

A Family Physician Guide to Employment Contracts



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The American Academy of Family Physicians (AAFP) does not intend for the information in this guide to substitute as proper legal advice from a qualified health care attorney. The information is intended as general information as you prepare to receive a new or updated employment contract. The AAFP recommends that physicians seek the counsel and advice of a qualified health care attorney to review physician employment agreements and contracts properly.

Introduction

Starting your career as a physician or pursuing a new opportunity in family medicine can be exciting. While the promise of a new chapter to your career is inspiring, the physician employment contract process can be tedious and time-consuming.

The American Academy of Family Physicians (AAFP) developed this guide to help you better understand contracts and the employment contract process. Preparation and knowledge, along with advice from qualified advisors, can ensure you have the most complete and accurate information to land your dream job.

Follow the three steps below to help navigate contracts and successfully steer through the physician employment contract process:

- Choose a qualified attorney
- Learn about provisions and review your contract
- Conduct negotiations

The guide describes these steps and explains the provisions and elements you'll typically find in a physician employment contract or agreement. Throughout the guide, the icons below will appear and indicate the following:



Choosing an Attorney

The first step to successfully navigating the physician employment contracting process is choosing an attorney. Similar to physicians, attorneys have specialties. Find an attorney with health care and contract experience and one you are comfortable with and trust. Colleagues, AAFP chapters, and the [AAFP Buyer's Guide](#) are valuable resources to find a qualified attorney.



Be clear about your expectations for the timing and extent of the attorney's duties and their responsiveness to questions.

An experienced attorney can guide you in evaluating the physician employment agreement and provide counsel as you prepare to negotiate with an employer. While comfort and trust with your attorney are important, you'll also want to choose an attorney who:

- Has experience with physician employment contracts
- Understands your specific situation
- Understands the laws in your state and/or region
- Provides a clear understanding of how their work will be conducted, the anticipated cost and fee structure, and when you are charged

Contract Provisions and Elements

You're probably not going to understand everything in a physician employment agreement. That's why you chose a qualified, knowledgeable attorney. However, it is important to become familiar with key provisions in agreements or contracts so you're prepared to negotiate the best opportunity for your career.

This guide introduces you to the following provisions of a typical physician employment agreement or contract:


- Pre-employment/Employment Conditions
- Signing Bonuses/Loans
- Termination Prior to Employment
- Duties and Schedule
- Compensation
- Benefits
- Future Equity
- Term and Termination
- Assignability
- Restrictive Covenants
- Non-solicitation
- Non-disparagement





Pre-employment/Employment Conditions

Physician employment agreements often require a wide variety of conditions to be satisfied before employment begins. Employers typically delay the start date to a mutually agreed upon date if certain conditions are not met during a designated period. In the written agreement, employers may state that if conditions are not satisfied, the employer has the right to void or terminate the employment agreement immediately. Some of these conditions may require third-party approval and timing can be outside your control (i.e., medical staff credentialing).

The conditions typically required to satisfy before the physician employment agreement begins include¹:


- Background check
- Drug test
- State licensure
- Medical staff privileges
- Malpractice insurance
- Completion of third-party payer credentialing

 Beware of language that would allow the employer to terminate or void your employment agreement if failing to meet any condition(s) in a timely manner was not your fault.

-  Conditions in the agreement that are subjective could cause a delay in the start date of the agreement or cancel the agreement entirely (e.g., the employer needs to obtain approval from a board or committee or review the physician's references).
-  Find out if these types of conditions have delayed or canceled employment agreements in the past.
-  Know all your pre-employment requirements.
-  Give yourself ample time to meet all required conditions by the date required in the agreement.

Signing Bonuses/Loans

Physician employment agreements can include signing bonuses, often written in the agreement as an advance or loan. Signing bonuses may be paid upon execution of the agreement or when you commence employment.



 If you receive a signing bonus before the actual effective date of employment, expect to repay the total bonus if you fail to commence employment – regardless of the reason.

