

VSPA FALL 2022

ASSOCIATE CONTRACTS AND NON-COMPETES

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1

1

EMPLOYMENT CONTRACTS

- **All Associate Employment Agreements should be in writing**
 - **Avoid misunderstandings on important terms**
 - **Avoids false claims by disgruntled employee or owner**



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HANDLING CONFLICT DURING CONTRACT RENEGOTIATIONS

- **Goal: Existing associate's relationship must be maintained**



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HANDLING CONFLICT DURING RENEGOTIATIONS

- **Negotiate at a Neutral Site**
- **Don't rush the Employee**



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HIRING ASSOCIATES

- **Signing Bonuses**
 - **What is a reasonable amount?**
 - **Must understand what your competition are offering – locally and nationally!!**
 - **How do you structure Signing Bonuses in contract?**



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HIRING ASSOCIATES

- **Moving Expenses**
 - **What is a reasonable amount?**
 - **How do you structure Moving Expenses in contract?**



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RETAINING ASSOCIATES

- **Retention Bonuses**
 - Is this necessary?
 - What is a reasonable amount?
 - Must understand what your competition are offering – locally and nationally!!
 - How do you structure Signing Bonuses in contract?



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ASSOCIATE COMPENSATION OPTIONS

- **Salary**
- **Base salary plus percentage of personal production (pro-sal)**
- **Percentage of personal production**



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WHEN SHOULD YOU CONSIDER A SALARY OPTION

- **Recent graduates**
- **Part-Time Associates**
- **Practice without adequate client base**
- **Practice's preference**



9

WHAT IS "FAIR" COMPENSATION?

- **Must understand what your competitors are offering – locally and nationally!!**
- **What is a competitive salary or guaranteed base on proposal?**



10

PERCENTAGE OF PRODUCTION

- **What is a competitive percentage?**



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IS NEGATIVE ACCRUAL REASONABLE?

- **What is a negative accrual?**
- **Should there be annual zero out of a negative accrual balance?**



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EMPLOYMENT BENEFITS

- **Continuing Education/Conferences**
 - **Number of days permitted to be absent for CE**
 - **Dollar amount to reimburse for costs to attend CE**
 - **Specify if Compensation will be paid while attending CE**
 - **If on a base plus percentage should associate receive credit for lost production?**



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EMPLOYMENT BENEFITS

- **Paid time off days (sick and vacation days)**
- **Compensation for paid time off days**



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EMPLOYMENT BENEFITS

- **Paid time off**
- **Sick days (per state law)**
- **Professional Association Fees**
- **License Fees**
- **Malpractice insurance**
- **Disability Insurance**
- **Retirement Plan**



15

IMPORTANT TERMS FOR AN ASSOCIATE CONTRACT

- **TERM OF AGREEMENT**
 - **Do you establish a date to renegotiate terms or make continuing subject to termination?**



16

IMPORTANT TERMS FOR AN ASSOCIATE CONTRACT

GROUND TO TERMINATE CONTACT BEFORE END OF TERM

- **Voluntary Termination**
 - **Establish a reasonable
advance notice before
terminating**



17

IMPORTANT TERMS FOR AN ASSOCIATE CONTRACT

GROUND TO TERMINATE CONTACT BEFORE END OF TERM

- **Involuntary Termination**
 - **Cause**
 - **Death or disability**



18

IMPORTANT TERMS FOR AN ASSOCIATE CONTRACT

- **Employee Duties**
 - **Broad in scope to benefit Employer**
- **Employee Hours**
 - **Identify schedule to avoid ambiguity**
 - **Permit Employer to alter schedule**



19

IMPORTANT TERMS FOR AN ASSOCIATE CONTRACT

- **Prohibition on working for other Practices without permission**
- **Benefits and signing bonuses should be prorated on termination**



20

CONTRACT TERMS TO PROTECT THE PRACTICE

- **Employer ownership of client and patient records**



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COVENANTS NOT TO COMPETE

What is a Non-Compete?

