

Physician Contract Negotiation



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Whether you are a new physician straight out of residency or an experienced physician relocating to a new practice, negotiating an employment agreement can be just as overwhelming as that first week of medical school. That long-winded mess of legal jargon is harder to read than Steadman's Medical Dictionary, but it's no less important to your future. It should not be skimmed and signed based on the hospital or practice administrator's kind words and handshake. You should carefully review its terms and consider the requirements and consequences. After drafting and negotiating hundreds of physician employment agreements, Foulston Siefkin has developed a few tips that we think will assist you in negotiating your employment agreement.

Don't Hesitate to Negotiate. Don't be afraid to ask for revisions to your contract. Some employers simply won't change their contracts, but they will not be offended if you ask for changes. Most hospitals and physician practices are used to new physicians asking for contract revisions and will consider the requested changes. Of course, you should prioritize your requests and pick your battles. Don't expect your employer to accept every request. Also, if you don't understand your contract, or a key term is missing, request that the contract be revised to clarify the parties' intent.

Compensation. Physician compensation packages, especially in rural Kansas, come in various shapes and sizes. The compensation should be objective and easy to calculate. Don't agree to a formula that you do not understand. For new physicians, the compensation often includes a combination of a guaranteed salary and a productivity bonus. Consider a productivity bonus based on wRVUs if you are likely to take more charity or low-reimbursement cases. If you're a hard worker, you might request a tiered structure where the rate of your bonus compensation goes up as production increases. Although they are less common in Kansas than in other areas, consider a performance bonus based on certain quality-of-care or patient-satisfaction measures.

Patient Fees. Patient fees are assignable when you enter a contractual relationship with your employer. It is most common for the employer to be entitled to patient revenue, but make sure it is clear in the agreement which party is entitled to bill and collect such revenue.

Call Coverage. Call coverage is a big issue in rural Kansas, where you may be one of two or three physicians in town. Consider whether your agreement identifies a maximum number of hours/days/weekends of call that are included in your salary and whether it specifies the regular call schedule, including when coverage begins and ends. If you provide coverage in excess of the maximum, you should be compensated for the additional coverage. When negotiating call coverage compensation, you also should know whether the rate is for time on call or for time when you are actually furnishing patient services. Also, you should know whether you or your employer has the ability to bill for the patient services you provide during call period.

Non-Competition Agreements. Non-competes (or restrictive covenants) are generally expressed by three main components: duration, range, and scope. Duration refers to the time period during which the non-compete remains in force; range refers to the geographic area to which the non-compete applies; and scope refers to the kinds of services or activities that are subject to the non-compete. All three components are important and could affect your practice and life moving forward. Carefully consider how the limits in the non-compete may affect you. If your agreement terminates, will your spouse have to change jobs? Will your kids have to change schools? If possible, consider trying to limit the scope and ask for exceptions or “carveouts.” Also, consider requesting elimination of the non-compete if your employer terminates the agreement without cause or if you terminate the agreement for cause. If you are working for one provider type (a group practice, for example), it might make sense to ask for an exception to work as an employee of a different provider type (a hospital, for example) inside the non-compete radius. Pay attention to whether there is a termination fee or “liquidated damages” amount you can pay to terminate the non-compete.

Exit Strategy. Always have an exit strategy! Every employment relationship ends at some point. Ask yourself what happens when you’re ready to quit your job. Will you have to give thirty, sixty, ninety days’ notice? Also, how much notice does your employer have to give you? How quickly can you pick up and leave town? Consider your spouse, kids, house, family, etc. The employer’s termination rights are often overbroad and should be narrowed or limited, if possible. For most issues that don’t involve an immediate threat to the well-being of patients, you should have a period of ten to thirty days to correct a breach of contract. Your employer should seek to identify the specific conduct that would be grounds for terminating your employment. Who gets your patient medical records upon termination? Do you still get a bonus? Will you or your employer be the one to tell your patients when and/or how the employment relationship ended?

Duties. Is medical staff membership at the local hospital(s) required? Is call coverage required? What about weekend rounds? Will you be allotted time to complete your charts? Will you have to supervise any advanced practice professionals? Make sure you understand what and how many hours are expected from you.

Benefits. Health, dental, disability, life, 401k – all of these are often included in physician benefits packages, but employers often don’t explain these policies in advance. Request a copy of the current benefits summary. It is commonplace for employers to reserve the right to modify benefits. Consider requesting the same benefits that are provided to your employer’s other full-time physicians. Paid time off (“PTO”) should also be addressed. How many vacation days, sick days, or personal days do you get? Are you allotted time for CMEs? Does your PTO carry over from year to year? If you are not going to use very much PTO, consider requesting a payout for unused PTO.

Medical Professional Liability Insurance. Generally, your employer should pay for your insurance in at least the minimum amounts required by Kansas law. If the policy is a “claims made” policy (i.e., coverage for only those claims made during the term of the policy), you may need “tail” coverage that provides insurance coverage for claims made after your employment terminates for services furnished during the term of your employment. Consider asking your employer to pay for the tail coverage.

Expenses. Employers often cover licensing fees, medical staff membership, and CME expenses. Also consider professional memberships, trade journals, board certification expenses, etc. We often see expense limits of \$3,000 to \$5,000.

Don't Be Afraid to Ask. Many employers need you just as badly as you need them. Don't be afraid to ask for other perks. Rural employers often pay new physicians moving expenses and signing bonuses and provide loan repayment assistance and other incentives. If employers are hesitant, offer to treat such incentives as debts subject to repayment if you leave before conclusion of your first, second, or third year. Of course, the amount owed should decrease proportionately the longer you stay. Or if your employer is a private practice, ask your potential employer if the local hospital might be willing to provide these payments as recruitment assistance. Hospitals often provide financial incentives to recruit a physician to their community, even to join a private physician practice.

Miscellaneous. Does the agreement provide you with the possibility of becoming a shareholder in the business? Consider striking, or at least attempting to limit, your indemnification obligations and any arbitration clauses. Complete all blanks in the agreement before you sign it.

Attorneys Aren't That Expensive. When you're living off protein bars and cafeteria food, attorneys seem expensive. But an initial attorney review of an employment agreement is a relatively small financial commitment, given the amount of money that's at stake in the agreement. Whether you hire Foulston Siefkin or another healthcare lawyer, we think the benefits of legal counsel will be well worth the costs.

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