Most signing bonuses require physicians to remain employed for a period – typically two or three years. The signing bonus amount may be forgiven on a pro-rated basis over time. There are some conditions where it is standard for the forgiveness of the note to be provided – regardless of how much time has passed. These conditions include:

- Death or total disability of the physician
- Breach of the employment agreement by the employer
- Termination of the physician without cause by the employer
- Non-renewal of the employment agreement by the employer
- Closure of the employer's business or a sale or merger and similar provisions

Termination Prior to Employment

Unexpected events can happen, altering plans between when you sign an employment agreement and your first day of work. Review your contract for what happens if you or the employer terminates your contract before starting work.

-  If you are bound to the term of an employment agreement upon signing, you may need to comply with the agreement even though you have not started working for the employer. This can become an issue if you terminate the agreement before your first day of employment. Under these circumstances, you can be obligated to provide notice of termination required by the employment agreement.
-  Watch out for an employment agreement that takes effect upon signing and locks you into the agreement for a significant period.

The following example illustrates how the termination prior to employment condition could be triggered.

Suppose a physician signs an employment agreement on January 1, 2022, with a July 1, 2022, start date. The employment agreement takes effect when it is signed. The agreement states that once the physician begins work, they can only voluntarily exit the agreement after working one full contract year.

On March 1, 2022, the physician receives a better job offer and wants to accept it. Technically, any termination before June 30, 2023, is a breach of the employment agreement, and the employer can subject the physician to a contract claim for damages.

Damages might include amounts the employer spent on stipends, signing bonuses, recruitment costs, and other similar expenses. The situation and precedent for contract claims in the employing state can also entail a claim for lost profits and other damages – including costs to recruit a replacement physician.

The parties can often resolve these situations. However, they can result in the employer losing income, missing out on another candidate, and incurring expenses during the hiring process.



Know when the terms of your employment agreement take effect. This could be when the agreement is signed or when work begins.



Let the employer know as soon as possible if you do not intend to start employment at all or on the agreed-upon start date. This minimizes possible legal damages and allows the employer to seek a replacement.

Duties and Schedule

A physician employment agreement should contain enough information so that physician duties and schedules are clear. The agreement should capture the essential duties and expectations in writing so there are no misunderstandings or conflicts. Be clear and open about your schedule expectations at the beginning of negotiations. Employers often leave scheduling provisions vague so there is flexibility to account for the needs of patients and the practice.² However, the employer's schedule and needs may not align with yours.



Review the specifics in various provisions of the contract for the following:

- Patient care setting: in-patient, out-patient, or both
- Specialty/subspecialty
- Scope of practice
- Administrative or leadership duties
- Supervising responsibilities
- Teaching or research expectations
- Rounding requirements
- Practice location(s)
- Schedule and call obligations









Does the agreement provide a clear expectation of life as an employee?





Does the agreement align with conversations you've had with the employer, and does it allow for input about your schedule (e.g., if the employer promises you'll work a maximum of one Saturday per month or agrees to a flexible schedule, get the specifics in writing)?



Does the agreement outline how duties could change in the future?

-  Will you practice all aspects of family medicine?
-  Will you perform procedures you are trained in and want to provide?
-  Is call fair, or do you have a responsibility for a maximum amount of call? Be sure your call responsibilities are not more burdensome than other family physicians employed under similar terms. Also, ask whether you will receive compensation for taking additional call.
-  How many hours of patient care are expected?
-  How many hours of teaching or research are expected?
-  Are there provisions for part-time work explained in writing?

Some physicians elect to work less than a full-time schedule. Understand how reduced work hours may impact the physician employment agreement. If you are starting with a part-time schedule, the details are crucial if you are a salaried employee. The agreement can prevent the employer from requiring you to work more hours than you agreed.

-  Review the number of hours per week you are expected to devote to patient care. Many contracts state the physician must devote a minimum of 40 hours to patient care – not considering administrative tasks (i.e., electronic health record [EHR] entry, prior authorizations, reviewing test results, referrals).
-  A physician with a role 100% dedicated to patient care should understand how many hours in the workweek will be devoted to direct patient care rather than administrative tasks.





