The Top 10 Things to Know About Your First Dental Employment Contract

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When you first start out as a dentist, all of the things you need to address can be overwhelming—from student loans to licensing to landing your first job as a dental professional. While graduating from dental school is undoubtedly a fantastic accomplishment, you need to have your eyes on the next steps in your career to be successful. For many, that means engagement with a dental practice through an employment contract.

Your dental employment contract or associate agreement is a stepping stone to get your career headed in the right direction. However, this agreement should not be taken lightly—it will often bind you for several years, so you want to be sure you know and understand what it says. You should also be aware that you have more options than you might think to dictate what is included in your first dental employment contract.

To help you through this process, Dental & Medical Counsel has prepared this resource as a good starting point to get the most out of your first dental employment contract.

1. Your Need a Contract.

Let's start with the basics. First, you need a dental employment contract.

It is tempting to simply forego having an employment contract. Unfortunately, many employees make the mistake of assuming that the employment contract is only for the employer's benefit. However, in the dental employment context, your dental employment contract provides just as much protection for employees as it does for employers.

An employment contract provides most of the pertinent details of a dental associate's employment, including compensation, benefits, and duties. This agreement also sets out certain rights and responsibilities, as well. Some of the most common terms will be addressed throughout this resource.

Without an employment contract, your options for legal recourse if the relationship turns sour are more limited. It also serves as a means to avoid misaligned values or expectations. Finally, it forces communication about what both the employer and the employee are envisioning for the relationship. As a result, the document and the process of working together to create the agreement can both be very valuable for the relationship.

2. Your Contract is Negotiable.

When you receive an offer to be a dental associate, you may also get a "standard" employment agreement that accompanies the offer. You may make the mistake of assuming that the offer is contingent on you accepting the employment agreement "as is." But that is not the case. In fact, some of these "stock" employment agreements may include provisions that are clearly not relevant to you or your situation.

Your contract is negotiable. If you want to include additional terms or take out some clauses, you can request that the employer do that for you. There may be certain items that are not negotiable, but, in most cases, it does not hurt to ask the question. If the employer is completely unwilling to make any changes in the contract, that is a red flag that you should consider as you move forward.

Keep in mind that if a term does not end up in your employment contract, it may not be enforceable. It is very difficult (and sometimes impossible) to prove that there were additional terms of employment beyond what is written in the contract. You should be sure that every item you discussed with your employer is addressed within the contract. A good rule of thumb to remember is: "If it is not written down, it didn't happen."

Err on the side of including too much in your employment agreement, even if you think it may be overkill.

3. Take a Hard Look at the Often-Overlooked Terms and Conditions of the Contract.

Every employment situation is different. What worked for their last dental associate may not work for what you need. You should take the time to review each term and condition in your contract to determine if they are agreeable to you. Think about what additional terms you might want to include.

Below are a few items that you might want to consider addressing as part of your employment contract.

Location

In some cases, your employer will have more than one dental office location. Perhaps you only want to work out of the location closest to your home. If you want to be sure that your employer does not suddenly force you into an hour-long commute every day, you should include a term about where you will be working. You should also take note of whether your employment contract is with a specific office location alone or as part of a group of practices that has several locations.

Consider whether you would be willing to revisit this issue in the future or perhaps work out of another location on certain days per week. All of those provisions can be included in your employment agreement, and they can be written in a way that makes location terms as flexible or inflexible as you would like them to be.

Compensation

Salary is often the first thing that dental associates consider when they get an offer. They often know intuitively that this item in the contract can be negotiated. However, what the average new dentist might not consider is that compensation can extend far beyond a base salary as well.

Bonuses and other incentives can be a good way to boost your base salary. Perhaps you can get a portion of the income if you meet certain requirements. Maybe you can get a slice of the revenue when you bring in new patients. Creativity can be helpful here—do not be afraid to pitch new ideas if they will work for you and benefit the dental office.

You should also be sure you fully understand all of your pay sources. For example, if you know that you will be paid on a percentage, ask questions until you know how that percentage is derived. Is the percentage based on gross production? Gross collections?

How are write-offs handled? Do discounts affect your pay? Are there certain services that do not "count" toward your percentage (like hygiene or x-rays)? How will you know how the firm is doing? How are expenses allocated among the partners or associates?

It is worth noting that if you are paid based on collection rates, you should shoot for a rate that is over 90%--anything too far out of this range is lower than standard for dental practices in most areas.

Scheduling

You should set out how you would like to address scheduling as part of your employment agreement. You can actually set out a hard and fast schedule as part of your agreement, or you can set out how the schedule will be developed as part of your agreement.

Most dental contracts do not promise any specific scheduling. This can be a problem, especially if your pay is based on service hours or appointments. Read scheduling provisions carefully and adjust them so that you are comfortable, particularly if there is a decrease in patient traffic for any period of time.

Termination

Termination is a crucial aspect of any employment agreement. The contract should specifically set out the circumstances in which you can be terminated and the method by which the termination must occur. There should also be terms that describe how you can end the relationship as well.

