

Ask An Attorney

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Q I am graduating from my residency program and received an employment contract from my future employer. What should I be aware of while reviewing the proposed agreement?

A Unfortunately, how to review and negotiate a physician employment contract is not usually covered in the hustle and bustle of residency or fellowship. Yet, the physician employment contract defines the parameters of your relationship with your employer during your employment, and even after it ends. Making sure you understand the terms of your employment agreement prior to signing on the dotted line is crucial for any new (or experienced) physician.

Compensation is usually the first question on a new attending's mind. Research what other physicians in your specialty and geographic location earn and use that knowledge to ensure that your new employer is offering market rate. Additionally, negotiating productivity incentives may be possible because your employer's profits will rise as your productivity increases. Make sure to review the practice's fringe benefits such as health insurance, disability insurance, and retirement savings options, as these benefits contribute to your overall compensation.

Quality of life issues are another important component of any physician employment contract. Carefully review the call schedule. The agreement should state whether call will be taken evenly by the physicians in the practice and how call will be handled during absences. If there are multiple locations for the practice, expectations about covering far-flung offices should be addressed, as well as travel expenses. Prior to entering into a contract, it is always beneficial to ask about how the practice operates, its billing procedures and employee retention rates.

The physician employment contract should also specifically set forth the duties of the physician, including clinical responsibilities, administrative tasks and teaching responsibilities. The agreement should delineate the responsibilities of the employer, such as keeping malpractice insurance, maintaining appropriate support staff and ensuring standards for medical care.

Non-competition and non-solicitation terms are now common in physician employment agreements. Depending on your practice, separating from your employer may mean having to move to continue working. In New York, these restrictive covenants are enforceable if they are reasonable in time and distance. For example, in a town with two hospitals, a hospitalist who leaves her position will likely be unable to work for the competing health system for two to three years. This means relocating or enduring a long commute.

Restrictive covenants are the most litigated terms of physician employment contracts. Ensuring that you understand any restrictive provisions of your contract and negotiating a reasonable time and distance are essential to avoiding costly litigation should you separate from this practice and want to continue working in this community.

Finally, understanding how you or your employer may terminate the physician employment agreement is also critically important. Physician contracts usually recite a definite term of employment; but give either party the ability to terminate the agreement on written notice (usually 60 – 90 days). The best protection for job security—and the hardest to achieve—is a fixed term contract allowing termination only "for cause", which is clearly defined. Additionally, the employment agreement should give the physician an opportunity to cure any alleged shortcomings before termination upon prior written notice.

The transition from a resident or fellow to an attending is an exciting and gratifying time. Taking the opportunity to understand and negotiate your employment agreement should not be missed. If you have questions concerning the content of your employment contract, you should contact an attorney experienced in negotiating and understanding these special agreements.

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