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Part I: Physician employment

agreements in the 21st century

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Many physicians and other advisors have asked me, "What is the need and positive and/or negative consequences of having an employment agreement with physicians?" This article will be one in a series discussing when an employment agreement is appropriate, the advantages and disadvantages of entering into an employment agreement, and several provisions critical to providing the legal protection necessary in an employee/employer relationship.

When is an employment agreement appropriate?

Under Illinois law, an employee hired without an agreement is considered an "employee at will." This concept means that an employer can fire any employee with or without cause and with or without any specific notice or any compensation upon being dismissed. While various federal and state statutes protect employees from age, sex, disability and other types of discrimination in the workplace, unless there is a verbal or written agreement to the contrary, an employee working for a business organization has no legal rights concerning dismissal, subject to the various employment/employee statutes stated above.

Therefore, the issue becomes whether it is in your best interest to have a written agreement in view of the uncertainty of not having an agreement. For example, if you are a physician working for a medical institution, medical group or other health care provider, it would appear to be in your best interest to have an agreement that sets forth the terms and conditions of your employment, including the length of employment, reasons for termination, notice of the period prior to termination, compensation during employment, severance pay upon termination, disability payments, and other employee fringe benefit programs to which you would be entitled.

Most importantly, however, you would be concerned who is responsible for paying professional liability insurance (during your employment and at the time of termination) to provide continuous medical liability coverage after you no longer work for the organization.

When and how to negotiate

an employment agreement

Whether you are an employee or an employer, you need to evaluate the positive and negative impact of a written employment agreement. For example, as an employee, you would like to know for certain what your income will be, how long the employment relationship will continue, under what circumstances the relationship can be terminated and who will pay the cost of professional liability insurance coverage during and after the employment agreement terminates. On the other hand, a written agreement may require you to enter into a restrictive covenant which would restrict you from practicing medicine within a specific geographical area for a specific time.

The employer and employee share many of the same issues. Some of them can be a win/win for both the employee and the employer. Some issues will result in one side having the advantage over the other. In negotiating employment agreements, it is critical that each party realistically understand their business and professional strengths and weaknesses.

While protecting its business interests, a business organization needs to critically evaluate that the terms and conditions of the employment agreement will result in a profit to the organization and reasonable compensation for the employee. The employee needs to recognize how valuable their services will be to the business entity, negotiate fair and reasonable compensation, including fringe benefits, and be fully informed of the restrictions and costs, if any, that the physician will incur upon the termination of such relationships.

This article is the first in a series. Part II: Restrictive Covenant Not to Compete will appear in the winter issue of Chicago Medicine.

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