According to the 2020 AAFP Practice Profile, AAFP members report an average workweek of 59 hours, consisting of 33 hours of patient care, 13 hours of EHR entry, and 13 hours of other administrative duties.³

Compensation

There are many different compensation models for physicians. It is crucial to understand the compensation plan and its tax implications. A qualified tax or financial advisor can help you determine the tax consequences of compensation and questions to ask your employer.

Some of the most common compensation models include⁴:






- Base salary
- Base salary, plus a bonus tied to [productivity](#) (formulas are often tied to a percentage of collections or achieving a certain number of relative value units [RVUs])
- Productivity compensation formulas tied to collections and/or RVUs






-  Is the compensation offered comparable to physicians with similar skills and experience in your region? Survey reports like [Medscape](#) provide data about physician compensation. Ask employed colleagues in similar practice situations about their compensation.
-  How long is your base salary guaranteed without adjustment? For physicians coming directly out of training, this period may be one year. Physicians joining a health system as part of a practice may negotiate an extended period of guaranteed base salary.
-  What are the requirements for all activities and metrics (e.g., productivity, quality, cost) that will affect compensation? Are they included in the employment agreement or an established written policy? Are written policies applicable to all similarly situated physician employees, or are they subject to the employer's discretion?
-  Are [benchmarks](#) that you will be measured against stipulated in the employment agreement? Are benchmarks local, regional, or national? How often do they change? Understand how your data will be collected and submitted.

Incentive Compensation/Production-based Compensation

If an employer offers a base salary, plus incentive compensation, determine your qualifications for incentive payments and how they are calculated. Many incentive models are based on collections or work relative value units (wRVUs). However, these models are evolving to support high-quality, cost-effective care (e.g., value-based payment).





Since it's one of the more critical elements of a contract, answers to the questions below about compensation should be stated in the written agreement. You do not want to rely on agreements or promises about compensation via email, text, or conversation.








-  Do you understand the compensation formula and its computations (i.e., bonus tied to productivity or an entire compensation formula tied to productivity)?
-  Do you understand the work you will be credited (e.g., collection/RVU credit for supervising non-physician clinicians or services billed incident-to the physician)?
-  Has the employer shared enough data for you to understand how the compensation formula works and how other physicians have performed under a similar agreement? There may be information in the agreement about the formulas but no details about what the numbers mean. Ask for clarification.
-  How were the figures in the agreement established (i.e., target RVUs, target collections, dollar amount per RVU)? Is it national data, and has this information been shared with you?
-  When will you be paid? Many compensation formulas provide payments – especially bonus payments – delivered quarterly, semi-annually, or annually. You should understand how the process works.

-  In the event of termination, how does the agreement address your compensation? Does the contract specify how final production-based compensation and bonus payments will be calculated and when they will be paid? If you are paid based on production, is there a run-out period after termination where you continue to be paid amounts collected for your services (i.e., at least 90 days to allow collections to occur)?
-  What data will be shared with you? Will you have access to your billing, collections, RVU, and/or quality data? How often will you receive data, and will you have the opportunity to reconcile it?
-  How will compensation change over time? Often a base salary will increase over time, and the targets in a compensation formula will change over time.
-  How are the targets set, and when are they set? Is the process clearly understood in the employment agreement so there is no future dispute?
-  If you are being credited with RVUs, what reasons can the RVUs be discounted or removed? RVUs taken from the physician due to poor collection results should be cause for concern.

Value-based Compensation

It is essential to know if your potential practice is currently participating in value-based payment arrangements or plans to join a value-based model soon. For physicians providing value-based care, employment agreements may contain both incentive compensation and value-based bonus components.

-  How are goals set, and do you have input in establishing goals? What is the source for benchmarks?
-  How are bonus amounts determined? What goals must be reached to earn a value bonus, and how much ties to each goal?
-  Is the bonus all or nothing? Are there opportunities to earn it based on improvement?
-  What technology and staff support will be available to achieve quality measure goals and support population health efforts?