- **prevent a former employee from working for a competitor for an identified period of time**
- **prevent a departing employee from soliciting other employees from leaving employer**



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COVENANTS NOT TO COMPETE

What is a Non-Compete?

- prevent a departing employee from soliciting former clients of the employer
- prevent a former employee from disclosing proprietary information



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COVENANTS NOT TO COMPETE

- Should your practice require a non-compete where legally enforceable?
- Impact on sale of practice if you don't have non-compete agreements?



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ARE COVENANTS NOT TO COMPETE ENFORCEABLE?

- **Enforcement controlled by each States' law – must understand your state's laws**
- **Different state law approaches to enforcement**



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APPROACHES BY DIFFERENT STATES TO ENFORCEMENT

- **Prohibit all non-competition agreements (but generally not non-solicitation provisions)**



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APPROACHES BY DIFFERENT STATES TO ENFORCEMENT

- **Prohibit geographic area and length of time terms that are not reasonably limited**
- **What is a reasonable limitation on length of time?**
- **What is a reasonable limitation on a geographic radius?**



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APPROACHES BY DIFFERENT STATES TO ENFORCEMENT

- **Prohibit enforcement if employee is terminated without cause**
- **Prohibit enforcement unless advance copy of contract provided to employee**



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APPROACHES BY DIFFERENT STATES TO ENFORCEMENT

- **Only applies to highly compensated employees**
- **Proprietary information protection contract terms are virtually always enforceable**



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APPROACHES BY DIFFERENT STATES TO ENFORCEMENT

- **Require legal “consideration” to be enforceable**
- **Most states permit Judges to judicially modify instead of void overly aggressive non-compete terms**



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NEW COLORADO NON-COMPETE STATUTE

- **Historically non-compete terms have been enforceable against veterinarian employees if reasonably limited in length of time and geographic location**



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NEW COLORADO NON-COMPETE STATUTE

- **Employment Agreement Non-Competes are generally void, unless:**
 - **Employees or independent contractors are highly compensated (\$101,250 annually)**



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NEW COLORADO NON-COMPETE STATUTE

- **Non-solicitation provisions are enforceable if employee or independent contractor earns 60% of threshold (\$60,750).**
- **Proprietary information limitations are generally enforceable**



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NEW COLORADO NON-COMPETE STATUTE

- **New statute voids non-competes unless 14 days advance notice of non-compete with a summary of terms**
- **Notice must be in a separate agreement and not combined into any other document**



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NEW COLORADO NON-COMPETE STATUTE

- **New statute requires geographic area and length of time to be reasonably limited**
- **What is reasonable for a general dvm versus a specialist?**



35

NEW COLORADO NON-COMPETE STATUTE

- **Colorado law applies to all employees and independent contractors located in Colorado**
- **Enforcement litigation is required to occur in Colorado**
- **Applies to all contracts beginning on August 10, 2022**



36

NEW COLORADO NON-COMPETE STATUTE

- Employer violations impose civil penalties and Class 2 Criminal Misdemeanor**



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ASSIGNMENT CONTRACT TERMS

- Important to permit practice to assign contract if an Owner wants to sell his/her Practice**



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ATTORNEYS' FEES PROVISIONS

- **Normally established as a “prevailing party” right to recover in the event of litigation**
- **Can benefit and hurt both Practice and Associate**



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ARBITRATION PROVISIONS

- **Substantially less cost but limits right to conduct discovery to determine what happened if a dispute**



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THE IMPORTANCE OF EMPLOYMENT MANUALS

- **Applies to all employees – including Associates**
- **Should be used with Associate Contract to clarify Employee Benefit/Compensation Issues**
- **Creates a defense to Employee Claims of Discrimination**



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CONTRACT TERMS FOR AN ASSOCIATE THAT MAY BUY- IN

- **State that it is a non-binding goal to explore compatibility for a buy-in**
- **Is nothing more than a carrot - should not be abused by Practice Owner!!!**



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42