

## **Anatomy of a Physician Employment Contract**

By Bonnie Darves

Understanding the basic elements of an employment contract can help physicians emerging from residency evaluate job offers.

Somewhere between residency and your first practice position lurks the employment contract. A basic understanding of the main elements of employment contracts will help you wade through what is often a multipage document replete with legalese.

**The employment contract will — or should — address the following:**

### **Employment status and scope of work.**

These sections define a physician's status as either independent contractor, employee, or shareholder. Although employers sometimes hesitate to include specifics about the scope of work because workload and patient volume aren't always predictable, the contract should stipulate basic expectations and, in the case of specialists, should include estimates regarding numbers of procedures or patients.

Important consideration: Employment status can affect both your tax burden and potential liability in the event of a malpractice suit, so make sure you understand the difference between contractor and employee or shareholder status.

### **Restrictive covenants.**

These “non-compete” clauses or “non-competition” agreements typically prevent a physician from working for a competitor located within a specific geographic area for a certain period of time; these covenants thus thwart a departing physician from “stealing” patients. The contract might state, for example, that the physician cannot practice medicine within a 10-mile radius for a period of two years. Despite widespread physician opposition, these clauses continue to appear in many contracts.

Important considerations: Non-compete clauses are illegal in some states, and they're enforceable only if deemed “reasonable” in other states. An attorney versed in the particular state's contract laws should review such clauses.

Tip: “The more specialized you are, the more geographically expanded you can expect the covenant to be,” says attorney James D. Wall, a contracts specialist and partner with the law firm of Bell, Davis & Pitt in Winston-Salem, N.C. He also recommends talking to other physicians in your specialty and in the region to get a sense of the prevailing practices regarding covenants.

**Compensation.**

Generally, a physician's compensation is structured in one of three ways:

- as a guaranteed annual sum or salary
- as a variable amount based on “production” (usually calculated from billings or collections)
- as some combination thereof

If a production formula is used, the contract should provide specific details on how compensation is calculated, when you will be paid, and in what increments. Multiyear contracts should spell out the specifics of annual pay increases.

Important considerations: The contract should clearly delineate terms regarding any money you might be obligated to repay under certain conditions — such as signing bonuses, loans, salary advances, or recruiting fees. Also, the contract should address total compensation, including malpractice premium payments; coverage for malpractice claims arising after you leave the practice; health, life, and disability benefits; and vacation policies.

Tip: “Some production formulas take 12 or more factors into account,” says Rich Glehan, a consultant with HealthField Alliance in Mount Kisco, N.Y. “More important than grasping the formula's intricacies is understanding what your personal compensation will amount to from X dollars in collections.”

**Work hours, schedule, and call duty.**

The contract should stipulate the maximum number of work hours each week or month and should define call-duty expectations. It also should address whether Continuing Medical Education (CME) can be acquired during work hours or must be completed on the physician's own time.

Important consideration: Make sure the contract describes in meaningful detail the practice's approach to call duty and coverage for other physicians. For instance, a contract that states “call will be shared on a fair basis” is ambiguous. James Wall advises that physicians request a clause stating that “call will be shared on a substantially equal basis.”

**Termination.**

There are two basic types of termination provisions:

“with cause” (with good reason) provision allows the employer to terminate the physician for reasons such as loss of hospital or prescribing privileges or inability to meet patient-care obligations.

“without cause” provision enables the employer to terminate the contract with no stated reason by providing written notice in advance — typically from 30 to 180 days. Fair contracts allow the physician to do the same.

Important considerations: In “without cause” terminations, the notice period should be long enough to allow the physician to secure other employment. If the physician is permitted to initiate a without-cause termination, he or she should make sure the termination clause does not conflict with the non-compete clause.

Resources

Physicians preparing to negotiate their first contract should contact their state medical society as well as national and local specialty societies. Many of these organizations provide model contracts for reference and contract-analysis services to their members.

Note: The author, Bonnie Darves, is an independent health care writer based in Lake Oswego, Oregon.