-  How is performance measured? Are internal calculations calculated across all payers or by an individual payer? Do they account for social determinants of health (SDOH)? Is performance adjusted for external factors (e.g., COVID-19, natural disasters)?
-  What are the consequences of not meeting goals?
-  Are goals similar for all physicians in the specialty?
-  Are goals relevant to the specialty? Are the goals based on outcomes that a primary care physician can control?
-  How often and when is the bonus paid? What happens in the event of termination of the agreement? Is the payment a pro-rated bonus?
-  Do other family physicians in the practice, hospital, or health system typically earn some or all the value bonus the employer receives from a payer?
-  If a bonus from a health plan or the Centers for Medicare & Medicaid Services (CMS) is paid directly to the employer or health system, how will that money be distributed to you and other physicians?

Benefits

Hospital and health system employers typically offer better benefits and more retirement options than private practices. However, many practices offer common benefits such as paid time off, maternity or family leave, and malpractice insurance. This section covers the common benefits employers provide. In addition to common benefits, many employers offer these benefits^{2,5}:






- Health insurance for the employed physician (and possibly for family members)
- License fees
- Medical staff dues
- Stipend for continuing medical education (CME)

Some employers may also offer these benefits^{2,5}:

- Professional association dues
- Retirement plan
- Moving expense allowance (if you are taking a position in a different area)
- Educational loan forgiveness
- Paid sick leave (less common)



Paid Time Off


More employers are combining vacation, CME time, and sick leave into paid time off.²

-  Does your employment agreement specify the amount of paid time off you are entitled? If not, changes to your employer's leave policy could reduce your benefits without your consent.
-  Do national holidays count against paid time off?
-  Will paid time off increase over time?
-  If your compensation is based in part on productivity, how will your income be affected when you take paid time off?
-  Most physicians are required to use or lose time off completely. Do you understand the employer's policies on using or losing time off?

Maternity or Family Leave

Physicians should review their agreements for how leave for adoption or the birth of a child is addressed. Maternity or family leave is rarely addressed in physician employment agreements, yet it can impact the physician's employment. Ask to read the employer's leave policies and any associated written policies.

-  If you are fully or partially paid based on production, how is your compensation impacted during maternity or family leave and upon return from leave?
-  What happens if you are under a recruitment agreement that requires you to maintain a full-time practice of medicine during both the period of support and the period of forgiveness? Some recruitment agreements will detail the impact of leave, but others do not, possibly leading to disputes.

 How does maternity or family leave impact potential future equity in a medical practice? Will you need to work longer to qualify for equity if you take a leave?

Malpractice Insurance Policies

There are several different types of malpractice insurance policies. Some of the more common types (occurrence coverage, claims-made insurance, tail insurance, nose policy) are explained below, along with red flags and questions to ask that address malpractice insurance policies.

Occurrence coverage covers claims made against a physician if the physician had the coverage when the event occurred. Occurrence coverage is generally more expensive but avoids continuing malpractice coverage following termination of employment.⁶






Claims-made insurance is a more common type of malpractice insurance, particularly in the private practice setting. Under a claims-made policy, the insurance must be in place when a claim is made against the physician. The physician must have coverage that will extend into the future since a claim can be brought against a physician years after termination of employment.⁶

Tail insurance provides coverage following employment termination when the malpractice coverage provided by the employer is terminated. This type of coverage is typically obtained through an extended reporting endorsement. Tail insurance will push the physician's claims-made coverage into the future, so the physician is covered should a claim be filed. Tail insurance can be costly depending on the state, specialty, years of experience, claims history, and other factors.⁶ The premium is typically calculated based on a multiple of the insurance premium paid when termination occurs.

Nose policy is coverage that is an alternative to tail insurance. The new employer acquires a prior-acts endorsement, commonly known as a nose policy. This coverage goes back to the first day that the physician began employment with the previous employer.⁷ For

example, if a physician started working for an employer on January 1, 2016, and goes to work for a different employer on January 1, 2022, the second employer would obtain a nose policy to provide coverage for the physician dating back to January 1, 2016.




There are other types of malpractice insurance coverage arrangements, including self-insurance policies. In tort-reform states and at state and federal institutions, other insurance products and arrangements are typical.

