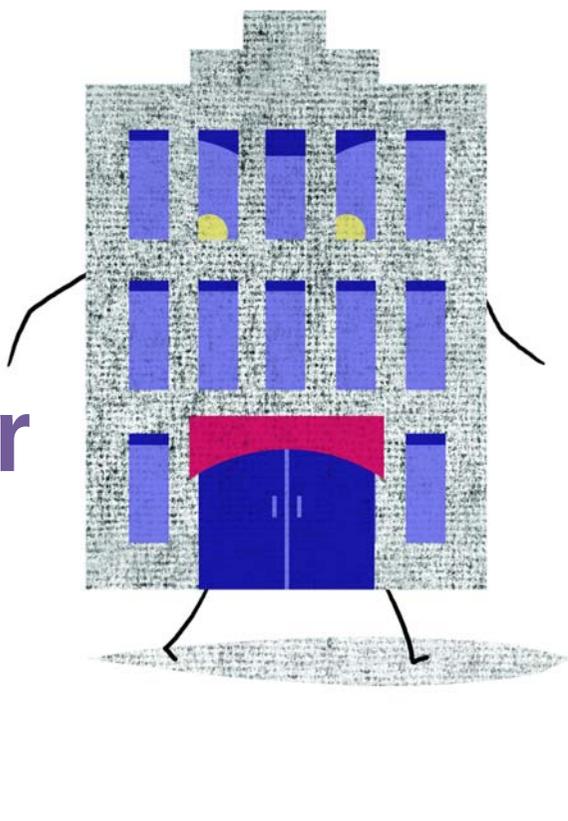


*Vague contract language makes it tough – but not impossible – to make your case.*

# Dealing With a Health System That Fails to Honor Your Employment Agreement

David R. Dearden, JD



**A**s the economy continues to weaken, health system executives are under increasing pressure to cut expenses. This can be especially distressing if you've sold your practice to a hospital system. Belt-tightening may adversely affect compensation or force you to accept changes you didn't anticipate, such as moving to less expensive office space or reducing staff. At some point on the continuum of bureaucratic change, you will probably reach for the employment agreement you signed years earlier, hoping to find something in it that

will help defend you against the health system. In most cases, all you will find is vague terminology that doesn't give you much to stand on. But instead of despairing, you should take the following action.

*David Dearden is a shareholder and officer in the health care law firm of Kalogredis, Sansweet, Dearden and Burke, Ltd. in Wayne, Pa. Conflicts of interest: none reported.*

## Gather supporting data

Before approaching an employer, you should gather empirical evidence showing that a change in working conditions falls below



## Take care not to do anything that violates medical staff bylaws.

some recognized standard of care or conduct. Doing so may help solve a problem or it may serve as a basis for monetary damages if a long-term solution cannot be found. Focus on collecting information that can be used to supplement and explain the more ambiguous statements in an employment agreement. For example, a resignation letter from a loyal and trusted employee who is unable to continue with the practice because of the new but cramped office

### KEY POINTS

- If administrative changes have caused a breach in the terms of an employment agreement, gather supporting evidence before approaching an employer.
- Review your contract. Most contracts require that an attempt be made to resolve disputes informally before pursuing legal action.
- Don't withhold information. Issues not brought up during informal procedures may not be admissible in court should litigation occur.



Before approaching your employer, collect information that can supplement and explain the more ambiguous statements in your employment agreement.



When gathering information, be careful not to use a heavy-handed approach, especially if you're extremely frustrated.



Re-read your contract. It may require you to attempt to resolve the problem with your employer informally before filing a lawsuit.



The best way to make sure an employer lives up to an employment agreement is to get specifics in writing during initial negotiation.

space is effective evidence supporting a breach of implied obligation to provide appropriate office space. An administrative memorandum documenting errors in the employer's billing practices may prove that physician collections have been lower than expected because of the employer's failure to use due diligence.

Medical staff committees and subcommittees are good places to obtain information. When gathering information, be careful not to use a heavy-handed approach (especially if you are extremely frustrated). An employer may resist, making data collection that much more difficult. Also, always keep in mind that you are a member of a medical staff. Take care not to do anything that violates medical staff bylaws.

### Give "notice"

Once you gather the documents to support a claim that administrative changes have caused an expressed (or even implied) breach of the terms in an employment agreement, you will need to give notice. Most contracts define the type of notice to be given and the name and address of the person to whom notice must be sent. The notice should provide reference to specific contract language where possible and be supported by some of the evidence collected. Making a persuasive

presentation at this point may help you avoid a costly and time-consuming lawsuit against a powerful adversary later on.

Many employment contracts require that an attempt be made to resolve disputes informally before a lawsuit is filed. Don't be misguided by the term "informal" here;

issues not brought up at this point in the process will often be inadmissible in court should litigation occur.

Consequently, you must be careful to exhaust all administrative remedies stipulated in an employment contract before filing a lawsuit.

### Cover your bases

The best way to make sure an employer lives up to an employment agreement is to get specifics in writing during initial negotiation. However, these specifics are often difficult to obtain since employers are well aware that whatever they agree to during negotiation could tie their hands down the road. For example, if a practice selling to the health system asks for a ratio of one physician assistant for every three physicians and the employer agrees, it could prevent the employer from taking any action that would change that ratio, such as merging that practice with another. However, forcing the employer to be as specific as possible and documenting agreement terms such as the one just described may be your best bet for preserving your practice and quality of life.

### Avoid a knee-jerk reaction

If an employer makes unilateral changes that adversely affect your ability to provide quality patient care, use tact to build a case to improve working conditions. A knee-jerk reaction may cause an employer to become defensive and resist providing information, significantly reducing your ability to successfully negotiate a solution or pursue a lawsuit. **FPM**

Send comments to [fpm@afp.org](mailto:fpm@afp.org)

## A WORD ABOUT COMPENSATION

Employment agreements often include incentive arrangements. The benchmarks used to determine these incentives are usually based on assumptions made when the practice sale occurred. If conditions underlying those assumptions have changed, incentive compensation may be vastly different from what you expected. Familiarize yourself with state laws regarding unpaid incentive compensation. These laws are designed to help employees put pressure on employers to either pay appropriate compensation or risk being subject to additional damages (e.g., attorney's fees and other costs associated with litigation incurred by the employee).

In most states, employees can require an employer to pay legal expenses if they win a case that claimed unpaid wages. In my home state of Pennsylvania, "wages" include fringe benefits and incentive compensation. Depending on state law, it may also be possible to recover an additional percentage (e.g., 25 percent) of earned but unpaid wages if you are forced to sue your employer for unpaid wages.