

What's in an Employment Agreement?

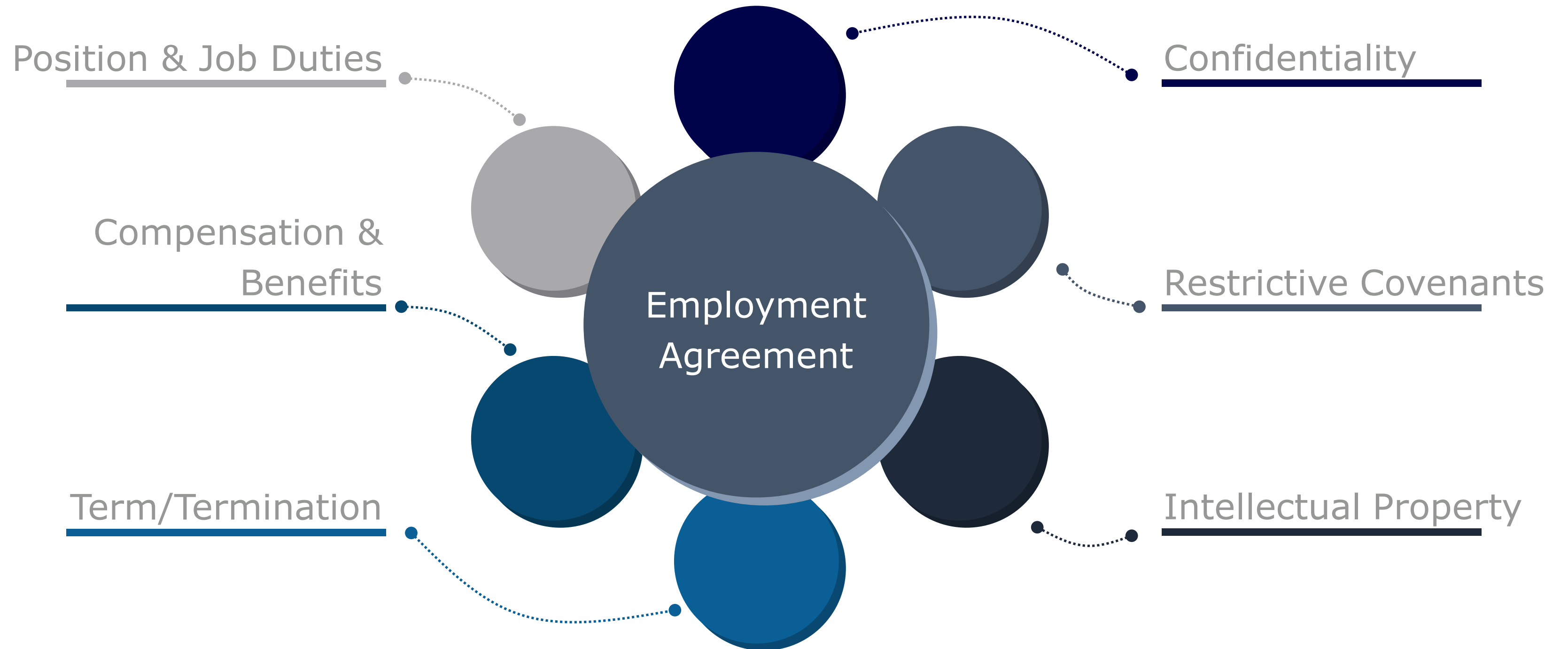
To Dos, To Don'ts, and Tadas!

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Overview



Offer Letters

» Standalone Document

- Include all basic terms such as job title, job description, description of compensation, benefits
- Identify any conditional terms that must be met
- Describe the term of the employment
- Employee signature

» Prelude to Employment Agreement

- Outline the basics of the position being offered
- Job title, job description, compensation, benefits
- Identify any conditional terms that must be met
- Describe the term of the employment

One Size Doesn't Fit All

Things to Consider:

- Exempt vs. Non-Exempt
- Length of Employment- Fixed Term, Evergreen, Employment-at-will
- Level of the position- Executive, Managerial, Entry
- Type of Position- Sales vs. Operations, Office vs. Factory, etc.