-  Who will pay for the insurance?
-  Will the tail insurance cover the same limits as the policy that was maintained during employment?
-  How far out in the future will the tail insurance policy extend? Tail insurance can be purchased for specific lengths of time or indefinite.
-  Your contract may require you to acquire tail insurance at your sole cost. If this is the case, research the cost of tail coverage for your specialty and the practicing state before signing the agreement.
-  You may need to negotiate the employer covers or shares the cost of the tail insurance, depending on the reason for termination. Common reasons an employer might cover or share the cost of tail insurance include:
 - Employer terminates the physician without cause or doesn't renew the agreement
 - Agreement is allowed to expire, and the employer does not offer a new agreement
 - Employer does not offer partnership or equity (when available)
 - Employer breaches the employment agreement
 - Employer dissolves, closes the practice, or declares bankruptcy

Employers often agree to cover the cost of the tail insurance policy, depending on the length of time a physician remains with the employer. For example, an employer might cover an additional 20% of the






premium for each year a physician remains with the practice. Under this arrangement, the employer would cover 100% of the premium by the fifth year of employment. This type of cost sharing still allows you to negotiate for the employer to cover the full cost earlier if termination occurs for one of the reasons mentioned above.

Another option is to simply take your insurance policy from the previous employer to the new employer and avoid any interruption in coverage. Under this arrangement, you may need to continue to provide evidence to the employer that the policy is maintained throughout the statute of limitation period and acquire tail insurance if the policy is terminated. This option may not always be possible.

-  Acquire tail insurance coverage through the same carrier that provided malpractice coverage during your employment.
-  Shop around and be careful to only purchase tail insurance from a reputable carrier with a high rating. If a carrier fails or goes out of business, you may not have coverage.
-  Financing options allow you to pay for the tail insurance over a period. The employer may not be willing to allow you to acquire the tail insurance in this manner because the physician and the previous employer may have limited or no contact after the termination of employment. However, it is still appropriate to ask whether this is a viable payment option.

Future Equity

Physicians working for private practices can be offered future equity (or ownership) in the practice. This opportunity is often stated verbally but not always included in the physician's employment agreement.⁵ Review your employment agreement about the opportunity for future equity in the practice. Many physicians seek specific details about future equity. This may not be reasonable to know at the beginning of a relationship with a new employer. The information may be confidential, and/or the employer may not desire to share details at the early stage of the relationship.

-  When will the opportunity for future equity be shared with you? A date you can expect to know whether you will have the opportunity to become an owner of the practice allows you to plan for the future. Open-ended possibilities provide confusion and often lead to discord.
-  If you become an owner, will you be given the same benefits, voting rights, and compensation formula as other owners?
-  What has been the cost of becoming an owner in the past? Will the same arrangement apply to you?
-  Physician employment agreements often expire immediately when the ownership opportunity arises (e.g., the agreement expires on the second anniversary of the agreement start date, and you will be eligible for equity as of, or after, the second anniversary of the start date).
-  If an offer is not made or is not promptly made, this approach can leave you without a written contract before signing new ownership documents. Even worse, if no equity offer is made, this can leave you without a contract or a job.

An employment agreement should be written to continue until it is terminated by one of the parties according to the terms of the agreement, or it is replaced with a new agreement or partnership documents. Another option is for the offer of employment to be made for a fixed period before expiration. This allows you time to negotiate the buy-in documents and sign them before the contract expires. If no offer is presented, you'll have to negotiate an alternative arrangement or find a new position.

When no ownership or equity is offered, the physician may remain an employee. This may be seen as a rejection by the physician and signal the end of the relationship. Consider how this impacts other provisions, such as non-compete provisions, obligation to acquire a tail policy, and repayment of financial obligations.

Term and Termination

One of the first provisions to understand about any contract is the term of the agreement (i.e., start and end dates and whether the contract addresses a renewal of the contract). Some contracts include auto-renewal provisions that require a party to provide notice of the intent not to renew. If you wish to terminate the contract upon renewal but have not followed the contract requirements, you may be legally obligated to remain in the agreement for an additional term.


