



EMPLOYMENT AGREEMENT & GUIDE

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1. Overview

Having a good start to an employment relationship and making a positive first impression on a new hire is essential to establishing a productive, successful, and professional workplace. An important part of this process is creating an employment agreement. There are many advantages to having a well-crafted employment agreement, the most obvious of which is the legal protection it affords a company or business. By providing written employment terms—including details of compensation, position, and at-will status — the company is creating a legal document that, when signed, can prove valuable if disputes occur.

A written agreement lists employment terms, limiting later confusion and disagreement about those provisions. An express statement of terms not only eliminates ambiguities, but also establishes a working relationship built on mutual understanding.

This document contains employment agreement essentials, including a standard form that can easily be revised and used again for the hiring of future employees. If you follow the guidelines provided, you can use your employment agreement effectively to protect your business and minimize confusion, misunderstanding, and error. In every way, this promotes a successful work environment and satisfied employees.

2. Dos & Don'ts Checklist

- ☐ A good employment agreement is one that captures the intentions of the parties accurately. It's a good idea to clarify the potential employee's job duties and responsibilities, and his or her compensation package, before writing them down.
- ☐ Historically, only executives and professionals received employment agreements. It was fairly unusual for lower managers or workers to negotiate and sign such contracts. However, employment agreements have more recently been used for all new hires at a company. Entering into contracts with all of your employees may offer long-term protection to both parties.
- ☐ Do not promise raises, bonuses, or other business perks if those are not guaranteed. Do not include anything that is not an absolute. Many lawsuits are predicated on misunderstandings related to expected bonuses. If you have a simple bonus calculation applicable to this employee, include that information in the agreement.
- ☐ If the company will reimburse or provide funds for moving expenses, include that information here and make your language precise.
- ☐ Regardless of the nature of your arrangement, the employment agreement should be signed before the employee starts work.
- ☐ If you revise the enclosed agreement, do not alter the at-will language or insert terms that would conflict with that language (for example, references to long-term employment). Nothing in this form or any other writing should contradict your arrangement for at-will employment. Many wrongful termination cases have been launched on the employee's mistaken assumption that his or her employment was for a guaranteed length of time or that they could not be terminated without cause.

- ☐ A non-disclosure clause in which the employee agrees to keep the company's private information private that is effective from the beginning of the employment can protect a company more thoroughly than one entered at the end of the relationship. A departing employee's ability to use confidential information will continue to be effective, and you will not need to negotiate with a potentially hostile party to ensure this limitation.
- ☐ If you do include a clause that puts limits on a departing employee's ability to compete with the company, make sure the scope and reach of this clause is reasonable. Although some states' courts enforce these clauses as a matter of course, many others (including California) view them unfavorably and will not enforce them unless the restrictions are very narrow. There must be a correlation between the time period for the limitation and the need for the clause. In other words, this clause can only be for as long it would take for an employer to overcome any potential competitive disadvantage.
- ☐ If you want a specific state's laws to resolve any employment disputes, specify that state in the employment agreement. Courts will generally honor the parties' choice of law if the state selected has a connection to the dispute.
- ☐ The provisions of an employment agreement will bind your employee strictly only if you follow them to the letter. In other words, you can enforce its terms against your employee if you do not violate your own obligations under the agreement. For example, your employee will not be bound by the terms of a non-competition clause if you try to end the agreement without giving the required notice.
- ☐ Nothing lasts forever, and this is certainly true of employment. At the end of an employment relationship, your company should conduct an exit interview, and you should consider putting this as a requirement in his or her employment agreement. At this meeting, the employee should be reminded of his or her continuing obligations to the company, including maintaining the confidentiality of information beyond the termination of the employment period. You can also use this time to resolve misunderstandings and smooth ruffled feathers, perhaps limiting later termination-related lawsuits.
- ☐ Allow the employee to spend time reviewing the agreement. This will reduce the likelihood, or at least the efficacy, of a claim that he or she did not understand any terms or how those might affect the agreement as a whole.
- ☐ Both parties should review the completed document carefully to ensure that **all relevant points** have been included. It is better to be over-inclusive than under-inclusive. Do not assume that certain expectations or terms are agreed to if they are not stated expressly in the document.
- ☐ Sign two copies of the agreement, one each for you and the other party.
- ☐ If your agreement is complicated, do not use the enclosed form. Contact an attorney to help you draft a document that will meet your specific needs.

3. Employment Agreement Instructions

The following provision-by-provision instructions will help you understand the terms of your employment agreement.

The numbers and letters below (e.g., Section 1, Section 2(a), etc.) correspond to the provisions in the agreement. Please review the entire document before starting your step-by-step process.

- **Introduction of Parties.** Identifies the document as an employment agreement. Write in the date on which the document is effective (usually the date that it is signed). Identify the Parties and, if applicable, what type of entity the Employer is (e.g., corporation, limited liability company, etc.). Note that each Party is given a name (e.g., "Employer") that will be used throughout the Agreement. As you probably guessed, the Employer is the party that will be hiring the Employee. When the Agreement refers to one or the other of the individuals (i.e., no one specifically), the term "Parties" is used.

Throughout this Agreement, the Employee is described without designating a gender (i.e., [s]he, [his] [her], etc.). When you are customizing this document, edit all of these references to match the gender of the Employee you will be hiring.

- **Recitals.** The "whereas" clauses, referred to as recitals, define the world of the agreement and offer key background information about the Parties. In this Agreement, this section includes a simple statement of the Parties' intent to enter an employment relationship.

Describe the Employer's business in detail. Note that this description could have a long-term impact on both Parties. There are other provisions in this Agreement that restrict the Employee's ability to compete with the Employer in its industry after his or her employment ends. If the Employer's business is defined too broadly, the Employee might not be able to find any employment at all! Make sure both Parties agree on the business definition that is provided.

- **Section 1: Employment.** Confirms the Parties' agreement to enter an employment relationship. Note that the employment will be "at will." This means that it can be ended by either Party at any time, for no specific reason.
- **Section 2: Term.** Enter the date on which the Agreement starts. Note that there is no definite "term" for the relationship. Unless either Party ends the Agreement, it will continue.
- **Section 3: Compensation.** Sets the Employee's salary and other benefits to be received in exchange for his or her work.
 - (a) Base Salary. Enter the Employee's annual Salary and an explanation of how this will be paid (e.g., weekly, bi-monthly, monthly, etc.).
 - (b) Non-Salary Benefits. This subsection allows you to list any other compensation that the Employee may receive. For example, if the Employee will receive pension benefits or relocation expenses as a part of his or her compensation, you can detail those here.
 - (c) Vacation. Enter the number of paid vacation days that the Employee is entitled to in a given year.

- (d) (Optional) Signing Bonus. An optional provision that requires the Employer to pay the Employee a certain amount for agreeing to come work at the Employer's offices. This may be included in an executive agreement, as an additional incentive for accepting a job. If you include this subsection, enter the amount of the signing bonus that will be paid and when it will be paid. Note that if the Employee stops working for the Employer within a certain amount of time, he or she will be required to pay back this signing bonus. Enter this amount of time in the space provided.
 - (e) (Optional) Performance Bonus. An optional provision that rewards the Employee for hitting certain specified performance goals. According to the terms here, the Employee's bonus compensation will be calculated according to the Employer's bonus plan. Note that most employment agreements do not include specific information about an employee's bonus: they refer to the general plan and leave the details for that document. However, if you want to add additional provisions about the Employee's performance bonus, feel free to do so here.
 - (f) (Optional) Stock Options. An optional provision allowing the Employee to participate in any stock option plan that the Employer has after a certain number of years. If you want to include this clause, enter the length of time it will take for the Employee to qualify for this plan.
 - (g) Other Benefits. A catch-all provision simply stating that the Employee may receive other benefits of the sort that other employees of his or her position receive.
 - (h) Withholding. States that the amounts that will be paid to the Employee may have deductions taken from them to satisfy tax requirements.
- **Section 4: Responsibilities and Duties.** Describe what the Employee is expected to do as part of his or her job. This should be as specific as possible, for both Parties' benefit. For the Employee, it is important to know what is expected of him or her. For the Employer, defining the Employee's work duties will make clear, from an intellectual property perspective, what the Employer can claim to own under the work-product doctrine (which states that things created in the course of the Employee's employment are owned by the Employer).