Key Considerations

» Include Unambiguous Terms

» Retain discretion and flexibility

» Protections for the employer

» Restrictive Covenants

Position and Job Duties

Position and Job Duties

- Job Title
- Broad description of job duties
- Retain the ability for management to modify job duties and supervisor during employment
- Full vs. Part-time



Compensation and Benefits

Compensation

- 1 Hourly Employees
- 2 Salary
- 3 Incentive Compensation
- 4 Commission
- 5 Stock Options
- 6 Discretionary Bonuses

Benefits

Describe any benefits that may be available as well as any eligibility requirements.

» Health Benefits

Provide a brief summary of the plans the employee may be eligible for: medical, dental, life insurance, etc.

» Paid Time Off/Vacation/Sick Time

Include details on how and when each is earned, whether or not the time rolls over from year to year and what happens to the time upon termination of employment.

» Retirement

Identify pension, 401(k), or 403(b) eligibility and/or other retirement benefits.

Term/Termination of Employment

Term of Employment

Describe the intended length of the Employment Relationship

» Employment-at-will

- Either employer or employee may end the employment at any time, for any reason, with or without notice.
- *Employer reason for termination must be lawful

» Evergreen

- Fixed term contracts that will renew each year under the same terms and conditions, unless otherwise amended or terminated.

» Fixed Term Contract

- Employment contract for a fixed period of time.
- What happens upon the expiration of the contract? Are there any extension?

Termination of Employment

Termination of Employment by Employer

» Termination With Cause

Clearly define "For Cause":

- Failure to adhere to the terms of employment
- Insubordination
- Conduct harmful to the employer
- Violation of company policies
- Gross negligence or willful misconduct
- Illegal activity

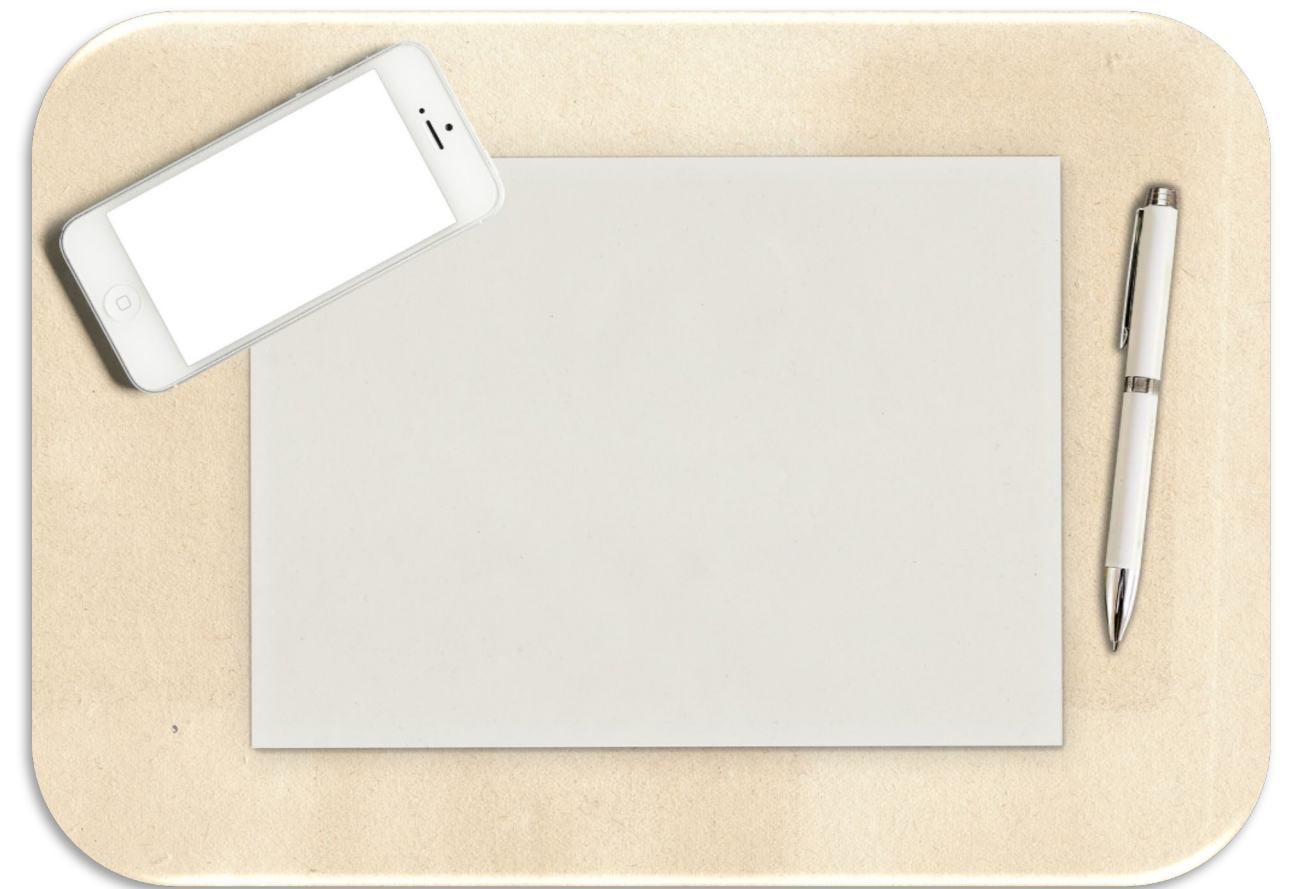
Arbitration clause?