Most termination provisions are written very broadly. Altering these to specific circumstances will help protect your employment. At the very least, building in a "cause" provision forces the employer to set out the rationale for the termination provision.

Along these lines, you should also review any term set out in the employment agreement. Review how the term can be renewed or extended. If the assumption is that the contract will continue, but it will be renewed annually (or the like), then the agreement should explicitly spell out that expectation.

Termination provisions or end of employment considerations should also specifically address who will keep patient records. If you want the option to take patients with you when you leave, for example, it can be helpful to address this consideration at the outset of the relationship. By the same token, strongly worded language in this area can signal to the other members of the practice that you do not intend to stay long at this location. As a result, the patient record provision can be a unique balancing act that may require some professional assistance to negotiate.

Benefits

Benefits are a part of compensation, but, in some cases, you may want to specifically set out the terms of certain benefits. Professional liability insurance is one such area. If the practice holds malpractice insurance for the firm, you may not need your own insurance. If each individual dentist holds their own policy and you are expected to make arrangements for your own coverage, consider whether you can negotiate the cost of the policy as part of your bonus structure or salary.

Keep in mind that you need to have malpractice insurance one way or another. Regardless of whether you obtain your own insurance or use the firm's policy, be sure that you know and understand the terms of the policy, including the amount and type of coverage provided.

4. Review Non-Compete and Non-Solicitation Clauses for Reasonableness.

You will usually find a non-compete and a non-solicitation clause in a dental employment contract. These are also known as restrictive covenants.

We include this term separately simply because it is often a term that leads to conflict in the future and sometimes provides the basis of litigation between the employee and employer.

Many new dentists do not have plans to leave the practice when they enter into an employment agreement. However, plans change, and life happens, and you might want to make a move at some point in the future. If you do not address non-compete or non-solicitation clauses now, you run the risk of having to move significantly out of the area to continue your dental practice elsewhere.

Whether a restrictive covenant is reasonable depends on a wide variety of factors, including:

- How many offices the practice has
- Duration of employment
- How spread out the various locations may be
- Office branding
- Population density

Most restrictive covenants will have both a mileage and time restriction. The mileage provision is often the more important term because you likely will not want to wait for the required time restriction to practice again if you leave this particular dental practice.

Unfortunately, there are no hard and fast rules about what is "reasonable" in restrictive covenants. Instead, each case is evaluated based on its unique facts. At the outset, you need to examine these provisions to determine what is reasonable for you.

Some new dentists make the mistake of ignoring a restrictive covenant because it seems unreasonable and therefore unenforceable. Do not assume that it will not be enforceable even if it does not seem reasonable—this is a good way to end up in litigation. It is also wise to check your state's laws regarding enforceability, as states such as California only enforce non-compete clauses when buying and selling a practice.

Some lending institutions will not provide loans to those who are subject to a restrictive covenant that limits their practice, even if you think the clause is unreasonable. Your only real option to address it is to go through litigation to have the provision declared invalid or void. Dealing with this issue now, instead of spending time, money, and effort to fix it later, is a much better use of your time.

5. Are You Considered an Employee or an Independent Contractor?

While we have been using the term "employment contract," the reality is that you can be considered either an employee or an independent contractor when you enter this type of agreement with a dental practice. The distinction is important for several reasons.

- You have more protections under federal and state law if you are considered an employee.
- You have different tax treatments that you need to consider.
- You have the option to obtain additional benefits from your employer (workers' compensation benefits and unemployment benefits, for example) if you are considered an employee.
- Healthcare benefits and malpractice insurance considerations are different under either structure.

The employee vs. independent contractor distinction is important, but one option is not necessarily better than the other. An independent contractor may have different goals compared to someone who wants to be treated as an employee.

Independent Contractor

An independent contractor inherently has more control over their practice. They are considered a self-employed professional who exercises independent judgment. They often have more control over their hours and patients. They control the means and methods of treatment and generally direct the work that they are doing to accomplish a specific goal. They often will have to purchase or bring in their own equipment and staff as well.

Someone who wants to be classified as an independent contractor will often seek more independence from the dental practice as a whole. Often, independent contractors provide a specialized area of service. They are brought into a practice to provide a new service offering that was not available before. Their compensation is often tied directly to net income, sometimes specific only to the patients that they serve.

There are also tax advantages to being considered an independent contractor with your own dental practice.

Dental Associate Employees

An employee does not control most aspects of their practice. The employer dictates when, how, and what the employee does when it comes to dental services. The employee has more general benefits compared to an independent contractor, and their salary is often more stable and predictable. Employees do not bring in their own equipment and generally do not contribute to the salaries or benefits provided to other employees.

Someone who wants to be classified as an employee wants stability in their employment. They might just be starting out, or they want to ensure that they can balance their working life and their home life with set hours and expectations.

Setting Clear Expectations in the Dental Associate Contract

The line between independent contractors and employees can be blurry. In some cases, an employer may want to classify a new dentist as an independent contractor because they do not have to pay as much in benefits with that designation. While this "misclassification" is not as prevalent in the dental industry compared to other lines of work, it does happen from time to time.

