“Veterinary Hospital Employment Agreements”

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WHAT IS AN EMPLOYMENT CONTRACT

An employment contract is really no different that any other contract. It simply specifies that the purpose of the contract is employment.

It is important to state from the outset that while employment contracts do give employers a certain amount of authority and control over the employee, they should not be used to abuse or misuse employees and they should never be viewed as weapons to punish a wayward employee. Most states have very strong public policy biases against employers using contracts in those ways. It should also be mentioned that where there is an unresolved dispute over a contract any ambiguities will be held against the drafter of the contract which is usually the employer.

To have a valid contract there must be three basic items; an offer, some consideration for the offer, and an acceptance of that offer. Sounds simple, but, like most other things is somewhat more complex than it appears.

First, all parties to the contract must be legally able to enter the contract. Most states specify that the parties must be persons of sound mind and of a certain age, usually 18 years. Most potential veterinary employees have sufficient legal competency to enter an employment contract. Nonetheless, this should not be overlooked. Potential employers should be aware that drugged or mentally-impaired people have impaired capacity and, if there is a dispute, a court may not hold that person to the contract. Except for the necessities of life, such as food, clothing, or for student loan contracts, un-emancipated minors cannot, generally, enter into a binding contract without parental consent.

An offer occurs when you ask someone to work for you for a price. Any words, gesture, or action can signal an offer to enter into a contract. So be careful. An offer can be accepted or rejected. If the offer is rejected, in whole or in part, there is no contract and that offer is “off the tablet.” However, the other party can return to the table with a counter-offer. A counter-offer is a new set of terms and conditions given in response to the original offer. The new terms may be entirely different from the original offer or may be just a minor change in one term. Please remember that contracts are, by their very nature negotiable. Non-negotiated (take it or leave it) contracts can, in many states, be invalidated.

Acceptance is often referred to as mutual assent, or sometimes as “a meeting of the minds.” This means that each side must be in agreement as to the essential details, rights, and obligations of
the contract. Putting the entire deal down on paper helps to avoid future misunderstandings and disputes. Meeting of the minds sometimes can be expressed by words spoken or gestures made or can be inferred from the surrounding circumstances. There is no meeting of the minds if: (1) one side is obviously joking or bragging, (2) there is no actual agreement (i.e., the hospital is offering part-time employment and the potential employee is expecting full-time employment), or (3) both sides have made a material mistake as to the terms or details of the contract (i.e., the contract runs for three years while both sides thought it only ran for one.

In order to be valid, the parties to a contract must exchange something of value. In other word, you can’t get something for nothing here. The quid pro quo in contracts is called consideration. Money is the most common form of compensation, but it can also be property, giving up a right or valid claim, or making a promise to do or, as in covenants not to compete, not to do something.

An employment contract does not have to be written to be valid. However, oral contracts can be difficult to enforce if both parties do not agree on the terms of the contract. I have found that when a dispute arises our personal memories become universally unreliable. A written employment contract allows both parties or, in the case of a dispute, a judge or jury to see just what terms actually were agreed to. An employer doesn't have to enter into a written contract with every employee he/she hires. In fact, in veterinary hospitals, written employment contracts are generally the exception, rather than the rule. In some situations, however, it makes good sense to ask an employee to sign a contract. This is true especially in professional contracts where there can be complex issues around compensation, duties, or non-compete agreements or where you, as the employer, want to control the employee's ability to leave your business.

WHAT GOES IN AN EMPLOYMENT CONTRACT

The employment contract should, when appropriate, include:

- The employers name and address
- The employees name and address
- The date when the employment begins and, if for a fixed period, ends.
- An automatic renewal statement if a new contract is not negotiated but employment continues
- An at will employment statement, if applicable
- The job title and a description of the job and its duties
- A reference to any hospital or employee manuals used and the right of the employer to change them at any time and without notice
- The compensation(s) provided and the method(s) of computing them
- The intervals at which each form of compensation will be paid
- The expected place(s), days, and hours of work including any emergency service
- A statement of the employers responsibility
- A statement of employee qualification warranty (licensure and fitness to serve)
- A statement regarding the ownership, use and return of hospital property
- A statement regarding the confidentiality of and the access to client information and medical records
• The employer provided benefits including:
  o Vacation time and how calculated
  o Paid and unpaid holidays
  o Sick and disability leave and pay
  o Pension programs and the routes and times of entitlement
  o Dues and subscriptions paid or not
  o Professional memberships paid or not
  o Medical, Dental, Eye insurance paid or not
  o Travel and clothing allowances, paid or reimbursed
  o Personal benefits such as discounted or free services provided

• A notice of termination requirement
• If not an at will employee, the grounds and procedures for discipline, appeal, and termination and any effects of termination on benefits
• Grievance procedures
• A method of dispute resolution, in separate color and bolded with a separate initial box
• Covenant not to compete, if applicable
• A statement governing protection of your trade secrets and client lists
• A work product ownership statement (for example, if the employee writes books or invents instruments or techniques for you or on your time)
• Choice of law clause
• Severability clause
• Revocation of any prior contracts clause
• Modification in writing clause
• Totality of agreement clause
• The date signed
• The parties signatures

Many of these items are specific to the contract and must be custom tailored to the particular situation. Others are simply important “boilerplate” and can be inserted by any competent attorney according to the laws of your state.

IMPLIED CONTRACTS

This is rather a side issue to employment contracts. I include it here because I have found that many unlawful termination cases are born from the myths and murky waters of at-will employment and is therefore of some importance to those of you who will be dealing with hiring and firing issues.

I am assuming that this audience is at least familiar with the concepts of at-will and for-cause employment. At will employment allows either the employee or the employer to terminate the employment without cause and without notice. The potential advantages and disadvantages for both parties is a subject for another day and I won’t discuss them here. For our purposes here, it is enough for hospital administrators to know that at-will employers may be converted to for-cause employers, with regard to specific employees, without their knowledge or consent through what are called “implied contracts or implied contract terms.”
Implied contracts/terms are those contracts/terms created by inference from the surrounding circumstances and which can sometimes prevail over the stated terms of the contract. Unintended implied contracts most often come from employee handbooks but they can they can arise from other and more diverse sources. Some examples are:

**Employment advertisements:** In some cases, the original advertisement contains language that imply for-cause, or at least not at-will employment. (e.g., “Looking for high quality, compatible, full-time employment to join our family and provide long-term care to our clients and patients: Buy-in a possibility.”)

**Written Correspondence:** This often comes in the form of letters and e-mails between the employer and the employee. Any written correspondence and particularly any formal job offer should be carefully scrutinized before sending. (e.g., “We are looking forward to having you in our practice and look forward to a long and lasting relationship with you.”)

**Length of Service:** An at-will employee can be converted to a for-cause employee by nothing more than the length of service. The longer a person is employed the more they have a legitimate expectation that the employment will continue. However, the length of service must be significant. Two weeks as an employee does not create an implied contract; ten years probably does.

**Salary Terms:** Be very careful of advertising a salary for a fixed length of time as that can provide evidence of the unstated employment period. (e.g., Salary $35,000/year.) Such a statement can imply that the term of employment is one year. Better to offer all at-will employees a per hour rate of pay with no stated term.

**Probationary Periods:** Practices that offer new employees a training or probationary period have been held to an implied contract of permanent employment at the end of the probationary period.

**Employee Performance Reviews:** When an employee is told that their performance will be reviewed on a periodic basis (e.g., every quarter or every six months) that can create a legitimate expectation by the employee that he/she will be employed for at least that period.

**Progressive Discipline Policy:** Many employers have progressive discipline policies. These policies most often state that employees will not be fired the first time they make a minor mistake. Instead, employees receive warnings, second warnings, opportunities for training and correction of deficiencies, etc., before they are fired. If these policies are written so as to apply to every employee then they can change what the employer believes is an at-will employee to a for-cause employee.

**Employee Benefit Programs:** Benefit and Retirement programs, particularly when the qualification requirements include longevity clauses, can help to create implied employment contracts because they suggest that the employee is expected to be around long enough to qualify. (e.g., “The employee qualifies for retirement benefits two years and one day after hiring.”)
If an at-will employee fired for no cause can establish that any of the above occurred the employee can point to source and treat it like a written contract. The employee, or his attorney, can look at the specific language of the source document to see if the employer has failed to follow it.

**CONCLUSION**

Employment agreements can go a very long way in clarifying and memorializing the terms of the agreement and subsequently protecting the employer from resolvable disputes. But, they, and the related documents, can be complex and filled with hazards to the employer. Please provide current written contracts to all appropriate employees and pretty please (with whipped cream and cherries) prevail upon your employers spend the money and have each contract reviewed by a local employment law attorney prior to signing.