When reviewing a new employment agreement, a physician must focus on the exit strategy. It may seem strange to think about resignation or termination as you begin employment, but key contract provisions can impact your career and finances when the employment agreement is terminated.


Termination provisions could, in essence, set the term of the employment agreement – regardless of the stated term. If you or the employer can terminate the agreement without cause, the actual term of the agreement is the length of the notice period.

Some hospitals and health systems will guarantee a minimum one-year term or more for an employment agreement. Be aware that you may be contractually obligated to stay for the full period if you agree to this term.

There are two types of termination (termination without cause and termination for cause) often included in agreements or contracts. These provisions are explained below, along with red flags and questions to ask sections that address these termination provisions.

Termination without cause is a provision many employers (especially physician groups) include in contracts. It allows you or the employer to terminate your employment without cause.²

 Employers often include language in contracts that allow the employer to accelerate the termination date once the physician provides proper notice.


 A physician may provide proper notice to terminate employment in 90 days only to be informed that the contract will end sooner (i.e., next week, next month) or even immediately. This often signals that the physician will only be paid through the date of termination.










A termination without cause provision might be worded similar to the following:

Either party may terminate this agreement for any reason or no reason by providing at least 90 days prior written notice to the other party stating the effective termination date. If the physician terminates their employment under this section, the physician is only entitled to receive compensation during this 90-day period if the physician performs services on behalf of the employer during the 90-day period. The employer reserves the right to require the physician to cease performing services at any time during the 90-day period. If this occurs, the physician will only be entitled to compensation for the days they perform services on behalf of the employer.


Under a termination without cause provision, a physician providing the proper notice required under the agreement in good faith can be summarily terminated and no longer receive any compensation. An employer can elect not to have a physician work during a notice period, but the physician should continue to receive compensation and benefits for the entire notice period.

Termination for cause is a provision included in nearly all physician contracts and allows the employer to terminate for a particular reason.²

 Check the agreement to see if it requires your employer to give you written notice of the cause for termination (e.g., failing to satisfy requirements of the agreement, failing to complete medical records in a timely manner, failing to comply with a policy) and fix alleged breaches or deficiencies within a reasonable period.

-  How much notice must each party provide to terminate the agreement, and what happens once the termination notice is triggered?
-  How is notice properly provided?
-  How can you be terminated for cause, and do you have the right to cure (i.e., fix) an issue that exists before termination occurs?
-  What type of malpractice insurance does the employer provide? Are you responsible for acquiring a tail insurance policy if the coverage is claims-made?
-  Is there a non-compete provision to be followed?
-  Is there a signing bonus or other financial support where termination triggers repayment?
-  Does the timing of termination (i.e., end of the year or quarter) impact compensation or bonus calculations?
-  How does the timing of the termination (i.e., the year when termination occurs) impact repayment obligations or other factors?
-  Does the reason for termination impact issues such as responsibility for malpractice, enforcement of the non-compete, and repayment of a signing bonus?

Know the answer to these questions before signing any agreement, and be sure you can live with the terms. You should understand how the possible termination scenarios can impact you and your career.



-  Be cautious about termination without cause and termination for cause provisions. They can be subjective and tied to the employer's reputation or opinions about the physician's conduct. Inquire whether such a subjective provision requires the employer to act reasonably and in good faith when terminating a physician.

Termination for cause provisions do not relate to the physician's conduct but rather that the cause can't be prevented or cured (i.e., fixed) by the

physician. Carefully review and understand the possible outcome(s) should termination occur. Some termination provisions are triggered when the employer:

- Files for bankruptcy
- Closes the location of the practice or the practice entirely
- Loses a contract with a hospital or other third party
- Dissolves or liquidates
- Agrees to sell all its assets or stock or a similar transaction where it will no longer operate its business

From a physician's perspective, situations such as these can be worrisome. Termination can be immediate in a termination for cause provision. For instance, if your employer decides to close your location, the employer does not need to tell you until the day that they determine your employment ends. Similarly, if the employer is losing a hospital contract or has financial issues, they can hide the truth from you until the last minute. The employer does not want to risk that physicians and other staff will resign and find another job while they remedy the situation. At the same time, this can be unfair to employees whose livelihood and financial stability are at stake.