Your employment agreement should specifically set out what your classification is. The actual functionality of your relationship should also resemble that understanding. Ultimately, the designation can have little meeting if it is ignored in practice.

6. Watch Out for Post-Termination Promises.

Once you go through the termination process, regardless of who initiated it, you have very little additional leverage to force your prior employer to carry out post-termination promises. Instead, you may have to rely on litigation or similar tactics to carry out these provisions in your employment contract. As a result, most post-termination promises should be avoided if at all possible.

One post-termination promise that comes up quite frequently for dental associates relates to patient records. This is one area where a post-termination promise can be helpful.

Your access to patient records after termination will depend on both state and federal law. In some states, you may automatically have access to these records if these were your prior patients, depending on the purpose for which you need them.

In other situations, it can be a good idea to include a provision that permits you to access patient records after termination for specific reasons, such as defending a malpractice lawsuit or for peer review. This provision should also include a requirement that the employer makes a good faith effort to secure patient consent if it is required by law.

Most employers will be understanding and provide access to records in these more extreme circumstances. However, you should not rely on your prior employer's good faith representations alone. Having a term in the contract, even if you need to resort to litigation to enforce it, can be very helpful.

7. Review Language Regarding Dispute Resolution Methods.

There is a good chance that you and your employer will disagree about various aspects of your employment at some point in the future. Based on this reality, it is a good idea to have dispute resolution methods addressed as part of your employment agreement.

Most of these types of clauses are designed to benefit the employer. However, you can benefit from using confidential dispute processes in some cases as well. For example, if you have a wage or salary dispute, it is beneficial for both you and your employer if you do not have to go through litigation to deal with this dispute. You save time and money, and you can avoid having your name associated with litigation if you use arbitration, mediation, or another form of dispute resolution. This level of confidentiality is helpful in your future employment searches.

As you review the dispute resolution language, be sure to fully understand which rights you are giving up. Many dispute resolution clauses specifically state that you are giving up the right to a jury trial. While that right may not matter in some cases, it can be critical in other situations. Take the time to know what you are getting into before you sign.

8. Carefully Scrutinize Any Liquidated Damages Provisions.

The term "liquidated damages" means money that you (or the employer) will have to pay if you (or the employer) breach the employment agreement. This provision estimates the value of a breach, in large part because the true damages of a breach of this kind of contract would be very difficult to value.

In the average breach of contract case, the person or entity alleging the breach would have to prove the value of the damage that they sustained because of the breach. In a contract for goods, for example, the damages are relatively easy to prove—the value of the goods at issue in the contract. However, damages in the employment context are much harder to quantify.

Any liquidated damages provision in a dental associate employment agreement is likely to work against you rather than for you. These clauses should be reviewed carefully. Ideally, this type of provision would not be in your employment contract at all. However, employers are sometimes reluctant to take out these provisions as it saves significant time and money in proving what kind of damages their dental practice sustained because of your breach.

If it cannot be removed, you should review the provision to be sure that the amount of the damages is not out of line with the value of the services you are providing. Keep in mind that there may be different liquidated damages amounts based on the type of breach that has occurred.

9. Understand the Buy-In Clauses (if any) in Your Agreement.

Some employment agreements contemplate that you will become a partner or shareholder in the dental practice within a specific set time period. Those provisions will often set out the specific option to buy in and how the buy-in amount will be determined. Unless the buy-in is within a short amount of time, the buy-in amount is often not included in the agreement itself.

If you are planning to exercise the buy-in option, you should be sure that you understand your rights and obligations for the buy-in. Some questions you might want to consider include:

- Is the buy-in mandatory?
- Does the valuation method seem fair and reasonable (not arbitrary)?
- What happens if you do not want to exercise your option to buy in?
- Are there separate terms for the buy-in that you need to review before agreeing to be bound to buy-in with this agreement?

Review these provisions carefully to be sure you have a firm grasp on all of the rights and responsibilities that go along with committing to a buy-in.

10. Hire an Attorney to Review Your Employment Agreement.

Just because your potential employer gives you a contract along with your offer letter does not mean that you have to accept it "as is." You have the option to make changes and have it reviewed by an attorney of your choice.

You can—and should—have an experienced attorney review your employment agreement. He or she can work with you to develop terms you may not have considered and review the entire document for reasonableness and enforceability.

If the owner of a dental practice is asking you to sign the document without having a meaningful opportunity to review it and have an attorney look at it, then that is a serious red flag.

Contact Dental & Medical Counsel

Now that you are aware of what a carefully drafted employment agreement entails, we encourage you to negotiate for the best terms and conditions. Since the practice owner will be doing what's best for their practice, you should do what's best to protect your interests as well.

If you need help reviewing your employment agreement, contact Dental & Medical Counsel at 925-999-8200 or by filling out our contact us form to schedule a complimentary consultation with dental attorney Ali Oromchian.

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Do you have questions regarding anything we covered in this whitepaper?

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Regards,

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