

## Employment Contracts: What Every Optometric Graduate Should Know

Congratulations on being offered your first position as a practicing optometrist! Now what is this long document with the tiny type? It's an employment contract.

Whether your first job offer is in a corporate or independent setting, you will be presented with an employment contract. And you may be surprised to find that there is little that can be negotiated in terms of your number one concern: your compensation.

Reality check! In the optometric marketplace, your worth is not measured in terms of how much you know but in how much that knowledge, along with your growing experience and skills, contributes to the bottom line of the practice that you join, according to Pamela J. Miller, O.D., F.A.A.O., J.D., who lectures and writes on the subject.

“When optometric graduates are entering practice, they often feel they don’t want to raise negatives,” says Dr. Miller, “but there are specific points that can be negotiated, points that make a critical difference as you begin to envision the way you wish to practice over the long term.”

### **The employment contract: What you will encounter**

Contracts vary. A corporate employer will probably spell out fixed terms of compensation, working hours, conduct and other expectations—with little room for negotiation. An independent practice likely will be more flexible in many areas, and you may be able to be creative in crafting a contract that best suits your goals and expectations.

- **Employment terms:** A contract should spell out compensation levels and payment schedules, expectations of hours worked, and include some language about professional behavior.
- **Contract time limit:** An employer wants a reasonable amount of advance notice should you choose to leave. As an employee, you want that too, should you be terminated.

- **Practice commitment:** You may be surprised by language that requires you to perform duties tied to the furtherance of the practice, such as taking CE courses or joining the local Rotary Club, as a way of becoming more involved in community and attracting more patients to the practice.

- **Opt-out clause:** An employer will want to be rid of you if there are breaches of conduct, such as unprofessional behavior, drunkenness, sexual improprieties or unwillingness to maintain CE and licensure. You surely would want to be able to opt-out, as well, and not feel pressured to remain in an inappropriate or unpleasant circumstance.

- **Non-compete clause:** Most non-compete clauses are non-enforceable or certainly can be challenged in court. However, you don't want to spend the time and effort defending yourself later, so tackle it early. The more carefully and reasonably the non-compete clause is written, the more difficult the challenge will be. Some non-compete clauses are also phrased positively, such as one that says, "If you choose to open your own practice within five miles of this location within two years of leaving, you will pay \$25,000 in compensation."

### **Determine your best arrangement: Employee or independent contractor?**

You may assume your only option (provided you don't start your own practice) is to be an employee and your only choice is corporate or independent. Wrong. You also can work out an arrangement as an "independent contractor." As such, you are not an employee and may have more flexibility in setting your own terms.

This arrangement offers advantages to an established optometrist. He or she needs to pay neither wage taxes nor worker's compensation. If you are independently contracted, say, at \$300 a day, the cost to the practice is just that. In contrast, if you are an employee with benefits, the employer cost is far higher. From your perspective, you may have more independence, more flexibility in hours, and you may be able to flee a bad situation more easily than if you were employed. If you elect this route, be sure you comply with the IRS definition of an independent contractor, to avoid tax issues and penalties. You'll have to pay your own income taxes quarterly, as well as the Social Security and Medicare tax, known jointly as your self-employment tax.

### **The contract: What is valuable vs. what is not**

Contracts must serve both parties, and there are state and federal regulations in employment that cover working conditions. But in reality, as a first-job applicant, you hold little negotiating leverage.

If you have developed a specialty (e.g. sports vision) and the practice is looking to grow in new revenue-producing areas like that specialty, you may have leverage to ask for additional compensation or incentives related to practice growth. Review your experience, education and personal skills to see what saleable skills you might have: a residency in low vision or fluency in a second language, especially if the practice is seeking to grow its patient base within that community.

Keep some track of the patients you bring in as a result of your skills and effort. If, after a year's time, you can demonstrate, in measurable terms, that your special skills have contributed to practice growth, you may be able to renegotiate your compensation as a result.

## **It doesn't hurt to ask: You may be able to negotiate...**

Compensation for CE courses. If you take courses in areas that may benefit the practice (e.g. Medicare coding and billing, vision therapy), your employer may agree to reimburse you for the cost. Put that in writing.

- **Death or disability:** Should the practice owner die or become disabled during the course of your contract, you may be able gain right of first refusal in buying the practice.
- **Special involvements:** If you are, for example, seriously involved in sports and need time off for tournaments, you should look to spell that out. If you are continuing your education and have evening classes or have special religious obligations and cannot work on holidays, you should spell that out.

## **How to review a contract**

Review a contract slowly and closely; the devil is in the details. Further, contracts are contracts; breaching a contract may result in serious consequences and financial loss, or even time in court and legal fees, so be certain you feel comfortable with the contract before you sign it.

It is vital to any practice or corporation that is going to employ you that it protects its patient records. Appropriating patient records with intent to steal those patients down the road is probable cause for dismissal or even legal action. The language surrounding this point will be specific and may appear harsh.

Set time limits. The worst thing is to lock yourself into an unreasonable contract for the long haul. A new job is an experiment — for you and for your employer. It's best to limit a contract to one year, at which point your contract is "revisited," for your benefit and your employer's. If the arrangement is not a fit for you or your employer, both can walk away cleanly. On the other hand, if the arrangement has worked well and you have helped to grow the practice (or can envision buying into the practice or franchise), you are in prime position to argue those points to your advantage.

Bear in mind, you can always say no. The first job that is offered may not be the best situation for you. If a contract appears "burdensome" at the onset, don't sign it. Ask if details can be changed. If the contract is not what you would call "fair and equitable," feel free to walk away.

## **A glimpse of your future**

Your first encounter with an employment contract is an envisioning of your future, says Dr. Miller. "You're really asking, 'What do I want to be in a year...or five years?'" she says. "Do I see myself as an owner or employee?"