

Employment Agreement Checklist

This article provides a detailed checklist of items for consideration whenever a doctor is considering engaging the services of another licensed individual to provide patient services within an existing business. Besides determining the appropriate individual for the needed position, the doctor must fundamentally decide whether that individual will be engaged as an independent contractor or as an employee/associate. This decision is important since it will affect the types of the provisions which can be placed in an agreement involving employment services. In general, an employer has less ability to control the hours of service, manner of service, and general performance of an independent contractor, as compared to those aspects of an employee. Also significant are the tax reporting obligations of an independent contractor as compared to that of the employer with an employee. Doctors are encouraged to consult with a tax or financial advisor in relation to this important decision as to how to characterize the engaged professional under any type of employment agreement.

The ultimate terms of any employment agreement will vary significantly depending upon the unique needs and expectations of the employing doctor. This checklist provides a basis for the various items which are addressed in each unique, written employment agreement. It should be noted that this list is not intended to cover the wide variety of issues which can be more appropriately addressed in an "office policy manual" or similar document which is commonly adopted by a doctor's office to describe rights and duties of an employee of that office. Any doctor engaging the services of an individual as an employee should consider attaching and referencing the office policy manual to the employment agreement. For doctors engaging in services of a professional as an independent contractor, some of the major issues in an office policy manual should be addressed in the employment agreement.

A. Parties to the Agreement

1. Legal name(s) of all parties

2. Individual capacity or capacity as a business entity (i.e. corporation, limited liability company, etc.)
3. Taxpayer identification number of all parties

B. Nature of Business Relationship

1. Indicate whether individual is an employee or independent contractor for tax purposes
2. Indicate general intent of parties as it relates to their established business relationship (i.e. associate, partner, independent contractor, lessee, etc.)
3. Identify business location
4. Identify space or size accessible by parties

C. Term or Duration of Relationship

1. Commencement date
2. Duration of relationship
 - a. Manner of conditions of terminating early
 - b. Manner of notification to terminate early
 - c. Manner or conditions of extending agreement
 - d. Manner or notification to extend agreement
 - e. Length of any extension (maximum/minimum)
 - f. Timing for extension of agreement (i.e. automatic annual extensions, limited time periods to extend agreement, mutual consent to extend, etc.)
 - g. Will there be any trial or “probationary” period
3. Duration subject to third party control (i.e. leasehold arrangement)

D. Compensation or Financial Arrangement

1. Amount of payment
 - a. Form: Base pay, salary approach, “draws”, hourly, per patient basis, etc.
 - b. Incentive based: Base pay plus “commission”
 - c. Manner for calculating any commission (describe in detail)
2. Frequency of payments
3. Accountability for all payments (i.e. receipts or common record book, etc.)

4. Bonus arrangements
5. Fee or “rent” for use of facilities
 - a. Manner of calculating
 - b. “triple rent” approach or other techniques
 - c. Frequency of payments
6. Manner for modifying compensation or fee arrangements in the future
7. Ability to accept loans or advances

E. Duties of Parties

1. Hours/days of employment or independent contractor “service”
2. Standards or practice protocols
3. Expected professional association
 - a. Membership
 - b. Seminars/CE – frequency, etc.
 - c. Reimbursement/payment for above
4. Participation in reviews or outcome assessments
5. Access and use of office equipment
 - a. What items can or will be supplied by each party
 - b. Maintenance responsibilities for equipment
 - c. Key equipment use and maintenance: postage machine, copy machine, computers and internet, fax machine, phones
 - d. Manner of making decisions on the purchase of new equipment
6. Allocation of patients
 - a. How new patients are allocated
 - b. How referral patients are allocated
 - c. How existing patients are allocated
 - d. Referrals to other health care providers
7. Ability to consult/work for other businesses (“exclusively” issue)
8. Extent of participation in business programs and classes
9. Personnel and other staffing decisions (use, allocation, type, fees, etc.)
10. Forms of adjunctive services available

11. Representations or marketing, us to the doctor's background, by both an employee or independent contractor

F. Office Management

1. Procedures and responsibility for:
 - a. Scheduling
 - b. Billing
 - c. Insurance claims
 - d. Collection practice
 - e. File storage and maintenance
 - f. Authorizing managed care plans
2. Supplies and products
3. Patients files
 - a. Intake procedures
 - b. Access and duplication
 - c. HIPAA policy and compliance
4. Proprietary information
 - a. Patient lists
 - b. Policy and procedure manuals
 - c. Naming rights
 - d. Computer programs

G. Utility and Outside Services

1. Selection procedures
2. Allocation of costs
3. Types needed

H. Insurance and Risk of Loss

1. Types (general business, automobile, premises liability, malpractice, fire, theft, equipment, unemployment and workers compensation)
2. Allocation of cost
3. Malpractice coverage
 - a. Limits
 - b. Form (per claim or per occurrence)

- c. "Tail" coverage and cost allocation
 - d. Responsibility for payment
 - 4. Uninsured loss – hold harmless and indemnification
- I. Marketing, Advertising and Signage
 - 1. Forms permitted
 - 2. Cost allocation
 - 3. New patient solicitation methods
 - 4. Letterhead and phone designations
- J. Benefits (Note – can be covered in "office policy manual")
 - 1. Vacations
 - 2. Holidays
 - 3. Personal days, maternity/family leave
 - 4. Health insurance
 - 5. Retirement plans
 - 6. Discounts on products or services
 - 7. "Expense accounts"
- K. Termination or Resignation
 - 1. Basis
 - a. Upon mutual agreement
 - b. "At will" termination
 - c. "grounds" for termination
 - (1.)Death
 - (2.)Disability (physical and mental)
 - (3.)Loss of license
 - (4.)Investigation for loss of license
 - (5.)Criminal violation/investigation
 - (6.)Unable to perform at specific level or certain dates
 - 2. Manner of notification of termination
 - 3. Effective date of termination
 - 4. Effect of termination upon compensation/rental arrangements
 - 5. Mediation of disputes as to amounts owed

6. Effect of termination upon patient lists and files
 - a. Notification to patients
 - b. Manner for transferring files
 - c. Payment for services upon effective date of termination
 - d. Transfer to third parties
 - e. Duties of each party

7. Severance packages or payments

L. Non-compete or Restrictive Covenants

1. Upon termination or end of agreement
2. Nature of restrictions (distance and amount of time)
3. Ability to seek injunction
4. "Liquidated" (or pre-specified) amount monetary damages

M. Miscellaneous

1. Assignment or transfer of agreements to others
2. Personal guarantee for performance
3. Mediation or arbitration to solve disputes
4. Allocation of legal fees upon dispute
5. Accurate address for notification purposes
6. Ability to change business location or "satellite" offices
7. Modification to agreement in future
8. Use of separate counsel

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