internet search will reveal lawyers that specialize in employment law in your area. Often, lawyers will provide a short initial consultation free of charge to determine if your situation might benefit from their services. Another excellent source for obtaining legal advice for a reasonable cost is the [Lawyer Referral Service \(LRS\)](#). The LRS program provides the opportunity to have a consultation with a lawyer for up to 30 minutes for a fee of \$25 plus taxes. After the initial consultation, there is no obligation to retain the lawyer.

LAWYER REFERRAL SERVICE

The Lawyer Referral Service operates by telephone. Please call during business hours, 8:30 am to 5:00 pm, Monday - Friday at 604.687.3221 or 1.800.663.1919. Once the area of law is determined the operator will provide you with the name and telephone number of a lawyer in your geographical area. You contact the lawyer to set up an appointment to meet. You are entitled to up to a half hour consultation for \$25 plus taxes.

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APPENDIX A: SAMPLE EMPLOYMENT CONTRACT (from CDHA)

See Appendix A for a sample employment contract available from the Canadian Dental Hygienist Association (CDHA).

Note: This contract applies Ontario law and should be used as an example only. Please ensure that the applicable provincial law and legal advice is considered prior to entering into any type of contract.

managerial, secretarial, administrative and accounting services necessary to conduct the practice (the “services”);

AND WHEREAS the Dentist desires to hire the Dental Hygienist as an employee of the practice on the terms and conditions set forth;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1 - EMPLOYMENT

1.1.The Dentist hereby agrees to employ the Dental Hygienist to perform all of the normal and usual duties associated with providing dental hygiene services in the Dentist’s practice. The Dental Hygienist agrees to devote substantially all of his or her time, attention and energies providing dental hygiene services to the practice.

ARTICLE 2 - TERM

2.1.This employment of the Dental Hygienist is not for a limited term and shall commence on ***** and shall continue until this Agreement is terminated pursuant to the terms and conditions contained herein.

2.2.This Agreement may be terminated at any time upon the mutual agreement of the parties hereto.

ARTICLE 3 - DUTIES

3.1.The Dental Hygienist shall perform diligently and conscientiously those duties as are customarily required by and required of a Dental Hygienist and as the Dentist may reasonably require from time to time. The Dental Hygienist agrees to perform the duties prescribed to the best of his or her ability and to the satisfaction of the Dentist. In addition to those duties referred to above the Dental Hygienist shall be required to perform the specific tasks set out in Schedule “B” attached hereto.

ARTICLE 4 - COMPENSATION AND BENEFITS

4.1.The Dental Hygienist shall receive the remuneration and benefits set out in Schedule “A” attached hereto. The Dentist shall make all of the normal and usual statutory remittances and deductions on behalf of the employed Dental Hygienist.

4.2.Each year during the term of this Agreement the Dental Hygienist shall be entitled to a period of vacation not exceeding *****(**) weeks during which time all remuneration and benefits shall be paid in full. The Dental Hygienist’s annual vacation shall be taken at a time acceptable to the Dentist. Paid vacation is not to be carried forward into later years and must be taken in the year in which it is accrued. Any unused vacation time will be paid to the Dental Hygienist at the year end.

ARTICLE 5 - CONFIDENTIALITY AND NON-COMPETITION

5.1. The Dental Hygienist acknowledges that in providing services to the Dentist he or she will acquire information about certain matters and things which are confidential to the Dentist and which information is the exclusive property of the Dentist, including, but without limiting the generality of the foregoing:

- (a) Lists of past, present and potential patients of the Dentist;
- (b) All patient files, records and charts;
- (c) Information relating to the dental practice, its finances, its manner of operations and other operational data.

5.2. The Dental Hygienist acknowledges that the information herein referred to could be used to the detriment of the Dentist. The Dental Hygienist undertakes to treat confidentially all such information and agrees not to disclose same to any third party during the currency of this Agreement or thereafter. The Dental Hygienist acknowledges, without prejudice to any other rights of the Dentist, that an injunction is the only effective remedy to protect the Dentist's rights as set out in this subparagraph.

5.3. The Dental Hygienist covenants and agrees that he/she will not, during the term hereof and for a period of six (6) months from the date of termination of this Agreement:

- (a) Solicit for employment any person who is, at the time of such solicitation, employed by the Dentist, or directly or indirectly induce such person to leave his or her employment with the Dentist; and
- (b) Directly or indirectly, whether as principal, agent, associate, director or shareholder of a company, or otherwise, solicit or aid in the solicitation of any of the Dentist's patients.

5.4. The Dental Hygienist hereby acknowledges that all patient files and charts are and shall remain the property of the Dentist unless the parties agree in writing to the contrary. In the event that this Agreement is terminated, the Dental Hygienist shall deliver to the Dentist all patient files and charts that are in the Dental Hygienist's possession and that belong to the Dentist.

