



BUTCHER HEALTH LAW LLC

Negotiating Your Medical Employment Agreement

You've survived school and your professional exams, and potentially multiple jobs before this one. Now it's time to ensure that you are valued and that your future career is protected. Your employee agreement is one of the most important aspects of a new job. By knowing your value, understanding your contract, negotiating smartly, and in some cases, hiring the right attorney to help, you can ensure that your agreement is fair and attainable. 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 fair contract, reasonably protects long-term interests, and fosters a good start to your new professional relationship.

Know Your Leverage

Before negotiations can begin, you need to understand your value and leverage. Know your own value by asking yourself questions like these:

- ❖ Do you have multiple job options available to you?
- ❖ Is this position 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 do they 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 point of this step is to properly gauge your bargaining position, so that you will know how hard you can safely push for particular terms or language in the written employment agreement.

Consider, if it is a large hospital system that values uniformity and they use a general form physician employment agreement for all physicians, they will likely be less amenable to proposed changes. This doesn't imply that you cannot negotiate at all, but this reality would tend to 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 based on these factors and your experience in dealing with the employer's representatives will be the best way to decide how hard to push when negotiating.

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706.352.9060 · www.butcherhealthlaw.com · trish@butcherhealthlaw.com

Review Carefully

Every provision of your employee 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 creates a tendency to gloss over language, which is a big mistake and can carry significant, long-term ramifications for you and your family.

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

- ❖ Location – are there multiple locations and, if so, where are you required to work? Can they transfer you?
- ❖ Start 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?
- ❖ Termination – what happens if you terminate your contract early?

Understand Your Compensation

Is your proposed compensation fixed or variable? Fixed compensation is often provided for new employees and is a set salary that is not dependent upon your performance. Variable compensation is generally used for more experienced practitioners and is a salary model that is based on formulas that account for the practitioner's performance. Make sure that you are familiar with median 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 your pay schedule for extra duties and on-call time.

Know Your Must-Haves

What elements are absolutely crucial for you? Know what your expectations are before going to the negotiating table. When you enter into negotiations, you're most likely going to be required to give something up as this is part of the negotiation process. Always establish about six or seven requests, with the understanding that only a few will 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.

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Don't be Afraid to Negotiate

Employers are expecting you to negotiate, so they should not be put off by any attempts in that direction. However, as stated previously, their willingness to negotiate will differ depending on several factors. Never assume a particular term or language cannot be modified. Remember, always bring several items to the table, and be prepared to throw a few out to show your willingness to compromise.

This being said, 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 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. You may make a bad impression with your new employer or the employment offer could be retracted 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 a third party who is only concerned with your interests review your contract and advise you. While attorneys can seem like an unnecessary expense, paying to have them 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.

The key is to hire an attorney who specializes in medical employment agreements and who practices in the same state. Not only will this ensure you that they have expertise in this subject, it can also save you money as well, as experienced attorneys often have a fixed price and do not charge by the hour for projects such as these. 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 amendments *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, if it is not in the contract, it is not binding on either party. Regardless of how many drafts are required, never sign your employee agreement until it is one hundred percent complete.

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

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