Write in the location where the Employee will provide his or her Services, which may simply be the Employer's main place of business.

- **Section 5: Other Employment.** During the Employment Period, the Employee is not allowed to work for other companies. However, he or she can invest in other companies if they don't require the Employee's help to operate.
- **Section 6: (Optional) Working Amenities.** An optional provision indicating that the Employee will be given certain extras to create a more comfortable work environment (e.g., a private office, personal computer, etc.). If you remove this section, correct the section numbers and the references in the document.
- **Section 7: Expenses.** If the Employee pays his or her own money to cover any reasonable expenses relating to official Employer business (e.g., travel expenses, client dinners, etc.), the Employer promises to reimburse that money. The Employer agrees to provide proof of payment of these expenses to the Employer's satisfaction.

- **Section 8: Confidentiality.** During the Employment Period, the Employee is not allowed to give any confidential information to outside parties without the Employer's consent. "Confidential information" includes any information about the Employer not generally available to the public.
- **Section 9: Non-Solicitation.** This provision is meant to prevent the Employee from luring away key employees or customers from the Employer if it stops working for the Employer. The Employee may not ask or lure any such individuals to accept positions as employees or clients of the Employee. This provision lasts only for a certain time after the Employment Period ends. Enter the amount of time this restriction will last. Make sure this is a reasonable time period: courts may overturn a provision that is for too long or for too large an area.
- **Section 10: (Optional) Non-Competition.** An optional provision providing that the Employee will not enter any business that competes with the Employer for a certain period of time after the end of the Agreement. This clause is subject to very specific state guidelines. If you live in California or Montana, you should consider deleting this clause, or conducting additional research to ensure that the language is drafted very narrowly and according to state law. In addition, non-competition clauses may be unenforceable for certain professions (e.g., in Delaware and Massachusetts, non-competition clauses for doctors are generally not allowed).

Enter the amount of time for which this non-competition restriction runs. If you choose not to include this section, correct the section numbers and the references in the document.

- **Section 11: (Optional) Fidelity Bond.** A fidelity bond protects employers from losses they might experience because of their employees' bad behavior (e.g., theft of company property). If you include this provision, the Employee will apply for the bond and the Employer will pay for it. If you remove this section, correct the section numbers and the references in the document.
- **Section 12: Termination.** Details the circumstances under which the Agreement may be terminated. Because this Agreement is for "at will" employment, either Party can end the Agreement simply by giving the other Party a certain amount of notice. Enter the number of days' notice that must be given. If the Employer asks, the Employee can continue to work during this notice period and will continue to receive salary payments until his or her last day of work. There is an optional clause that the Employer can use to offer the Employee a severance package. If the Employee owes any money to the Employer, the Employer is given permission to deduct this amount from the pay offered. If you include this sentence, enter the full amount of the severance pay (not including any deductions that might be made).
- **Section 13: Return of Property.** This is an extremely important provision, and although it may seem obvious to you that company property should be returned after an employee's termination, it may not be as obvious to your Employee. It is thus essential to communicate your return policy in the Agreement (and reiterate it in your employee handbook, exit materials, and severance agreements), stating specifically that employees must return all company property before leaving your employ.
- **Section 14: (Optional) Disability.** An optional provision providing that if the Employee can't perform his or her duties for a certain period of time because of an injury or illness, the Employer can reduce his or her salary by a specific percentage. Enter this amount of time (in weeks or months), and the percentage by which the Salary would be decreased. Note that the Employee will be entitled to full Salary once he or she goes back to work full-time. The Employer can end the Agreement entirely if the Employee's absence is for longer than a certain period. Enter this maximum in the space provided. If you remove this section, correct the section numbers and the references in the document.

