

Employment Agreements: Are They Necessary?

by Michael S. Gottlieb, Esquire

As an employer, do you require your employees to enter into employment agreements at the inception of their employment relationship? Should you? Many employers do not require their employees to enter into employment agreements because they don't see the necessity of doing so. As Maryland is an "at-will" employment state, absent an employment agreement and subject to a few caveats (collective bargaining, discrimination, etc.), the employer or the employee may terminate the employment relationship, with or without cause, at any time. Thus, if you can fire an employee for any reason or no reason, what's the need of an employment agreement that may serve only to muddy the waters?

Are Employment Agreements Right for My Business?

Depending on your business, and the role of the employee, it may make sense to require your employees to enter into employment agreements at the outset of the employment relationship¹. Does your company have a need to protect confidential or proprietary information? Do you wish to prohibit (for a period of time) your former employees from soliciting your: (a) current employees to leave your employ, (b) customers, or (c) referral sources? Do you wish to prohibit them from interfering with your other relationships, such as your distributors, vendors and the like?

It is important to recognize that an employment agreement need not bind the employer and employee into a defined employment term, i.e., the employment relationship can still be "at-will." As you will see below, there are many provisions that can and should be in an employment agreement that can prove to be beneficial to the employer.

Protections Afforded by Employment Agreements

¹ Employment agreements executed after the start of the employment relationship may be enforceable under certain circumstances. Please consult with an attorney prior to asking an existing employee to sign an employment agreement.

The following are a handful of reasons that an employer should enter into an employment agreement with its employees:

1. Memorialized in Writing: Having the basic terms of employment in writing helps ensure that both employer and employee understand the terms of the relationship so as to minimize the likelihood of misunderstandings in the future.
2. Leave time: Without an employment agreement, there may be questions as to how many days of leave the employee may be granted, whether leave may be carried over from year to year (there's no legal requirement under Maryland law that it must be), or whether leave will be paid out upon the termination of employment (again, there's no requirement under Maryland law that it must be).
3. Deductions from Pay: Section 3-503(2) of the Labor and Employment Article of the Maryland Code states that an employer may not make any deductions from an employee's pay without the employee's express prior authorization. Thus, for example, if your employee fails, upon the termination of employment, to return the cell phone you provided him, unless you have a written agreement that you can deduct the value or the cost of the phone from the employee's final paycheck, you may not do so.
4. Restrictive Covenants: Absent a written agreement, a former employee can compete with you by soliciting your employees, customers, referral sources, and otherwise interfering with your business relationships; and may even be able to use your confidential and proprietary information (including your trade secrets, customer lists and the like).
5. Jurisdiction/Venue: In the event of a dispute, an employment agreement can and should dictate where a law suit must be brought and which jurisdiction's laws govern. This can be of vital importance for employers that do business in multiple jurisdictions so as to avoid having to defend (or possibly being forced to bring) cases in

inconvenient jurisdictions or otherwise becoming subject to unfavorable laws.

6. Attorney's Fees: Assuming you prevail, there are only two (2) ways that you can recover your attorney's fees: (1) if attorney's fees are statutorily provided for or (2) the parties agree to such a provision.

Conclusion

Though employment agreements are not always necessary, if you desire to (a) protect your company's confidential and/or proprietary information; (b) prevent former employees from poaching your clients or existing employees or otherwise disrupting your relationships with referral sources or other parties; or (c) create uniformity and consistency in your staff's relationship with you, then it may make sense to have your employees enter into employment agreements.

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