ARTICLE 6 - TERMINATION

6.1. The employment of the Dental Hygienist may be terminated only in the following manner and only in the following circumstances:

- (a) At any time the Dentist may notify the Dental Hygienist of his or her immediate dismissal, for cause. For the purpose of this Agreement "cause" shall be a material breach of this contract which is more than mere negligence on the part of the Dental Hygienist and which results in the Dentist suffering or incurring substantial damages, liability or costs on account of the Dental Hygienist's willful misconduct or gross negligence. No notice is required to be given.

(b) At any time, the Dentist may terminate the employment of the Dental Hygienist, if not for cause, by giving to the Dental Hygienist notice of termination of one (1) month per year of employment. As an alternative, payment in lieu of notice of termination may be given. All benefits accruing to the Dental Hygienist shall continue through the notice period. If the Dental Hygienist is terminated during the first year of employment, one month's notice will be given. There shall be no maximum cap on the length of the notice required pursuant to this paragraph. In the event that provincial legislation specifies the amount of notice to be given on termination and if this agreement provides for less notice than specified by statute, in that event only, the provisions of the statute shall prevail as to the length of the notice period.

6.2. Notwithstanding paragraph 6.1 above, this Agreement shall be terminated immediately upon the death of the Dental Hygienist or if the Dental Hygienist is incapable, as a result of mental or physical incapacity, of conducting the practice of Dental Hygiene for a period of four (4) consecutive months.

6.3. Notwithstanding anything to the contrary contained in this Article, either party shall have the right to terminate this Agreement, upon the occurrence of any of the following events, such termination to be effective immediately upon receipt by the other party of written notice to the effect that:

- (a) Either the Dentist or the Dental Hygienist becomes bankrupt or insolvent or makes an assignment for the benefit of such party's creditors, has a petition of bankruptcy filed against him/her or attempts to avail him/herself of any protection arising out of an applicable statute relating to insolvent debtors; or
- (b) Either the Dentist or the Dental Hygienist is suspended for any period of time or loses his or her license to practice either dentistry or dental hygiene by the respective provincial licensing associations.

ARTICLE 7 - NOTICE

7.1. Any notice, report, direction, request or other documentation required or permitted to be given to any party hereto shall be in writing and shall be given by personal service, telecopier, or by mailing by prepaid mail addressed as follows:

(1) to

Telecopier no.

(2) to at:

Telecopier no.

Either party may by notice in writing advise of a new address for notice, which shall then be used by the party to whom it is addressed.

Any notice, report, direction request or other document delivered personally, or by telecopier in accordance herewith shall be deemed to have been received by and given to the addressee on the day of delivery of transmission. Any notice, report, direction, request or other document mailed as aforesaid shall be deemed to have been received by and given to the addressee on the third (3rd) business day following the date of mailing, provided that for such purposes no day during which there shall be a strike or other occurrence which shall interfere with normal mail service shall be considered a business day.

ARTICLE 8 - GENERAL

- 8.1. In the event that any provision or part of this Agreement shall be deemed void or invalid by a Court of competent jurisdiction, the remaining provisions, or parts of it shall be and remain in full force and effect.
- 8.2. This Agreement constitutes the entire Agreement between the Parties with respect to their relationship and any and all previous agreements, written or oral, expressed or implied between the Parties or on their behalf relating to their relationship are terminated and cancelled and each of the Parties forever releases and discharges the other of and from all manner of actions, causes of action, claim or demands whatsoever under or in respect of any agreement.
- 8.3. Any modification to this Agreement must be in writing and signed by the Parties hereto.
- 8.4. This Agreement shall be governed by the laws of the Province ***** and the parties agree that they will attorn to the jurisdiction of the Courts of *****.
- 8.5. All terms and words used in this Agreement, regardless of the number and gender in which they are used shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine or feminine or neuter as the context or sense of this Agreement or any paragraph or clause herein may require, the same as if such words had been fully and properly written in the appropriate number and gender.
- 8.6. Time shall be of the essence of this Agreement and every part thereof.
- 8.7. This Agreement is personal to the parties hereto and shall not be assigned without the written consent of the other party hereto, which consent shall not be unreasonably withheld.
- 8.8. The Dental Hygienist confirms that it has been recommended to the Dental Hygienist that the Dental Hygienist consult a solicitor and obtain independent legal advice prior

to the execution of this contract. The Dental Hygienist confirms that he or she has voluntarily declined to seek independent legal advice despite being given every opportunity to do so. The Dental Hygienist confirms that he or she has signed this Agreement voluntarily and with full understanding of the nature and consequences of the Agreement.

8.9. This Agreement shall be binding upon and ensure to the benefit of the Parties hereto, their respective heirs, executors, administrators and assigns.

IN WITNESS WHEREOF the Parties hereto have executed this agreement as of the date first above written.

SIGNED, SEALED AND DELIVRED)

in the presence of:)

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SCHEDULE "A"

COMPENSATION AND BENEFITS:

SCHEDULE "B"

SPECIFIC DUTIES FOR THE HYGIENIST: