

A Brief Overview of Physician Employment Agreements

By

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1. Termination Provisions

- Who can terminate and when?
- Typically recommend escape hatch
- What triggers termination?
- Termination “for cause”
- Termination “without cause”
- What are the consequences of early termination?
- Are there burdensome reimbursement requirements?
- Sign-on bonuses
- Relocation allowance/reimbursement
- Student loan payments
- Liquidated damages

2. Liquidated Damages

- What are they?
- Require payment of sum certain with triggering event
- When do they apply?
- Early termination
- Breach of specific provision
- Non-solicitation
- Non-competition
- Confidentiality (misappropriation of trade secrets)

3. Restrictive Covenants

- What are they?
- Non-solicitation
- Non-competition
- What do they do?
- In the event of a breach, do courts enforce them?
- It depends
 - o Statute limiting enforcement – NM
 - o Trend/public policy concerns (rural)
 - o If not, the general rule is to look at reasonableness of restrictions under the circumstances (duration/geographic reach)

4. Indemnification Provisions

- What is an indemnification provision?
- Reimburse employer if employer incurs damages due to physician's acts/omissions

- Indemnification should not apply to acts/omissions within scope of employment
- Each party has insurance
- Insurance should handle, not the physician individually
- Limit indemnification provisions to conduct outside scope of employment
 - o Intentional criminal conduct

5. Medical Malpractice Coverage/Professional Liability Insurance

- Types of policies
- Claims made
- Occurrence based
- Claims made = tail coverage required
- Occurrence based = no tail
- Who is responsible for tail coverage upon termination?

6. Tips for Negotiating with Prospective Employers

- Prioritize major concerns
- Pick your battles as opposed to fighting everything
- Every person has different concerns
- Non-compete as one example
- Liquidated damages as another
- Explain why you would like certain changes
- Explaining why makes you come across as reasonable
- Communicate early/often with prospective employers