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## **VETERINARY EMPLOYMENT CONTRACT LEGAL ISSUES** ©

High turnover among veterinary associates is caused principally by the failure of practice owners and employees to properly articulate their respective expectations and negotiate and document the employment relationship. Time and effort invested up front will help avoid mismatched expectations, misunderstandings and separation down the road.

**Can the practice even afford another full-time veterinarian?** Management consultants estimate that a small animal practice vet needs to produce 3,000-4,000 transactions annually and collect a minimum of \$180,000-\$250,000 gross income (excluding OTC product sales) to be worth his salary.

**I. WHAT IS AN EMPLOYMENT CONTRACT?** A contract is a set of bargained for promises between two or more people, where one party promises to do X in exchange for another party's promise to do Y. Courts require that an enforceable promise meet certain conditions. For example, the parties must be of age (no minors), of sound mind, and not under duress; there must be no fraud or mutual mistake over an important aspect of the transaction, and the deal must not be so one-sided as to be "unconscionable."

**Consideration.** To distinguish binding promises from charity or gifts (you can't sue Santa Claus because he didn't give you enough presents last year), the law requires that the party to whom the promise is made give "consideration" for the promise in the form of a benefit to the promisor and/or detriment to the promisee. Thus, Dr. Newgrad promises to work 50 hours per week in consideration for an annual salary of \$48,000 (i.e., a benefit to Newgrad and detriment to Oldguy). Oldguy promises to pay such salary to Newgrad in consideration for Newgrad's labor (benefit to Oldguy and detriment to Newgrad). Consideration exists for each promise which is therefore enforceable.

**Avoid Oral Contracts.** Oral contracts generally are binding only if their performance lasts less than a year, because the law assumes that the parties' recollections of what was agreed to become unreliable over time, increasing the tendency to remember events in a self-serving way. Few disagreements are less productive than the "you promised X," "I don't remember X but you promised Y" litany. Prevent such wasteful bickering by always insisting on a written contract, regardless of its term.

**II. CONTRACT FORMATION.** Legal theory provides that a contract is formed once an offer is accepted. Real life usually is a lot messier.

**Offer** An offer can be oral or written (e.g., employer advertisement in a professional

journal, on a bulletin board or mailed to the applicant). Typically, the prospective employee will ask for clarification and wish to change the terms of the original offer by making a counter-offer. The employer counters such counter-offer with his own counter-counter-offer. This confusing and frustrating process continues until either the parties reach an agreement or, realizing they can't make a deal, go their separate ways.

**Acceptance** Legally, the contract is formed as soon as the offer is accepted. This can be a trap for an impulsive party who accepts an offer, but who later (like Columbo) asks for "just one more thing." After acceptance, it's too late and the other party can sue for damages if the impulsive party doesn't perform his or her obligations under the originally accepted offer.

Ideally, an accepting party will clearly indicate his acceptance to the offering party, at best by signing an employment agreement or acknowledging acceptance in writing on the offer. More difficult to prove, but still unambiguous is an oral "I accept" or words to that effect.

**Avoid unclear contract formation situations.** Courts have created the so-called "action in reliance" (promissory estoppel) doctrine to find enforceable contracts even when one of the parties thought no contract existed. Courts have found valid contracts in cases where an:

- employer knew or should have known that the employee had acted "in reliance upon the offer" such as incurring expenses to move to the job location, searching for lodging thereat, and informing other employers they no longer are job applicants; and
- employee made the last offer or counter-offer, and such employee knew or should have known that in reliance thereon, the employer ceased advertising for the position, informed candidates that the job was filled, or bought new equipment or hired additional support staff in anticipation of the employees arrival.

Accordingly, a party considering an offer should not talk or act in a way it knows or should know will lead the other party to believe that such offer was accepted and should make sure that the other party is not taking action "in reliance" on anything it did or said.

**III. CONTRACT TERMS.** Assuming that the offer, counter-offer, counter-counter offer, etc. ballet results in the bliss of acceptance, the employment contract terms contain the nuts and bolts of the "meeting of the minds" of the parties. Following is a list of the main questions addressed in a proper employment agreement:

**1. How Long?** Is there a fixed term (period) of employment (six months, one year, two years, or is it "at-will" (i.e., the contract continues until a party decides to terminate it)? Is the term automatically renewed on the expiration date?

**2. Work Schedule.** How many scheduled hours per week must the employee work, and beyond the schedule, how many additional hours will employees actually spend phoning clients, performing diagnostics, interpreting laboratory work, overseeing patient care, etc. What is the schedule for any required emergency work? Is it equitable?

**3. Duties.** What are the associate's responsibilities? May employees decline (without penalty) to perform procedures they deem ethically wrong? How much emergency duty

is required?

**4. Compensation.** Is compensation a fixed salary or commissions based on the revenue generated by the employee and collected by the practice, or is it a hybrid system under which the employee earns the higher of a base salary or a percentage of generated (and collected) revenue (a.k.a. percentage based compensation)? How are production bonuses calculated? Is there a performance bonus and if so what are the evaluation criteria? what is it based? Is emergency work paid extra? How much?

- National starting salary information is published at least annually in the *Journal of the AVMA*.<sup>i</sup> 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 Practices*.<sup>ii</sup> Two periodicals, *Veterinary Economics* and *Veterinary Hospital Management Association Newsletter*, also regularly publish helpful articles.
- **Pay attention to deductions.** What will be deducted from employee compensation? Some employers deduct not only the employee's portion of payroll taxes but also the employer's share.

**5. Employee Benefits.** Practices usually offer at least some of the employee benefits described below to their employees. 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. 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).<sup>iii</sup>

- Health Insurance. Does the employer offer health insurance? If not, what does the employer do when *he* gets sick? If so, what kind of medical plan is it (e.g., fee for service, HMO, PPO)? What about pre-existing conditions, vesting, eligibility, deductibles and co-payments?
- 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. If the employer does not offer disability insurance, employees are well advised to get it on their own (after asking, of course how the employer, protects himself or herself against disability).
- Professional Liability Insurance. Do employers pay the premiums on the employees' professional liability insurance?
- Retirement Plans. Has the employer established a retirement plan for the employees? (Profit sharing plans are the most common type of retirement plan offered by veterinary practices.) When do employees become "vested" or

“eligible?” If the employer does not offer a retirement plan, employees will need to save on their own (and that means more than just the annual IRA contribution).

- Vacation. One week? Two weeks? More? How many consecutive days may be taken? How much advance notice must be given? May unused vacation days be carried forward to next year? How are vacation days paid for percentage compensated employees?
- Sick Leave and Disability. Does the employer offer paid sick leave? Disability leave? After how long can disabled employees be terminated? May unused sick days be carried forward?
- Continuing Education. How many CE leave days are granted and are they paid? To what extent do employers reimburse CE expenses?
- Association Dues. Are national, state and/or local veterinary association dues reimbursed?
- Veterinary License Fees and DEA Registration. Are these fees paid by the employer? Should the employee register with the DEA so she is permitted to prescribe and order controlled substances (rather than just administer them under the supervision of a DEA licensed veterinarian)?
- 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. Employees using their personal vehicles for practice business should be reimbursed for a pro-rata portion of their insurance, general maintenance, registration and inspection fees, fuel, repairs, depreciation, and lost opportunity costs.

**6. Performance Evaluation.** Will the employer provide written and/or oral performance evaluations? How often? Will these be used to modify compensation?

**7. Non-Competition.** 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.** Does the 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").

Employees should make every effort to leave their employer on good terms even if they are not requesting a reference. The veterinary industry is quite small, and an employee's reputation can easily suffer through casual conversation among colleagues.

**IV. LAWYER REVIEW.** Negotiating and drafting an employment contract can be long, painful and complicated. It therefore makes as much sense to seek professional help in this endeavor as it does to take a pet to a qualified veterinarian when it is sick. Lawyers are expensive, of course, just as much as veterinarians...

Dr. Lacroix assists veterinarians nationwide with drafting and negotiating veterinary employment contracts and can be reached at her office at 908-534-2065 or through her website at [www.pvmc.net](http://www.pvmc.net).

**V. ADDITIONAL INFORMATION.** This is just a thumb nail sketch.

- For an exhaustive study, consult, *Contracts, Benefits, and Practice Management for the Veterinary Profession*, written by James F. Wilson, DVM, JD; Jeffery D. Nemoy, DVM, JD and Alan J. Fishman, CLU, CFP.
- For what you need to know as a new veterinarian associate, look for *The Veterinary Associate Survival Guide*, soon to be published by AAHA.

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<sup>i</sup> *Employment, starting salaries, and educational indebtedness of year-2007 graduates of US veterinary medical colleges*, JAVMA231(12):1813-1816, 2007; *Employment of male and female graduates of US veterinary medical colleges, 2006*, JAVMA229(8):1256-1258, 2006.

<sup>ii</sup> Wise, J., Center for Information Management, AVMA, Schaumburg, IL (Tel: 800- 252 AAHA).

<sup>iii</sup> James F. Wilson et al., *Contracts, Benefits, and Practice Management For the Veterinary Profession* (Priority Press Ltd., Yardley, PA: 2000) Available through AAHA publications.