

## Employment law - Spotlight on Provider Employment Agreements

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Hiring a healthcare provider is a major commitment that typically involves significant upfront investment by the practice, and, from the provider's perspective, changing jobs and perhaps relocating. In other words, both the practice and the provider face inherent risk. A well drafted employment agreement can mitigate this risk.

Although there are myriad issues in negotiating and drafting provider employment agreements, following are some common issues and concerns faced by our clients:

**Duties and Responsibilities.** The agreement should clearly state the provider's position and duties. Specific issues may include (i) scheduling shifts (hint – the practice will typically want to retain discretion); (ii) reasonable allocation of call duties among providers; (iii) rotation for clinics and remote sites; (iv) whether “moonlighting” is permitted; and (v) the practice's authority as employer vs. the provider's medical judgment.

**Compensation.** If the compensation package includes incentive income, such as bonuses, it is important to leave no ambiguity as to whether the bonus is discretionary and how the bonus is earned and accrued. Consideration should be given to any potential issues with the “Stark” law and Internal Revenue Code Section 409A (which imposes significant taxes and penalties for non-compliant “deferred compensation”). Reimbursements for CME courses, fees for licenses, memberships and certifications, and, if the provider is relocating, reimbursement for relocation expenses may all be important issues.

**Insurance.** Consider addressing the parties' respective obligations regarding medical malpractice insurance, particularly tail coverage.

**Admission.** There may be an expectation that the provider will eventually be admitted as an owner. This is an area that requires very careful drafting, as the viability of the practice may depend on its current owners retaining discretion on admission of new owners, whereas the provider will usually prefer a process that is objective and assures eventual admission. In the author's experience, these factors may result in compromise language that is imprecise and ambiguous – each party applying their preferred interpretation, giving rise to disputes. We recommend a clear and forthright discussion of these issues and care in drafting any provision that contemplates admission as an owner, or that could be construed to guarantee the provider a right of admission. With careful negotiation and drafting, it is usually possible to reach a mutually agreeable balance between the parties' interests.

**Termination.** Both the practice and the provider usually wish to retain the right to end the employment relationship “without cause.” Given the nature of medical practices and the necessity of not compromising patient care, some minimum advance notice may be required to allow time to prepare for a separation. There may be circumstances in which the practice wishes

to retain the right to immediately terminate the employment relationship without cause, in which case the provider may ask that the practice provide payment in lieu of notice. The practice will want to retain the right to immediately terminate “for cause”. Specify the events that give rise to for cause termination - the practice will want to allow some flexibility due to the impracticability of listing every specific situation giving rise to termination for cause. Specify whether the provider’s employment is contingent on maintaining certain privileges, licenses, certifications, etc., and the practice’s rights if the provider does not meet these standards.