
3. Negotiating a Fair Employment Agreement

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Sample

The Employment Agreement

Learning Objective

- ◆ Negotiate a fair employment agreement.

A written employment agreement makes your expectations and those of your prospective colleagues explicit. It can be in a brief letter of understanding or a lengthy contract.

- ☞ Use the worksheet at the end of this chapter **Practice Opportunity Evaluation, Part 3: Negotiate the Employment Agreement** to analyze the offer.
- ☞ Compare the employment agreement against your **key issues outline**.

Consider analyzing your employment agreement with an attorney, management consultant, or other qualified advisor to gain a clear understanding of the terms, identify risks, and develop a negotiating strategy.

Usually, a contract favors the party who drafted it. Expect to disagree with parts of the employment agreement you receive. This is usually not a reason to worry. While some prospective employers might refuse to change a syllable, most will consider reasonable modifications.

Enter negotiations with the intent of building a relationship that will benefit both employee and employer, i.e., a win-win outcome.

- ▶ Prepare by reading the employment agreement (and all schedules, appendices, and other documents referred to in the agreement) carefully.
- ▶ Note the parts you are not comfortable with, and articulate the specific changes you would like.
- ▶ Rank your proposed revisions from the changes you must absolutely have to the ones that are nice, but not necessary.

Most employers will negotiate with a prospective employee who is prepared and presents reasonable revisions assertively. If both parties negotiate patiently and in good faith, they will arrive at a fair employment agreement.

No matter what form or organization the employment agreement takes, it is up to the parties to make the relationship work. An employment agreement cannot transform a bad relationship into a good one. It only provides a framework within which a good relationship can flourish or a bad relationship can end graciously.

Organization

A good employment agreement is well organized. It presents information logically. Many agreements, though, do not approach this ideal. The main information categories and an example of typical language fair to both parties follow. NOTE: These examples are for illustration only.

- ▶ **Term**, defining when the agreement begins and ends.
- ▶ **Duties**, describing what the employee will do.
- ▶ **Compensation**, describing how much the employer will pay the employee.
- ▶ **Benefits**, describing other monetary and non-monetary compensation the employee will receive.
- ▶ **Expenses**, describing practice expenses the physician will pay.
- ▶ **Time off**, describing paid and unpaid time off the employee will be entitled to receive.
- ▶ **Termination**, describing the conditions under which the agreement can end.
- ▶ **Restrictions**, describing what the employee may not do during the agreement and after it ends.
- ▶ **Ownership**, describing when the employee might become eligible to become a partner or shareholder in the practice.
- ▶ **Legal Constraints**, language describing the conditions under which the parties will enforce the agreement.

Declarations

The declarations, also called recitals, identify the parties to the agreement, their intentions, and when they entered the agreement.

Fair language might look like this:

"This Employment Agreement, entered into by and between Sycamore Physicians, Inc., an Ohio professional corporation ("Corporation") and Jane Miller, M.D., ("Physician") in Cleveland, Ohio, as of the 19th day of April 20xx.

WITNESSETH

WHEREAS, the Corporation is a professional association formed pursuant to the laws of the State of Ohio for the purpose of providing professional medical services; and

WHEREAS, Physician is duly licensed to practice in the State of Ohio specializing in the field of Family Medicine; and

WHEREAS, Corporation desires to employ the Physician and Physician desires to be employed by the Corporation to render professional medical services to the patients of the Corporation under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:"

Term

The term specifies the length of employment and the specific starting and ending dates. The typical term is from one to three years.

- ▶ Find out whether the agreement will renew automatically (an "evergreen" contract) and how much notice either party must give if they do not intend to renew.
- ▶ While automatic renewal language makes sense in physician-shareholder employment agreements, they make less sense in employment agreements for physicians who do not have an

ownership interest in the practice: The physician would probably want to negotiate more favorable terms in a successor agreement.

Fair language might look this:

"The term of this Agreement shall be for a term of consecutive twenty-four (24) months, commencing on August 25, 20xx. Thereafter, this Agreement shall be renewed for one year terms, unless either party gives ninety (90) days written notice of their intent not to renew."

Duties

The employment agreement should describe your general duties in the practice such as clinical responsibilities, hours, and call, and other responsibilities. Ideally, the employer should equitably distribute these among the physicians.

- ▶ If the agreement specifies a minimum number of hours you must practice, you might want to have it specify a maximum number of hours.
- ▶ Include (and exclude) specific duties you do (and do not) want to perform.

Employment agreements typically say you must devote all your professional energies to the practice.

- ▶ If you feel that moonlighting might be necessary for you, be sure to include language permitting this in the employment agreement. Your employer might require that you obtain its approval before moonlighting.
- ▶ Include language that specifies who keeps the money you earn outside the practice. You may keep all of it, none of it, or share it with the employer. Some agreements allow the employee to keep all honoraria and token payments.

Fair language might look like this:

"The Corporation hereby employs Physician to render professional medical services to patients of the Corporation at its offices at 123 High Street and at Community General Hospital. Physician agrees to