



“Miscellaneous” – but not to be disregarded

How to interpret the end of your employment agreement.

WHILE EACH SECTION OF AN EMPLOYMENT AGREEMENT IS IMPORTANT, one of the most often overlooked or sometimes ignored sections is the so-called “miscellaneous” section.

Though it may not be as economically impactful as the compensation section or as critical to long-term stability as the term and termination section, it needs to be carefully reviewed. Below are some of the more common provisions that may be included.



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Entire agreement

Unless specifically provided herein, this Agreement... constitutes the sole and entire agreement of the Parties with respect to the matters contained in this Agreement.

This clause seems simple and straightforward, but think about each of the promises the employer made during the course of the interview process—even just during lunch or over text. Each of those promises must be incorporated in the actual employment agreement, or those provisions will not be binding.

Governing law, jurisdiction and venue

This Agreement shall be interpreted, construed and governed according to the laws of the State of [INSERT] without reference to its choice of law rules...

What happens if the employer has locations in multiple states? Are the laws of one state more favorable than the other? Moreover, what about the choice of a county if litigation begins? Does the employer have a “home county advantage” given their size as a local employer?

Severability

In the event that any of the provisions of this Agreement shall be held to be invalid or unenforceable, the remaining provisions thereof shall nevertheless continue to be valid...

If there is a dispute regarding a section in the employment agreement that goes to litigation and the physician prevails, the employer likely does not want the entire employment agreement to be voided.

Waiver of breach

No waiver of any breach of any provision of this Agreement

shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provision of this Agreement and no waiver shall be effective unless made in writing.

No matter how many times the employer or employee may do something “wrong” as it relates to the employment agreement, that same conduct or misconduct can still be called out even if it was not raised before.

Notices

Any notice or other communication required or permitted pursuant to this Agreement shall be in writing...

You should know how news will be communicated by the employer. For instance, will an email or a text constitute notice? Also, know the address to be used by the employer if something is being transmitted to a physical address. You’ll want to ensure all official communication is directed only to your home, not your office.

Amendment

This Agreement may be amended only by a written instrument signed by both Parties.

A handshake does not suffice. An email or text likely doesn’t either. Make it official.

Assignment, mergers and consolidation, successors and assigns

Neither the Physician nor the [Employer] shall have the right to assign or delegate this personal service agreement... The [Employer] may freely assign and/or delegate any or all of its rights and duties under this Agreement to an affiliate...

This type of provision is often overlooked or misunderstood. You can’t bring in another physician to do your job. The employer, however, can assign the employment agreement to an affiliate if the employer is sold to another party.

Review by counsel

Each Party acknowledges that such Party has been given an opportunity to have this Agreement reviewed by the counsel of such Party’s choice...

The employer is pointing out the obvious: They used a lawyer to prepare the employment agreement, and the employer’s lawyer does not represent you.

No provision in the employment agreement should be overlooked or disregarded. This includes the “miscellaneous” section which may include multiple provisions, each of which are very important to read, understand and seek to change to protect the physician’s interests. •

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