

**LESSON 17:** Business Performance

# Employment and Contractor Agreements

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## INTRODUCTION

Ephesians 6:5 teaches, “Slaves, obey your earthly masters with respect and fear, and with sincerity of heart, just as you would obey Christ.” If our employees or contractors are unclear about what we expect of them, we can make it nearly impossible for them to comply. The worst business relationship is one beginning with a misunderstanding, and the best way to avoid that is to have all agreements in writing.

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*As a business leader, our employment agreements are to demonstrate the care we have for our employees, and our commitment to meet those obligations. It is necessary that we put that understanding in writing to show that commitment.*

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## EMPLOYMENT AGREEMENTS

Employment agreements generally fall into three categories:

1. An individual contract created for a specific employment arrangement,
2. A standard form or basic letter agreement, and
3. An oral agreement.

The complexity of each of these corresponds to the business significance of each employee. A highly-valued employee dealing in proprietary information and technology will require a longer, more detailed agreement. The entry-level office clerk, on the other hand, may require only a basic letter agreement, or even an oral agreement.

Many workplace situations are unique. The obligations under which an employee works will dictate if an employment agreement is needed, and if so, what type of agreement should be used. While there is no requirement that you must enter into a written employment contract with every employee, it is the employer's responsibility to individually consider each employment situation and determine the need for an agreement.

## WHAT IS AN EMPLOYMENT AGREEMENT?

First and foremost, an employment agreement (or contract) is a two-way street. It spells out exactly what the employer expects the employee to do (the parameters of their job). And in return, the contract will spell out what the employee can expect from the employer (normally a salary and benefits).

## BEYOND THE BASIC CONTRACT

In general, there are four categories of specific information that is often included in employment contracts.

**First** is the additional employment information. This section includes the details about the term of employment, performance expectations, supervisory roles, and career advancement.

**Second**, the employment contract includes specifics about the benefits provided to employees. Certain levels of employment often receive differing benefits packages such as vacation time, PTO, sick days, and time off for continuing education. Included here are the details about the company's health, life and disability insurance programs, and the options for contributing to retirement accounts.

**Third**, many employment contracts discuss the unfortunate situation of employee termination or departure. Employment agreements need to spell out if workers are considered "at will" employees, which means employers can terminate an employee without cause (so long as the reason is not illegal) and the employee can leave at any time without penalty. If it's not at-will employment, then the specifics about the grounds of termination must be spelled out. Also included are probationary periods and proper notice for both termination and departure, as well as a method for resolving disputes relating to employment (such as mediation or arbitration).

**Finally**, many industries must now contend with trade-specific topics such as non-disclosure agreements, covenants not-to-compete, and an ownership agreement stating who owns all materials produced by the employee during their employment. Often assignment clauses are included stating that any patents procured by the employee during their employment must be assigned to the company.

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## DISCUSSION QUESTIONS

1. What kind of experiences have you had with employment agreements? What did you specifically learn?

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2. In our litigious society:

- a. What concerns do you have about using employment agreements?

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- b. What benefits do you see in having written employment or contractor agreements?

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- c. How might your employees perceive a written employment agreement?

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3. If an employee was not doing their job as expected of them, how might an agreement be helpful or harmful?

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4. What could you include in your employment agreements that demonstrates your care and concern about your employee (e.g., the ability to re-negotiate a fair wage, paid time off for certain family occasions, etc.)?

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## CASE STUDY

After seven long years and \$150,000 in student debt, Brianna gratefully graduates with a Doctorate in Physical Therapy and accepts a job with a franchise physical therapy practice placing her in one of their small suburban clinics. As part of her employment, she signs an employment contract that stipulates she agrees to a high level of client confidentiality and to an agreement to not compete with her employer for two years if she chooses to end her employment with this employer. The entire metro area is defined as the market in which she agrees not to compete.

By the end of her first year, Brianna is not happy with the type of physical therapy practice her new employer follows. While she likes the other employees she works with, the commute, work hours, and client type are not what she had envisioned as she was going through her physical therapy training.

Through a mutual acquaintance, Brianna is introduced to the owner of a sole proprietor physical therapy practice closer to where she lives, who works the hours she would prefer to work, and who focuses mainly on treating children.

This would be Brianna's dream job. The only thing stopping her from quitting her current job and taking this new job is the confidentiality agreement and the not-to-compete agreement that she unwittingly agreed to in her current employment contract.

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## DISCUSSION QUESTIONS

1. Should Brianna worry about the ethics of agreeing to a contractual stipulation (intentionally or unintentionally) and then going back on her word?

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- a. Is it okay for her to step aside from her personal ethics?

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- b. Is there Biblical support for renegeing on a contractual obligation?

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2. Does the employer have the right to place such prohibitive restrictions in their employment agreements?

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- a. Is it fair for them to restrict how someone can make a living?

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- b. Is it Biblical?

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3. If the company is legitimately concerned over an employee's knowledge of confidential information and their business practices, are there other ways they can protect these interests other than in employment agreements?

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4. Should businesses even be legitimately concerned over confidential information and business practices?

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5. What should Brianna do and why?

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6. If Brianna leaves and takes the new job, what should her original employer do and why?

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## HOW TO DEVELOP AN EMPLOYMENT AGREEMENT

Legal services and template agreements are available to use as a starting point in developing a typical employment agreement form. But before starting the process of producing a typical employment agreement form, here are some issues to address first.

By first answering the following questions, the process of writing an employment agreement should be easier.

- **Will a standard form suffice for most of your employees, or are the employment arrangements so unique that an individual agreement is required for each employee? Can most of the “boilerplate” details be included in one agreement and specific individual arrangement be included in an addendum?**
- **Do you have an employee manual or handbook where all job descriptions and benefit listings are contained and can be referenced keeping the employment agreement shorter and more concise?**
- **Are there specific instructions for certain employees that need to be included in a written agreement (e.g., such as mentoring other employees, authority over certain decisions, critical milestones that need to be met, etc.)?**
- **Are your concerns over trade secrets, patents, confidentiality, client lists, and intellectual property high enough that a separate agreement is necessary? If so, for which employment level is this required?**
- **Are there understandings that reflect your care and concern for your employees that you wish to convey to all your employees in your employment agreements (e.g., faith in God, respect for other employees, etc.)?**

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### DISCUSSION QUESTIONS

1. What did you take away from this lesson?

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2. How can you demonstrate more care and concern for your employees?

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3. How will this lesson impact your current employment practices? What are you committed to do this month to begin implementing those changes?

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