- **Section 15: (Optional) Death During Employment.** An optional provision stating that if the Employee dies during the Employment Period, the Employer will pay his or her Salary to the Employee's relatives until the end of the month in which the death occurred. The Employer also promises to pay a certain additional amount, which the Parties can agree on and enter in the space provided. If you remove this section, correct the section numbers and the references in the document.
- **Section 16: Further Assurances.** The Parties' agreement to cooperate in doing anything else that needs to be done to complete the Agreement. This clause is included so that not every specific step that the Parties will take during the Employee's employment needs to be spelled out: the Parties simply agree to work together to do what needs to get done.
- **Section 17: (Optional) Arbitration.** A commonly used optional provision that requires the Parties to resolve any disputes in arbitration (rather than in the courts). Arbitration can be quicker and cheaper than litigation for both Parties. However, there may be local restrictions (or limitations in your industry) about using these clauses, so it's a good idea to review laws governing arbitration in your area and in your field. If you remove this section, correct the section numbers and the references in the document.
- **Section 18: Notice.** Lists the addresses to which all official or legal correspondence should be delivered. Write in a mailing address for both the Employer and the Employee.
- **Section 19: Successors and Assigns.** In the life of a company, there may be mergers, acquisitions, or sales of business divisions. On such occasions, the company may assign its agreement to a surviving entity or affiliate without obtaining the Employee's consent. Simply put, if the Employer is purchased, the new company will not need to renegotiate this Agreement: it will continue to be effective as is.
- **Section 20: No Implied Waiver.** Explains that even if one Party allows the other Party to ignore or break an obligation under the Agreement, it does not mean that Party waives any future rights to require the other Party to fulfill those (or any other) obligations. For example, say the Agreement requires the Employee to work 45 hours a week, but the Employer has only required the Employee to work 40 hours a week. Later on, the Employer could tell the Employee to work 45 hours a week, as required in the Agreement. If the Employee claims that this right was "waived" because the Employer didn't enforce it, the Employer can point to this section: its failure to enforce the provision at one point doesn't mean it can't enforce it later.
- **Section 21: Governing Law.** Employees may work in one state and their employers in another. A governing law provision allows the Employer to choose the state laws that will be used to interpret the Agreement. Note that this is not a venue provision. The included language will not impact where a potential claim can be brought. Write the applicable state in the blank provided.
- **Section 22: Counterparts/Electronic Signatures.** The title of this provision sounds complicated, but it is simple to explain: it says that even if the Parties sign the Agreement in different locations, or use electronic devices to transmit signatures (e.g., fax machines or computers), all of the separate pieces will be considered part of the same Agreement. In a modern world where signing parties are often not in the same city - much less the same room - this provision ensures that business can be transacted efficiently, without sacrificing the validity of the agreement as a whole.

- **Section 23: Severability.** Protects the terms of the Agreement as a whole, even if one part is later invalidated. For example, if a state law is passed prohibiting arbitration clauses, it will not undo the entire Agreement. Instead, only the section dealing with arbitration would be invalidated, leaving the remainder of the Agreement enforceable.

The second part of this section is optional, and discusses the non-competition and non-solicitation clauses specifically. Because these clauses are delicate, and run the risk of being termed too broad or overreaching, this subsection allows a court to limit the reach of these clauses rather than delete them altogether. If you do not include the non-competition clause in Section 10, delete any references to Section 10 or non-competition. If you do not include this subsection, correct the formatting in the document.

- **Section 24: Entire Agreement.** The Parties' agreement that the document they're signing is "the agreement" about the issues involved. Unfortunately, the inclusion of this provision will not prevent a Party from arguing that other enforceable promises exist, but it will provide you some protection from these claims.
- **Section 25: Headings.** Notes that the headings at the beginning of each section are meant to organize the document. Any interpretation of the Agreement should not be based on the headings.

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EMPLOYMENT AGREEMENT

This Employment Agreement (the "Agreement") dated as of _____ (the "Effective Date") is made by and between _____, (the "Employer") and _____, (the "Employee"). The Employer and the Employee may be referred to individually as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, the Employer is engaged in the business of

_____; and

WHEREAS, the Employer desires to employ the Employee, and the Employee wishes to enter into such employment, on the terms and conditions set forth in this Agreement; and

WHEREAS, each Party is duly authorized and capable of entering into this Agreement.

NOW, THEREFORE, in consideration of the mutual acts, covenants, agreements, representations, and warranties herein contained, and the good and valuable consideration therefor, the parties hereby acknowledge that