

Tips to Negotiate Your Physician Employment Agreement

Your employment agreement is one of the most important aspects of a new job. It may never be perfect, but it can absolutely be fair if handled properly. By knowing your value, understanding your contract, negotiating smartly, and when needed, hiring the right attorney to help, you can ensure that your agreement is fair and attainable. Remember, negotiation is almost always expected, so don't be afraid to make reasonable requests after receiving your offer. The true goal of a good employment agreement is to achieve a contract that actually gets signed, reasonably protects long-term interests, and fosters a good start to a sound working relationship.

Know Your Leverage

Before negotiations can begin, consider your value and leverage. Know your own value by asking yourself questions like these:

- ❖ Do you have multiple job options available to you?
- ❖ Is the position you are considering a comfortable fit for you and your long-term goals?
- ❖ How much do you want this position?
- ❖ Does the employer have multiple job applicants?
- ❖ How much does the employer want you for the position?
- ❖ Are they offering fair or above-market compensation?
- ❖ Can the employer easily hire someone else for this position?
- ❖ Is the agreement more of a take-it-or-leave-it general contract?

Remember to always critically and realistically assess what you bring to the table for the employer. The purpose of this step is to properly gauge your bargaining position, so that you will know how hard you might safely push for particular terms or language in the written employment agreement.

Consider, if the employer is a large company such as a hospital system that values uniformity and uses a general form physician employment agreement for all physicians, they may be less amenable to proposed changes. This doesn't mean that you cannot negotiate at all, but this reality may favor subtle or more restrained efforts to negotiate for improved terms or language. On the other hand, if you have three offers pending and any one of them would be a good opportunity, a more proactive approach in seeking particular contract terms and language might be beneficial. Ultimately, knowing your leverage considering these factors and your experience in dealing with the employer's representatives will help you decide how hard to push when negotiating.

Review Carefully

Every provision of your employment agreement should be reviewed and understood before your contract is signed. If there are provisions you do not understand, always ask for clarification or seek legal guidance from an attorney who has experience with medical

employment agreements. Contractual language can create a tendency to gloss over language without understanding it, which can lead to mistakes and carry significant, long-term ramifications for you and your career.

Review and consider all elements of the contract, such as:

- ❖ **Location** – Are there multiple worksite locations and, if so, where are you required to work? Can they transfer you with or without your permission?
- ❖ **Start date** – Will you be available and ready to start work or do you need to ask for modification of this date?
- ❖ **Term** – How long is the term and are there penalties for leaving early?
- ❖ **Duties** – What marketing, medical education, promotional, and/or administrative duties are required?
- ❖ **Autonomy/oversight** – Who is in charge of medical staff and do the hospital bylaws trump your contract?
- ❖ **Hours/call schedule** – What hours are required and what is the compensation for specific on-call requirements?
- ❖ **Salary** – Is it variable or fixed? Are there bonuses?
- ❖ **Benefits** – What benefits are being offered beyond your salary?
- ❖ **Medical Records** – Who owns the medical records? The practice or treating physician?
- ❖ **Non-Compete Clause** – Is there an unreasonable restraint that could create undue hardship such as a required move when you are ready to transition to a new job?
- ❖ **Termination** – What happens if you terminate your contract early? Are you required to pay back any start-up investment the employer made in your practice, or to pay costs such as professional liability insurance premiums for “tail” coverage after you leave?

Understand Your Compensation

Is your proposed compensation fixed or variable? Fixed compensation is often provided for new physicians as a set salary that is not dependent upon a physician’s performance. Variable compensation is generally used for more experienced physicians and is a salary model that can be based on formulas that account for the physician’s performance. Make sure that you are familiar with median physician salaries for your specialty in your area and if your compensation is based on performance, know what these benchmarks are and have a clear understanding of what is expected of you. Furthermore, always clarify in writing your pay schedule for extra duties and on-call time.

Know Your Must-Haves

What elements are absolutely crucial for you? Know your bottom-line requirements before going to the negotiating table. When you enter into negotiations, you're most likely going to be required to compromise, as this is typically part of the negotiation process. Consider establishing several requests, with the understanding that only a few may be true must-haves. While negotiating, you will be able to give up certain asks, while hopefully being able to keep your more crucial items, for example: compensation, flexible time, research projects, or CME funding.

Don't be Afraid to Negotiate

Employers are expecting you to negotiate, so they should not be put off by your reasonable and respectful requests to modify the contract. However, as stated previously, their willingness to negotiate may differ depending on several factors. Never assume a particular term or language cannot be modified. Remember, if you bring several items to the table, be prepared to let go of some items to show your willingness to compromise.

Always negotiate judiciously. If language proposed by the employer's form contract is onerous or overbroad, softened terms that ensure the employer's real interests are protected but without unfairly imposing upon your own interests is always reasonable. If you are perceived as too aggressive or uptight, rather than smart and reasonable, your language proposals are less likely to be accepted. Making a bad impression with your new employer could cause them to retract the offer altogether. Remember, the goal is not to achieve a perfect contract, so it is very important that you and/or your attorney balance your desire to get the job with achieving a fair and reasonable contract.

Consult an Expert

While some negotiation processes may seem relatively straight forward and simple, it is always wise to have an objective, experienced third party who is concerned with your best interests review your contract and advise you. Rather than being an unnecessary expense, paying an attorney to review and advise you on your contract up front can save you from an expensive and stressful battle if the agreement is terminated down the road under terms that could have been improved to protect you.

The key is to hire an attorney who specializes in medical employment agreements and who is capable of providing advice appropriate to your field and state of employment. Not only will this give you peace of mind that your counsel has expertise in the subject, it can also save you money as well, as experienced attorneys will be familiar with contract terms in your field. An experienced and local attorney may also have insights on the local market, or a prospective employer's negotiating style.

Get it in Writing

Finally, always get all edits and amendments to your employment contract *in writing*. No matter how smoothly the negotiating has gone and how friendly your employer has been, never sign a contract until all agreed upon modifications have been included. Remember, verbal agreements not documented in the contract are not binding on either party. Regardless of how many drafts are required, never sign your employment agreement until it is one hundred percent complete.

In conclusion, always vigorously review your employment agreements. Understand your leverage, review your contract thoroughly, know your wish list and must-haves, hire an experienced attorney if needed, negotiate smartly and get all of the agreed upon modifications in writing. This will foster a good start to the employment relationship and enhance your chance of signing a physician employment agreement beneficial to you and the employer.