

IMPORTANCE OF VETERINARY ASSOCIATE CONTRACTS

Now that the year is well underway, practice owners are beginning to revisit their “Administrative To Do” lists. About as pleasant as getting year-end tax paperwork in order is the prospect of conducting annual performance reviews of associates and reviewing the terms of their employment agreements. However, this process is necessary to ensure the employees who are entrusted with growing the goodwill and revenue of the practice understand their responsibilities. Likewise, these employees need to be assured they have the support of the practice and will be properly rewarded for their efforts.

I. PERFORMANCE REVIEW. Performance reviews are useful employee management tools to help avoid any mismatch of expectations between employees and their supervisors. Remember, a happy and stable employment relationship is fostered in an environment that has few surprises. Yet, for most supervisors, conducting formal employee reviews is worse than asking them to walk on hot coals across India. This is because by their nature, reviews “feel” confrontational, and few employers are sufficiently prepared to provide meaningful and constructive comments.

Associates are typically evaluated on many of the following criteria: a.) medical and surgical competence, b.) income production generated by efforts of the associate, c.) fulfillment of hospital policies, d.) acceptance by clients, e.) ability to work harmoniously with fellow veterinarians and other staff members, f.) personal and professional growth, g) involvement and participation in issues and events pertaining to the hospital success, and h) leadership, assisting with in-house management; teaching; and training of support staff.

II. CONTRACT TERMS REVISITED. Below is a list of the business terms that should be addressed in every employment arrangement and, preferably, in a written employment agreement. If it is not in writing, it will be difficult to enforce the obligation. Either way, the employer and associate will want to revisit these important terms of their employment relationship.

1. How Long is the Agreement? Many agreements have fixed terms, which are typically a year in duration. They also have language that requires the parties to meet and discuss the terms of renewal 1-2 months prior to the agreement’s expiration date. Sometimes, there is a provision that provides for automatic renewal of the agreement, unless one of the parties gives notice to the other that s/he does not wish to renew the agreement. Since what typically happens is that everyone is very busy and often forgets to meet to discuss the renewal terms within the time frame provided in the agreement, it is a good idea to have an automatic renewal provision.

2. Work Schedule. How many scheduled hours per week did the employee work during the preceding year? Was it consistent with what was stipulated in the contract? Will the schedule change for the next year? Will there be more or less evening or emergency coverage? Do the employer and employee both agree the work schedule for the previous year was fair for

the compensation received?

3. Duties. What were the associate's responsibilities? How was the associate's time allocated between appointments, surgery, management, and client continuing education functions? Will the associate's distribution of time and effort be the same for the next year? Were the duties and work schedule commensurate with the compensation and benefits?

4. Compensation. Was the compensation a fixed salary, commissions based on the revenue generated by the employee and collected by the practice, or a hybrid system under which the employee earned the higher of a base salary or a percentage of generated (and collected) revenue (a.k.a. percentage based compensation)? Did the associate meet his/her production targets? How were production bonuses calculated? Does the calculation need to be revisited? For example, many practices are paying their associates a higher percentage for professional services and less for prescription drugs and over the counter items. Does the associate deserve an additional bonus for having been a stellar employee?

There are numerous publications that publish salary and benefit ranges for veterinarians. National starting salary information is published at least annually in the *Journal of the AVMA. (Employment, starting salaries, and educational indebtedness of year-2009 graduates of US veterinary medical colleges, JAVMA 235(5):523-526, 2009; Employment of male and female graduates of US veterinary medical colleges, 2009, JAVMA 235(5):830-832, 2009.)* See also the latest biennial edition of the American Animal Hospital Association's *Compensation and Benefits-An In-Depth Look* and the AVMA's *Economic Report on Veterinarians and Veterinary Practice* (Wise, J., Center for Information Management, AVMA, Schaumburg, IL (Tel: 800- 252 AAHA). Two periodicals, *Veterinary Economics* and *Veterinary Hospital Management Association Newsletter*, also regularly publish helpful articles.

5. Employee Benefits. Practices usually offer at least some of the employee benefits described below to their associates. The cost of many benefits (such as health, professional, and disability insurance, qualified retirement plans) are tax deductible business expenses to the employer and are not included in the employee's income, resulting in a savings to the employee of 25 to 40%. Not taking advantage of this juicy gift from Uncle Sam is wasteful. On the other hand, employees must realize that the practice probably can't afford all the benefits they desire. And this "affordability" should be re-evaluated on an annual basis. One leading veterinary management consultant has calculated that small animal veterinary employers cannot afford to allocate more than 23 to 27% of the collected income generated by an associate veterinarian to pay his or her salary and benefits (due to lower overhead, the range is 28 to 32% for large animal practices). (James F. Wilson et al., Contracts, Benefits, and Practice Management For the Veterinary Profession (Priority Press Ltd., Yardley, PA: 2000) Available through AAHA publications.)

- Health Insurance. Did the employer offer health insurance in the preceding year? If not, is this a benefit the employer would like to offer in the future, especially if this is something the associate wants and needs? How much would the employer pay for the monthly premium? 100%? 50%?
- Disability Insurance. Employees at age 25 have a 58% chance of becoming disabled for more than three months (with an average disability duration of three years), so employees

need disability insurance to protect their greatest asset: the ability to work. Many employers do not provide this benefit, but it does not mean that an employer wouldn't consider it for a highly valued associate employee.

- Professional Liability Insurance and License Defense. Did the employer pay the premiums on the employees' professional liability insurance? License defense? If not, will they in the next year?
- Retirement Plans. Is there an established retirement plan for the employees? When does the associate become eligible to participate in the plan? Is there a vesting schedule for the employer's contributions to the plan? What forms will the employee need to complete to authorize contributions from employee's paycheck?
- Vacation. How much vacation did the employee accrue and take during the first year of employment? Will there be any carry forward into the next year? Will there be payout of accrued and unused vacation? Will the employee be eligible for more time off in the second, third, year of employment?
- Sick Leave and Disability. Did the employer offer paid sick leave? Disability leave? Will the provisions for leave change in the next year?
- Continuing Education. How many CE leave days were granted in the previous year? Will the amount of money available for attending meetings change? For new associates that were not able to attend a national meeting in their first year, will s/he be able to attend a national meeting during their second year?
- Association Dues. Were national, state and/or local veterinary association dues reimbursed? A portion? 100%? Will it change in the next year?
- Veterinary License Fees and DEA Registration. Were these fees paid by the employer? A portion? 100%? Will it change in the next year?
- Relocation (moving) expenses. Most corporate and government employers provide some form of moving expense. Sometimes a "signing bonus" or short term loan can cover all or part of these costs.
- Vehicle allowance or mileage payments. For ambulatory practices, did the employee use his/her vehicle? Was s/he adequately compensated for the wear and tear, insurance, general maintenance, registration and inspection fees, fuel, repairs, depreciation, and lost opportunity costs? Should there be discussion of having the employer provide a practice vehicle?

7. Non-Competition. Did the previous contract provide for a restrictive covenant? Many employers require their employees to sign non-competition clauses (also called restrictive covenants) forbidding terminated employees from competing with the employer. Such clauses must be limited in time (e.g., three years after termination) and geographic area (e.g., 15 air-

miles from the practice) to be enforceable. The precise limits on the scope of such clauses vary from state to state. From the employer's perspective, this is the most important reason to have a contract. Without a non-compete, employers cannot protect the goodwill they have worked so hard to build.

8. Termination. Will the new contract have a specific term (e.g., "this agreement will expire after one year") or is it employment "at-will", in which case, either party can terminate the relationship at any time, for any reason? Contracts with no term are deemed to be "at-will" in most states. If there is a term, then an employee leaving or an employer firing before the term would constitute a breach unless the contract provides otherwise. Most contracts which provide for termination before the expiration of the term require that the terminating party give advance notice (e.g., 30 days) to the other party. Such contracts usually also contain a list of situations (e.g., suspension of the associate veterinarian's license) permitting the employer to fire the employee at any time without notice (a.k.a. termination "for cause").

If the employer and employee agree that it is best to not continue their employment relationship, every effort should be made by both parties to leave their relationship on good terms. The veterinary industry is quite small, and reputations can easily suffer through casual conversation among colleagues.

9. Option to Buy-In. Did the previous contract, or will a revised contract, provide for the associate to buy-in? This is typically seen in contracts with experienced associates who have expressed their willingness and desire. Experienced associates that have their own clientele may not wish to enter into an employment agreement with a non-compete, without also being provided with an opportunity to buy an interest in the practice after a 1-3 year "try-out" period. These often are complex provisions to negotiate depending on the amount of security the associate wants "up-front", and should not be undertaken without consultation with an attorney that has experience with medical practice transactions. Too often, associates lock themselves into a non-compete and agree to an "option" provision that turns out to be a smoke screen.

III. LAWYER REVIEW. Negotiating and drafting the first employment contract can be long, painful and complicated. However, if the first contract properly addressed all the issues, revising and/or amending the agreement to provide for the new terms moving forward should be fairly straight forward. It still makes sense to seek professional help in this endeavor as changes in one section of an agreement often have to be reconciled with other provisions to ensure the language is clear, concise and consistent.

Veterinary Business Advisors, Inc., assists veterinarians nationwide with drafting and negotiating veterinary employment contracts and can be reached at 908-782-4426 or through their website at www.veterinarybusinessadvisors.com.