

NAVIGATING PHYSICIAN EMPLOYMENT CONTRACTS

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This guide provides information about physician employment contracts by defining common terms, offering advice about specific provisions, and providing key steps to follow before signing a contract.

Introduction

Physician employment contracts and agreements can seem complex and daunting. Some legal considerations and issues are difficult to understand, but physicians need to consider them before signing a contract. All agreements between physicians and employers should be included in the written contract between the parties, rather than relying on verbal promises, emails, or letters. A thorough review of a contract is essential and should be done with an attorney and financial advisor with physician employment contract experience.

Definitions

Term and Termination: A valid contract has a date it starts and a date it terminates. A physician employment contract should identify when employment begins and any conditions that must first be satisfied, such as receiving licensure in the practicing state(s) and obtaining medical staff privileges. Contracts can often be terminated or voided if conditions are not met by the designated start date, so it's ideal to account for potential delays. Once an employment agreement takes effect, it can usually be terminated in several ways. The termination method is significant since enforcement of non-compete restrictions, malpractice tail-policy obligations, and compensation payments can be tied to how termination occurs.

Expiration: Some employment agreements simply expire on a fixed date. Often, it is the intent that the parties will renegotiate or enter into a new agreement upon expiration. However, expiration dates are often forgotten or missed, leaving a physician with no enforceable agreement and little job security. Therefore, it is advisable for an agreement to automatically renew and remain in place until specifically terminated based on its terms or replaced with a new contract signed by all involved parties. If the contract does not automatically renew, physicians should start searching for new employment before the expiration of their current contract to ensure job security.

Automatic Termination: Grounds for automatic termination typically include death, total disability, or an event, such as loss of license, prescriptive authority, or medical staff privileges, or a similar occurrence that prevents a physician from performing their job.

Termination for Cause: Termination for cause provisions can cover a wide variety of events, such as committing a felony or not maintaining board certification. Most termination for cause provisions are within the discretion of the employer to enforce. Physicians need to be cautious of termination for cause provisions that are subjective, such as those related to the employer's reputation or general reference to the physician's professionalism or personal habits. Ideally, subjective provisions are subject to a good faith and reasonable standard on the employer's part. Most physician employment contracts also contain a catchall provision that allows each party to terminate the agreement for cause if the other party has breached the agreement and does not rectify the breach after written notice.

Without Cause Termination: Almost every physician employment contract contains an opportunity for the parties to terminate the agreement without reason, simply by providing notice. A typical notice period is 90 days. Ideally, both parties should have the same right to without cause termination with the same notice period. Employers sometimes prohibit a notice to terminate the agreement until the physician has worked a certain length of time (e.g., one year). Physicians should read their contract carefully, so they don't miss this requirement. Pay close attention to any provision that allows an employer to accelerate the termination date once proper notice is given. This can sometimes include immediate termination. Instead, physicians should insist the agreement include a provision that compensation and benefits will be paid to the physician for the entire notice period—even if the employer elects not to allow the physician to work.

Non-renewal: Some physician employment contracts can be terminated by notice of non-renewal before each annual renewal date. For employment contracts in which this is the only way the agreement can be terminated without a breach, it can be frustrating and difficult for a physician to leave employment. The process can become more complicated when one or both parties miss the period for notice of non-renewal before the annual renewal date. Do not allow this to happen to you.

Provisions of Contracts



Location: An important provision of the physician employment contract is the location of the physician's work. A location may include an office, surgery center, hospital, nursing home, or other site. Defining exactly where a physician works offers control for the physician over day-to-day life, limits work travel occurrences, and impacts a non-compete provision. If an employer does not want to specify an exact location, a mutual agreement on multiple work locations or limitation of travel to a specific number of miles during a given period can be an acceptable alternative.



Schedule: A physician's schedule impacts their job satisfaction. Ideally, you'll want to negotiate and specify your schedule with the employer, including shift details (night versus day), rounding, and weekly work schedules. Schedule details may include patient care, administrative duties, research, and teaching. The schedule should include days of work, including evening and weekend hours. Availability for block time or other assignments should be captured in the agreement document, as well.



On-call Commitment: On-call commitment varies among specialties, but physician agreements should at least provide for call to be shared equally if no other details are offered. The agreement should describe the maximum amount of required on-call time, or it should clarify when additional on-call time becomes voluntary (regardless of whether it is paid or unpaid). If call is paid, the agreement should include specific on-call payments. Ideally, it is important to understand precisely which locations are covered when on call and when shared or backup call is needed. Physicians may be required to provide call for their patients. In such cases, make sure there is a coverage plan during physician absences.



Professional Liability Insurance: Physicians must understand the type of professional liability insurance that will cover their clinical services and who will make those insurance payments. Insurance coverage provided by an employer will typically cover only the services a physician provides as an employee and will not extend to outside professional activities. If a physician is covered under a claims-made policy, the employment agreement should specify who will obtain and pay for a tail policy (i.e., an addition to a claims-made policy). If the physician is responsible for a tail policy, negotiate a cost-sharing arrangement if employment is terminated for certain reasons or specify that the employer should cover the cost. Reasons might include an employer breach of the agreement or termination by the employer without cause.



Non-compete Clause: The state in which a physician practices will determine whether there are restrictions on their ability to compete following termination of employment. Review these provisions carefully to ensure the length of time, geography, and scope of practice are reasonable. Properly written non-competes are enforceable in most states, and many contracts will shift legal and enforcement-related expenses to the physician. Ideally, negotiate a release from the non-compete for reasons that might include employer breach, termination of the physician without cause, or non-renewal of the agreement by the employer.



Compensation: There is no single payment structure by which physicians are compensated. Physicians should understand the formula they have agreed upon and that other changes to compensation may occur over time. When changes to compensation are possible, they should require the agreement of both parties. Employers are restricted to fair market value when compensating physicians, so physicians should use data to know the salary range by region and specialty. A substantial part of a physician's compensation may also include payments for productivity (i.e., relative value units [RVUs], collections), as well as value-based bonuses tied to meeting specific targets. The timing of, and reason for, termination in an employment agreement can impact payments.

Physicians often receive signing bonuses, retention bonuses, and/or relocation or recruitment bonuses. These payments can be tied to a physician remaining employed for a certain period. Carefully review the terms of these payments and seek out pro rata forgiveness of the payments over a fixed amount of time, as well as complete forgiveness in certain events, such as death, total disability, breach by the employer of the agreement, or termination of the physician without cause.

Steps to Review Contracts

When reviewing a physician employment agreement, follow these key steps:

- Hire an attorney and financial advisor with physician contract experience.
- Ask reasonable questions and be respectful of the hiring and contract negotiation process.
- Before signing a contract, talk to your attorney and financial advisor to identify and understand the advantages and disadvantages of the agreement being offered and plan what you will say in negotiations. Be prepared to walk away from the agreement if you cannot live with the terms and provisions.
- Understand the termination provisions and formulate an exit strategy before the contract is even signed so that you can protect and maintain your career options.

AAFP Resources

The American Academy of Family Physicians (AAFP) has developed resources to help you learn more about employment contracting (www.aafp.org/employment-contracting) and understand the credentialing and privileging process (www.aafp.org/hospital-privileging).

Author: Ericka L. Adler, JD, specializes in regulatory and transactional health care law and devotes a large portion of her practice to advising professionals and practices about contracts and compensation arrangements.