» Termination Without Cause

- Examples:
 - Downsizing
 - Reorganization
 - Position is being eliminated
 - Not the right fit for the position
- Notice – Will the employer provide the employee with notice if the relationship is being terminated without cause?
- Severance- Will the employee be entitled to severance if terminated without cause?

Employee Resignation

- Employers may want to request or require that the employee provide a specified amount of notice upon voluntary resignation.
- Benefits to be paid out upon termination may be conditioned upon proper notice being provided.



Confidentiality

Confidentiality/Non-Disclosure Provisions

- Used to prohibit an employee from disclosing the employer's trade secrets or confidential information during and after employment.
- Can be for an infinite duration.
- Typically include a requirement for employees to return all the employer's information and property (including confidential information) upon termination of employment.



**The definition of confidential information
should be carefully crafted.**

Include examples.

Breach of Confidentiality

What happens in the event of a breach of confidentiality?

- Will the employer be harmed if the employee breaches the confidentiality provisions?
- Address the repercussions that the employee will face in the event of his or her breach of the confidentiality provisions.
- May include an injunction, monetary damages, discipline up to and including termination.

Restrictive Covenants

Restrictive Covenants

Consider the industry and position type when determining if these provisions are necessary.

» Non-Solicitation of Employees

» Non-Solicitation of Customers

» Non-Competition

» Non-Disparagement

Consequences of Breach

- The agreement should explain what may occur in the event of a breach of a restrictive covenant by the employee.
- Typically includes discipline up to and including termination, an injunction, and monetary damages.
- Sometimes requires the employee to reimburse the employer for any attorneys' fees incurred as a result of the breach.



Covenants Not-to-Compete

- Non-Competition covenants are difficult to enforce.
- State laws regarding the enforceability of non-competes vary considerably.
- To determine whether or not the restrictions are reasonable, courts will focus on the following:
 - Geographic scope
 - Duration
 - Definition of competitors
 - Protection of legitimate business interests
- In some states, non-competes must be entered into prior to employment or tied to other specific consideration to be enforceable.
- Sometime courts are able to “blue pencil” these provisions.

New York

Enforceability of non-competition agreements in NY.

- NY Courts have found that employment or continued employment is sufficient consideration.
- These restrictions may be upheld if they are reasonable, but they are heavily scrutinized and disfavored.
- To be enforceable, employers must show that the restrictions meet the following:
 - Reasonable in geographic scope
 - Reasonable in duration
 - Are necessary to protect a legitimate interest of the employer
 - Do not place an undue hardship on the employee
 - Are not harmful to the general public

Intellectual Property

Intellectual Property Provisions

May depend on the position type and industry.

