

'Scope' Out the Potential Pitfalls in Your First Employment Agreement

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You finally made it to your last year of fellowship and are ready to get a real paying job in July. Besides hearing all of the traditional war stories about practice situations that were not as described, you may face black and white pitfalls in your employment agreement before you even start your job. What provisions should you expect to see in an employment agreement?

Contract term

Most new physician employment agreements have a stated term of 1-3 years. Wait a minute; don't sign a long-term lease or buy a house! Why? Because most agreements have early termination provisions allowing either the employer or employee to terminate the agreement at any time and without cause, often on 60 or 90 days written notice. What does this mean? It means that even though the agreement states that it is for a specific term, you really have a 60 or 90 day contract since the

employer does not need "cause" to terminate the agreement.

Noncompetition provisions

This is complicated further because almost every employment agreement has a restrictive covenant, often called a noncompetition provision. Employers usually include it so that no matter why or when your employment terminates, you cannot practice gastroenterology or hepatology within a specified number of miles from each practice location. Often, this includes more than one location and the restrictive covenant applies regardless of who terminates the agreement and whether there is cause to terminate the agreement. So if you start work, work efficiently, treat patients well, yet the practice decides it is better off without you, they can terminate your employment and subject you to noncompetition provisions. If you purchased a home or are stuck in a lease, your employer is precluding your practicing locally, so you may have to commute a

distance to new job or relocate and suffer a financial hit. Although you could attempt to negotiate to reduce or eliminate the restrictive covenant, fighting it in court is usually expensive and often a losing proposition.

Malpractice insurance

When you review a proposed employment agreement, make sure that your employer will provide you with malpractice insurance. Upon any termination of your employment, you should negotiate so that the contract provides that your employer pays any tail premium if you have a claims-made policy. With a claims-made policy, an additional premium, called a tail premium or tail endorsement is generally due at the end of the policy, and many employment agreements require the employee to assume this liability.

Define work obligations

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ing compensation. Even an initial agreement can address how co-ownership works, whether there will be a buy-in, and the long-term economics of the arrangement; all of these considerations will impact your decision about taking the job. It is also common that private gastroenterologists invest in nonhospital-based endoscopy centers, and if the practice physicians own one, you will want to make sure that your future co-ownership is in the cards. Since these centers often yield substantial revenue to the owners, it is important to understand the details of endoscopy center ownership and your future involvement or co-ownership.

Since most practice arrangements are determined by contract and not by law, if a term or provision is important to you, it must be memorialized as part of the contract for you to guarantee mutual understanding of the parties. Confer with a contract attorney who is familiar with physician employment agreements since their primary function is to counsel you on industry norms so that your expectations are aligned with reality. You may also wish to look at *Medical Economics: Modern Medicine* magazine online since many informative articles have been published that address physician contract issues. ■

coverage responsibilities. It is common to provide that all physicians equally share such obligations, but often a senior physician will want to reduce or eliminate call responsibilities, giving you a disproportionate burden. The time to discuss these issues and memorialize your agreement in writing is upfront, not after a problem occurs.

In addition to general work obligations being outlined, time off, including vacation, continuing medical education, and maternity/paternity leave, should all be addressed in the employment agreement. Is it competitive with other employers? Is the stated time reasonable and are you paid for your time off? What happens if you are ill or disabled? Are you paid? Will you have disability and life insurances paid by your employer?

During negotiations it is common practice that you and your prospective

employer will email or text various questions and responses but rarely will such discussions be specifically reflected in the final employment agreement. However, in the “boiler plate” provisions at the end of most employment agreements it is common to find a provision titled “Entire Agreement.” This provision essentially states “whatever is in this contract counts and anything we may have discussed in the past is irrelevant and not part of the agreement.” The bottom line is that all important terms must make it into the final written contract.

Although most initial employment agreements only address the first few years, if your employer is a private group there may be the opportunity for you to become a co-owner in the practice. Most long-term employees are interested in progressing in the practice, sharing control, and increas-