-  Check if any provisions that terminate a physician immediately (unrelated to the physician's conduct) are tied to a full notice period or at least that amount of notice the employer reasonably has available.
-  Check if the contract treats these provisions as a termination without cause provision that is tied, where applicable, to:
 - Payment of the physician's tail insurance policy by the employer
 - Release of the physician from any non-compete provisions
 - Forgiveness of amounts that may need to be repaid under a signing bonus or other recruitment agreement
 - Full payment of all final compensation and bonus amounts


Assignability


Most contracts have provisions that address what results if a merger, acquisition, or change in ownership occurs. If the contract is assignable (i.e., the new owner takes contract ownership from the original owner), the physician's rights and obligations likely continue as they were under the original owner. If the contract is not assignable, you may have to negotiate a new contract (that may not be as favorable to you) or be out of a job altogether.⁵


Restrictive Covenants

Non-compete provisions are enforceable in many states across the country. Non-competes are legally permissible, but enforcing them is usually related to whether the provision is reasonable in terms of geography, scope, and length of time.

Non-compete provisions are generally written to restrict a physician from competing within a geography – usually indicated by a certain mileage between locations. The reasonableness for the geography provision will depend on the location of the practice, specialty, and how far the practice attracts its patients. There is no correct number based on specialty or otherwise. A specialty practice at a hospital that draws patients from across the state might argue that a 50-mile radius is reasonable. On the other hand, it might be considered unreasonable for a small primary care practice to argue that a two-mile radius is reasonable.²

 Many non-compete provisions try to restrict a physician from competing with any employer locations or anywhere a physician ever practiced while employed. These broad provisions can be problematic for a physician upon termination. Language should be clear and specific so you understand your obligations.

 Clearly understand the exact location the geographic non-compete is tied. Ideally, the location(s) where the physician practices should be included, so there is no misunderstanding.

 Beware of broad non-compete provisions that limit you from working for a new employer who has a location within a certain radius of your

previous employers' sites – even if you currently practice outside the non-compete area. The language might state that a practice can't employ you if it has an office within 15 miles of any employer location where you worked. This could prevent you from working for an employer in another state because it has a clinic within the designated radius of the previous employer's location(s). This type of language is overly broad but increasingly common. Be careful if you agree to such provisions.



If location is described as where the physician spends a certain percentage of time or effort at the time of termination, it is important to understand how time and effort will be measured. From the physician's perspective, choose as high a percentage as possible so that the non-competes cover fewer locations.

Restricting physician competition should be limited to the services you provide. This is called a scope of service provision. If there are general prohibitions on the practice of medicine, then these provisions are too broad.

One to two years is common for the length of time a physician must comply with a non-compete provision.⁵ Generally, employers will enforce the non-compete for a variety of reasons. You should assume enforcement is possible and only sign a contract if you're comfortable with this provision. Entering into an employment agreement believing a non-compete is non-enforceable or won't be enforced is a mistake. Some non-compete provisions have language that provides for a liquidated buy-out of the restriction. Even when such language is not included, paying for a release from a non-compete may be possible.




Enforcement of a non-compete provision can be done in a variety of ways. Avoid the risk of enforcement as much as possible by understanding the non-compete before the agreement is signed. Be sure any legal fee language in the employment agreement rewards the prevailing party.



The AAFP opposes [unreasonable restrictive covenants](#).


Non-solicitation

Non-solicitation provisions limit you for a period from soliciting patients of the employer, employees, or independent contractors that may have worked for the employer, as well as limit you from soliciting referral sources, vendors, and other third parties who had business arrangements with the employer.^{5,8} Solicitation can't be performed by you or a third party on your behalf, such as a new employer. While you can't solicit patients, those patients who seek out a physician on their own are free to do so and can transfer their records to your new practice. Non-solicitation provisions are often used in conjunction with non-compete provisions, but only non-solicitation provisions are permitted in some states.

