



# What attorneys look for in employment contracts

A health care attorney's review can help you fully understand your new role. Here's what they're looking for.

**OVER THE YEARS,** I have been fortunate to have reviewed and/or drafted hundreds of contracts for physicians finishing training or taking new jobs in a variety of settings. I often think a well-written contract is like a good book, as you will see when reading below.



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## The title

First, but perhaps not always obvious, is identifying whether you're getting hired as an employee (a W-2) or an independent contractor (a 1099). The title of the agreement should, ideally, make that clear. Then the remainder of the agreement should use the correct terminology—employee or contractor—throughout.

## The main characters

It is critically important that the employer is clearly identified in the agreement. Many academic medical centers and community hospitals, and even some private practices, have multiple affiliates. You should know for whom you are working. For those working for a practice that has a venture capital component, there may be

multiple entities involved. Each entity may have different rights and responsibilities even if the employer and you view them as one and the same.

## The forward

Many books include introductory prose that sets the stage for the entire book. Similarly, many agreements include "Whereas" clauses or recitals that set expectations for what is to follow in the actual agreement. The forward may include additional parties that are relevant to the agreement and the purposes for why the parties are entering into this particular agreement.

## The table of contents

Most employment agreements do not include a formal table of contents, but it is relatively easy to do a page-by-page turn of the agreement to understand whether and how many of the critical topics in the agreement are addressed and in what order.

## The book itself

Size really doesn't matter. A 30-page agreement may be

“worse” than a three-page agreement. Like a good book, every paragraph, sentence and, yes, every word should be relevant. If something does not make sense in the agreement, it may not have been drafted appropriately. And it should be reviewed and rewritten *before* the agreement is signed by the parties.

There should not be “throw-away” provisions included in the agreement to make the agreement longer or seem “more legal.” Sometimes, less language may be more than sufficient to make the relevant points.

Be wary of language that was borrowed from another agreement that may not be especially relevant. The reference to a wrong medical specialty or the incorrect gender for a to-be-hired physician within the agreement may be a sign of other transposed terms.

An agreement should not be like a mystery novel; surprises generally do not benefit you or the employer. Be self-aware of your most important job priorities and any deal breakers, and be sure to address as many of them as possible before the agreement is signed.

Confirm when the initial term of the engagement begins, and be aware of any issues that could delay your start date.

Understand what needs to continue to occur during the engagement, such as regular clinical hours, administrative responsibilities, supervisory duties of mid-levels and other professionals, board certification and maintenance of certification, on-call responsibilities and frequency and ongoing compliance with policies.

Of course, just like a book, most agreements have to end somehow.

Know how and when both you and the employer can end the arrangement (for cause and without cause).

There can always be the opportunity for a sequel. Confirm the renewal terms—and which party may exercise those rights and when and how—if the engagement will continue beyond its initial term.

## The bibliography

Your employment agreement may rely on separate relevant agreements. These may include restrictive covenants, moonlighting policies, intellectual property requirements and fee allocations with respect to the commercialization of every intellectual property advancement.

Just like a book relies on its source documents to tell a story, the agreement between you and your potential employer may rely on these separate documents. Importantly, you may have little or no ability to modify these separate source documents. To the extent there is a conflict between these institutional policies and your needs and desires, you may be well-served to include specific language that expressly supersedes contradictory provisions that may be adopted by the employer now or during your term of engagement.

## The index

Carefully review and confirm each of the exhibits and appendices that are part of the agreement (for example, benefit details or credentialing prerequisites).

## The acknowledgements

A book’s author often lists the individuals who are important to the author. You should similarly be surrounded by qualified professionals. This may include an accountant, a professional liability broker, a disability specialist, a life insurance specialist and health care attorney. By surrounding yourself with qualified professional advisors, you can focus your time and attention on treating the patients who trust and need your expertise. •

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