
The transition from residency or fellowship to your first “real” job can be a fun and exciting time in your life, one you’ve been looking forward to for years. However, it can also be a time of great uncertainty, frustration and fear. One of the biggest challenges you may face is the all-encompassing employment contract. A few pieces of paper have the potential to make or break your experience in your first few years of practice.

An employment contract is a legally binding document between you and your employer. Whether your group is composed of a single practicing physician or a large, professional service corporation, your contract outlines your income, how and where you will practice, your potential for future professional growth within the organization, and assigns serious legal risk. It is important to note that an employment contract is rich in not only what it says, but also in what it might leave out.

What happens once you’ve decided in which practice you think you’ll fit best? First, you will receive what is known as a letter of intent. A letter of intent is a “document outlining an agreement between two or more parties before the agreement is finalized.” It is
not considered legally binding but it establishes good faith between the two negotiating parties. It is a way to ensure that the issues verbally discussed will make their way into the final employment contract. It’s a way for both parties to verify that they are on the same page. And, if you’re still shopping, it’s a way to compare different practices and offers without being obligated to draft a final legal contract.

Once a legal employment contract is drafted, it is generally a good idea to have someone well versed in contract negotiations help you navigate through the potential pitfalls. This often times means hiring an attorney well versed in contract negotiations. It is also helpful if the attorney is familiar with the field in which you work, as well as the legal climate and topography of where it is you will be practicing. A great contract attorney from California may not know anything about the legal climate in the northeast.

An employment contract can contain many different sections, however, in general, you want to make sure that they establish and clarify the following topics:

✦ **Terms of Agreement**
  ✦ How long a contract will be enforced before it needs to be renewed or expires; its beginning and ending dates.
  ✦ “Evergreen” contracts automatically renew unless terminated by either party. If this is the case, negotiations for changes in the contract should begin at least 90 days before it expires.

✦ **Scope of Duties**
  ✦ Contracts should contain a complete job description, including clear delineation of what your duties are in regards to patient care, administrative duties and teaching
  ✦ What procedures you are or are not responsible for
  ✦ Working relationships should be defined, such as to whom you report
  ✦ Special services you may provide that others do not
  ✦ How patients and procedures are assigned
  ✦ Your say in hiring and firing support staff
  ✦ Is committee work or community work expected?
Performance Standards and Evaluation

- How will your performance be evaluated and by whom? Is it objective or subjective? Are the objective goals realistic when accounting for your new employee status and lack of patient base?
- Is there a probationary period?
- Is there a regular and defined personal evaluation provided and what criteria will be included?
- Provisions that force dialogue and the development of constructive solutions is beneficial
- How soon after starting must you go from being board eligible to board certified?

Practice Issues

- What is your level of physician autonomy?
- Office hours and how many hours per week you must work
- Call coverage: How is call divided and amongst whom? On average, how many call shifts will you have a week or per month? What are you responsibilities while on call? Does everyone take call and if so, is it equally divided?
- Office space and resources
  - At what site will you be practicing?
  - What clinical and office staff will be available to you?
  - Are there adequate billing services?
  - Are adequate supplies and equipment available? Who is responsible for their cost and upkeep?
- What’s your role and level of say within the practice regarding its protocols and methods? Is the practice allowed to negotiate on your behalf and bind you to certain contracts?

Compensation

- When comparing different job offers, consider the entire compensation package, not just the base salary
- Is salary listed as gross, or post tax deduction (income tax, social security, Medicare)?
- Are health benefits and retirement deducted from your salary?
- Are you an employee or an independent contractor?
- Are you responsible for practice expenses and if so, how are they allocated?
✦ Method of compensation
  ❖ Guaranteed salary
  ❖ Productivity and incentive based
✦ How is productivity defined? (patients seen, fees billed, hours worked, fees collected or profit for the entire practice)
  ❖ Stepwise salary increases as time worked increases
  ❖ Profit sharing
  ❖ Are you receiving a salary or a “draw” in which you are responsible for paying back any salary received if you don’t generate enough profit to cover the salary you “drew” from the employer?
  ❖ Multi-year contracts should stipulate the specifics of annual pay increases
✦ When will you be paid and in what increments?

✦ Bonuses
  ❖ Signing bonus
    ❖ How and when you will be paid?
    ❖ Will it be pre- or post-tax
  ❖ Do you have to reimburse them if the contract is terminated early?
  ❖ Payment of student loans
  ❖ Dues and license fees

✦ Benefits
  ❖ Vacation, sick leave, parental leave, maternity leave, CME
    ❖ How many people can be on vacation at once? What is the protocol for taking vacation?
    ❖ How are holidays distributed?
  ❖ Health insurance
    ❖ Is your family included?
  ❖ Life insurance
  ❖ Disability insurance
    ❖ Short and long term
    ❖ Is it at “own occupation” levels?
    ❖ At what percentage of prior compensation level is disability coverage offered?
    ❖ Are payments pre-or post-tax?
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- Retirement plan
- Paid expenses
- Professional fees, national organization membership fees, CME-course fees

Future Partnership
- Specific timing, conditions and methods
- Do you have access to the practice books and accounting ledger?
- Is partnership guaranteed or based on potential future accomplishments?
- What does buy-in or shared ownership cost?
- Will you have to take out a loan to “buy in” to the practice, or will it come from future pay-roll deductions?
- If the practice is in debt to a third party would you be required to become a co-signer to the promissory note at the time of the buy-in?