 It can be difficult when an agreement prevents you from treating any patient you saw while employed by a practice – even if you did not solicit the patient. Physicians should strongly challenge these types of provisions since it interferes with a patient's right to select their physician.

Non-disparagement

Most physician employment agreements contain a non-disparagement provision. The employer requires the physician agree not to disparage or say negative things about the employer to any third parties.⁹


 Non-disparagement provisions should be mutual, so the employer can't disparage you to third parties either. Review these provisions carefully so you can communicate openly with your advisors and speak freely in the event of a government or other administrative investigation.


Outside Documents

It is not unusual for an employment agreement to refer to outside documents. These include rules and regulations, policies, handbooks, ethical guidelines, by-laws, and similar materials. An employment agreement will often reference payer contracts, contracts between the employer, hospital, and other organization(s), and similar materials. It is necessary to obtain copies of these outside documents. They may provide valuable information about working for the employer.

Contract law generally states that an outside document is considered part of the binding terms of a contract just as if it were outlined in the contract if the term is expressly incorporated by reference and made part of the contract (e.g., language might state that "policies located at [link] are incorporated herein and made a part hereof").

Sometimes, an outside document is considered a part of a contract even if it is only referenced (and not incorporated) – if there is no integration clause. An integration clause is often a provision titled "Entire Agreement," which says no documents, verbal agreements, or promises outside the contract are a part of the contract. However, even if there is an integration clause, outside documents expressly incorporated by reference are generally considered terms of the contract.





 You can be in breach of an employment agreement if you fail to comply with outside documents. This is particularly true when the employment agreement states that the physician has had the opportunity to review the materials, yet they have never been provided.

 Although physicians are required to comply with outside documents, employers are often reluctant or uncooperative to provide such documents for review, or in some cases, they may not exist. Agree to comply only with written rules and regulations and not verbal ones.



Conducting Negotiations

By this point in the employment process, you've chosen an attorney and familiarized yourself with key provisions of contracts. Once you and your attorney have thoroughly reviewed your contract, it is time to think about negotiations and the questions to ask the employer. Their answers will provide insight into the organization and your role.





Conducting your own negotiation rather than having your attorney speak for you is beneficial and sets the tone for your relationship with the employer. Negotiations and responses to your questions and requests will provide a better understanding of the organization and employment opportunity.

-  When you receive an employment offer, request a primary contact person for negotiations and questions.
-  Before negotiations begin, be sure to have a list of questions and issues essential to you.
-  Avoid making demands. Instead, ask questions and express concerns with the agreement. Typically, an employer will clarify with details about your concerns.
-  Ideally, you and the employer will negotiate and modify the written agreement's most important provisions and elements.

It is not unusual for an employer to reject making changes in writing and instead provide verbal reassurances. This process can be frustrating. If faced with this situation, think about your concerns and whether they are deal breakers. If you decide to sign the agreement with the verbal reassurances only, be sure you understand the termination provisions in the agreement and know what your exit strategy will be if these verbal, non-binding promises are broken.

-  Be wary of verbal promises not included in the written contract. Promises are made during recruitment and contract negotiations in good faith, but memories fade, and staff turnover happens.
-  Verbal promises are difficult to prove and essentially unenforceable. Avoid them if possible.

Suppose you reach an impasse in negotiations with the employer and still have remaining topics unresolved or legal issues to be addressed. In these instances, you want to involve your attorney in the negotiations. Remember, your attorney speaks for you.

-  What tone do you want your attorney to take? Provide clear expectations.
-  How aggressive a stance should your attorney take?
-  Are the requests you are asking the attorney to make reasonable? A negative experience between the employer and the physician's counsel can lead to the withdrawal of an offer.
-  Will your attorney handle negotiations professionally and honor your preferred approach?

Before you sign any employment agreement, weigh the pros and cons of the issues you have identified while reviewing the written agreement and during negotiations. You are ready to sign (or execute) the agreement when you understand everything in the agreement and can live with it. Signing an employment agreement with the belief that a term will be changed in the future or won't be enforced can be a mistake. You typically cannot rely on verbal promises, emails, and side letters. Essential terms of your employment should be included in the written agreement itself.

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