

# Employment contracts in North Carolina: What you need to know

Employers and employees often wonder about the benefits and drawbacks of employment contracts. Most employees do not have employment contracts. However, contracts may be appropriate for company officers, management employees, salespeople and key employees.

## Who's right for an employment contract?

Employment agreements are not for all employees. They should be crafted to fit the employer's goals and the employee's specific skills. Thus, employment contracts require the employer and employee to devote energy to crafting the specific terms of the agreement. This often requires the assistance of legal counsel. This extra energy and cost is burdensome, but may pay dividends by establishing a long-term relationship with an important employee.

In order to have a successful and enforceable employment contract, it should be in writing and its terms should be clear. It should address compensation, benefits, job duties, termination, confidentiality and noncompetition.

There are very different legal requirements for an employment contract without a noncompete provision and for one with a noncompete provision. Decide early on whether you need a noncompete agreement.

## Contracts without noncompetes

Basic contract law principles apply to the formation of employment contracts. The elements of a valid contract are offer, acceptance, consideration and mutuality of assent to the contract's essential terms.

North Carolina requires certainty regarding some terms of contracts for employment or "services rendered." Although the case law is confusing, it appears that the duration of the contract and the amount of compensation to be paid are mandatory terms for a valid employment contract.

Whether an alleged employment contract has a definite duration is often an issue. North Carolina courts have frequently stated that failure to state a definite duration makes an employment agreement terminable at will. For example, the general rule is that a statement of "permanent employment" only means steady employment—a steady job and a position of some permanence, in contrast to temporary employment or a temporary job. If there is no additional expression as to duration, a contract for permanent employment ordinarily implies an indefinite general hiring, terminable at will. Effectively, that means there is no employment contract.

Employment contracts are not required to be in writing. This often surprises employers. That is why managers and supervisors must be careful what they say to employees.

In general, basic employment contracts are fairly easy to prepare and address basic employment terms.

Employers generally do not like such contracts unless they also contain noncompetition clauses and other restrictions on post-employment conduct.

### **Contracts with noncompetes**

Many employers want their employment contracts to include noncompete clauses to protect confidential information, protect customer lists and prevent employees from competing unfairly after termination. The requirements for an employment contract with a valid noncompete provision are much greater than a basic employment contract. A valid noncompete clause must be:

- In writing
- Part of a contract of employment
- Based on valuable consideration
- Reasonable as to time and territory
- Not against public policy.

Additionally, the covenant must protect a legitimate business interest. Employment contracts with noncompete clauses struggle for a balance among: (1) an employer's right to protect its legitimate business interests, (2) an employee's right to pursue his or her profession and (3) the public's interest in access to services.

Employment covenants not to compete will be enforced only if "they are no wider than reasonably necessary for the protection of the employer's business, and do not impose undue hardship on the employee, due regard being had to the interests of the public."

### **The case for employment contracts**

Employment contracts can be a valuable tool for managing employees and protecting a company's confidential information and competitive advantages. They also can provide employees with a certain amount of employment security. A primary consideration is whether the employment contract will contain a noncompete provision.

Once the employer decides whether to include a noncompete clause, the employment contract should be carefully drafted to properly record the parties' agreement and ensure enforceability.

### **Employment contract benefits, at-Will status**

Employment contracts can:

- Attract and keep key employees
- Retain key managers or founders of a pre-existing business following mergers and acquisitions
- Set bonuses, incentive pay, stock options and other benefits arrangements
- Protect confidential information and intellectual property
- Require loyalty to the employer.
- Impose noncompetition restrictions on employees.

Employment contracts may restrict the employer's right to terminate by requiring notice and just cause. To keep as much control as possible, retain the right to fire for any reason. North Carolina allows such a term in an employment contract.