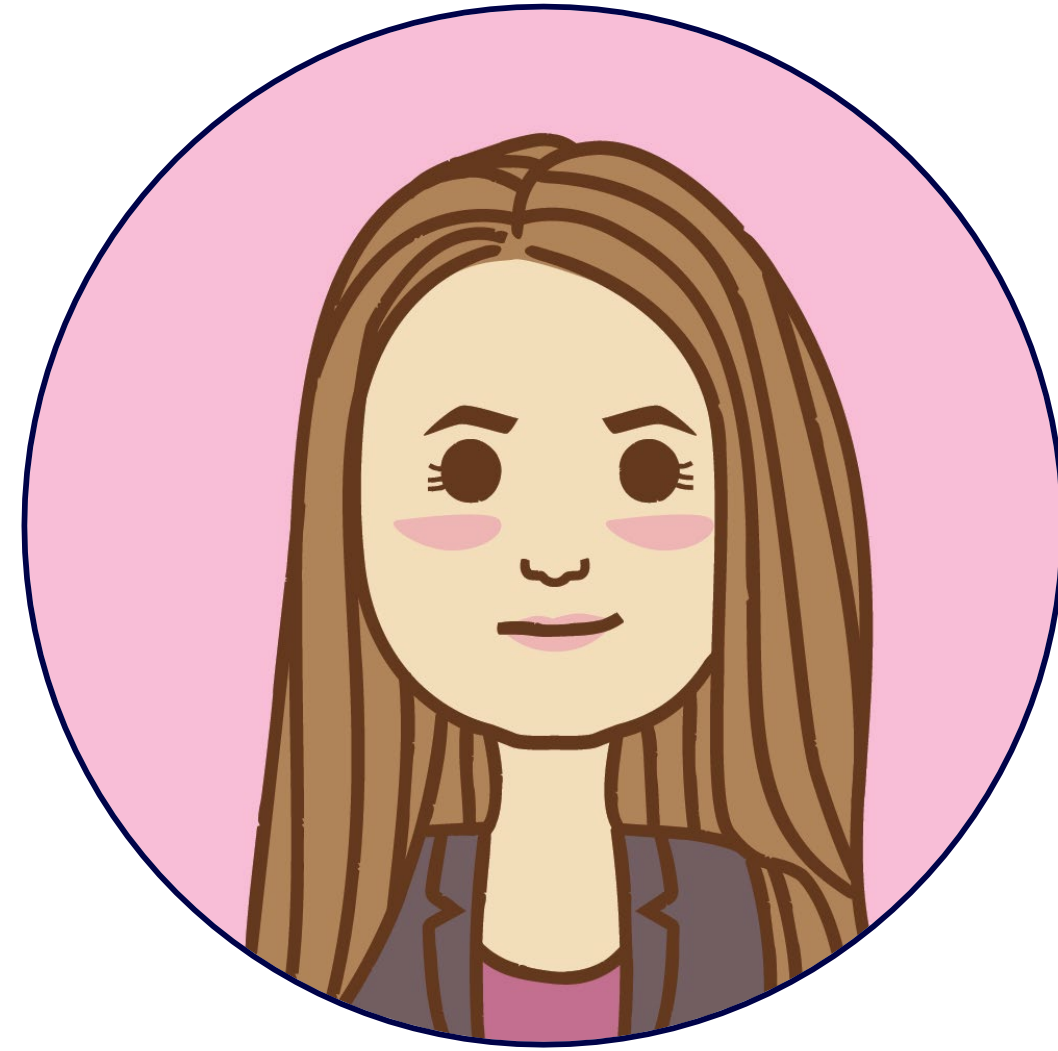
- Require the employee to disclose at the onset of employment any developments or creations previously completed by the employee and define that as property owned by the employee.
- Address use of employee-owned IP.
- Work-For-Hire Provisions- Provide that any products, services or intellectual property, such as patents or inventions developed by the employee on behalf of the employer during employment, will be the intellectual property of the employer.
- Include the assignment of intellectual property rights, including cooperation in the patent or trademark filing.

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Thanks for your time!

Questions?

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