Professional Liability Insurance Coverage
- Extent of coverage and who is responsible for it
- Will there be tail coverage provided?
- Will they provide tail coverage for any moonlighting you may have done as a resident or fellow?
- Does the employer provide indemnification?
  - i.e., Will they cover you if the malpractice verdict or settlement is in excess of the malpractice insurance limits?

Outside Practice Opportunities
- Are outside employment, moonlighting, teaching or medico-legal consulting prohibited?
- To whom does compensation from outside activities belong, the employer or employee?
- Who controls research or written work?

Restrictive Covenant (The Non-Compete Clause)
- Time and geographic distribution to which these apply
- Scope of services it applies to
What a court will and will not uphold differs from state to state and specialty to specialty so you should check with a local attorney where you will be practicing.

What damages are you liable for if the non-compete clause is violated?

You want to limit these restrictions as much as possible.

**Termination**

A section describing the conditions under which the contract can be terminated before the scheduled end date.

- Death
- Disability
- “qualifying” period of 60-180 days
- Will you receive you salary during the “qualifying” period?

**For Cause**

- Section listing reasons why you may be terminated
- Generally these are serious offenses, such as loss of your medical license or hospital privileges, illegal drug use, conviction of a felony, etc.
- Be cautious if cause is defined in subjective language such as “inappropriate behavior” or “actions that are negative for the practice”
- You want a clause stating that you are given a chance to rectify or cure the problem and the period of time you have to fix the situation

**Without Cause (Termination With Notice)**

- It should be stated that either party may end the employment at any time without specifying a reason by giving sufficient written notice
- You want these to be the same for both you and the employer

Termination clauses may also address the ownership of medical and financial records—which are generally retained by the practice.

- If records remain the property of the practice, do you have access to them in the future for medico-legal defense purposes or other necessary reasons?
If the contract is terminated, do you still get compensated for outstanding collections and if so, for how long? Is there a wage guarantee if the employer terminates the contract?

Do you get compensated for unused vacation days?

Patient notification
  - How soon before leaving can you inform your patients that you are leaving? Are you allowed to offer them your new employment location?

Dispute Resolution
  - The contract should state how major disputes between yourself and your employer will be resolved
    - Binding arbitration
    - In the case of a lawsuit, who is responsible for legal expenses?

Accessory Issues
  - Assignability
  - What happens if your employer is bought out—especially if you work for a corporation or hospital?
  - Market Condition Clauses
    - Only benefit the employer
    - Included to address rapid changes in market conditions affecting all healthcare providers
    - Should not be included in any final contract you sign
  - If employee handbooks and manuals are referenced in the contract—and therefore a part of the contract—and can be changed by the employer at their will, then essentially, the employer can change the contract at will
  - Does the employer currently have any active or pending litigation against it?
  - Has the employer been sued for Medicare fraud, or are they currently under investigation?

Once you have a contract in front of you, then what? Well, just because it’s on paper, doesn’t mean it is set in stone. This is where the fun really begins. Receiving a contract is an invitation to bargain.
Don’t be afraid to negotiate. Initial contracts are often worded in the best interest of the employer and should never be signed outright. You want to be aware of the situation, do they need you more or do you need them more? Also, what is the general climate in your area? What types of contracts are other people signing? Not everyone has to sign the same cookie cutter contract, even within the same group practice contracts may vary, however it is helpful to have a sense of what contracts look like in a similar geographic or practice environment. Before heading to the bargaining table, know which issues are most important to you and which issues you are willing to compromise on. You won’t get everything you ask for, but you won’t know how much you may get unless you ask.

The secret of contract negotiation is not in knowing what to ask for, but rather how and when to ask. This is a sensitive process and should be handled with care. Aggressive negotiations can remove the offer from the table and sour a working relationship before it even begins. However, not pursuing those issues which you deem most important could come back to haunt you in the future. Contract negotiations should create a win-win environment, and limit future conflicts and misunderstandings. (See Chapter 4: Negotiation)

An employment contract may be one of the most important legal and financial documents you ever sign. Having foresight, a small degree of knowledge, and the confidence to explore and negotiate your options can make or break your first few years after training. It’s not a matter of knowing everything, but of just understanding the basic components that any standard employment contract contains. And remember; the final contract may be tailored to best fit your needs and desires.
Resources for Additional Information:

- ACR Legal Department (www.acr.org)
- State Medical Societies
- National and Local Specialty Societies
- 2001 First Year Physician Starting Salary Survey, National Association of Physician Recruiters (www.napr.org)
- Local law firms specializing in employment contract law; specifically in the field of healthcare