

# **P<sup>&</sup>M**

## **PIERCE & MANDELL, P.C.**

*Attorneys at Law*

11 Beacon Street, Suite 800, Boston, MA 02108

617-720-2444 • [www.piercemandell.com](http://www.piercemandell.com)

### **SERVICE AND EMPLOYMENT AGREEMENTS FOR DENTAL PROFESSIONALS**

*The following practice points should be considered by dental practices and dental professionals when negotiating service and employment agreements. This list does not constitute legal advice and is not conclusive. We recommend that dental practices and professionals obtain assistance from professionals (attorneys and CPAs) to ensure that agreements are complete and serve to adequately protect their interests.*

Bill Mandell, Esq. ([bill@piercemandell.com](mailto:bill@piercemandell.com)), Kate Auerbach, Esq. ([kate@piercemandell.com](mailto:kate@piercemandell.com))  
and Rebecca Merrill, Esq. ([rmerrill@piercemandell.com](mailto:rmerrill@piercemandell.com))

#### **Dental Practices**

##### ➤ **Employee versus Independent Contractor**

- In Massachusetts, many dental practices classify dentists as independent contractors. When deciding to employ or contract with your dental professionals, dental practices should be aware of the IRS regulations concerning independent contractors and the Massachusetts Independent Contractor Law, which sets out a presumption that all workers are employees.

##### ➤ **Scope of Duties / Work Schedule**

- Does the agreement accurately reflect the professional's clinical and administrative duties, work schedule and the locations where the professional will practice, if a practice has multiple locations?

##### ➤ **Outside Activities**

- Does the agreement include appropriate limits on outside activities, especially if the professional will work part-time for the dental practice?

##### ➤ **Restrictive Covenants**

- Will the agreement include a covenant not to compete? Covenants not to compete and not to solicit may be enforceable against dental professionals in Massachusetts. Employment and service agreements can contain such clauses to protect the practice's patient base and prevent a dental professional from directly or indirectly competing with the practice during and after the relationship. Enforceability will vary depending upon the circumstances.

##### ➤ **Salary, incentive compensation and benefits**

- Is the salary, incentive compensation and benefits, if applicable, structured to be competitive in the market place? Will you offer guaranteed compensation or is the compensation based on productivity? Is the professional eligible for incentive compensation if he/she meets certain productivity targets? Is the compensation package competitive? What about - health insurance, retirement benefits, continuing education, vacation time, malpractice insurance?

➤ **Term and termination**

- Does the agreement allow the dental practice to terminate the agreement immediately for cause? Will the term of the agreement be for a fixed period or will the dental professional be permitted to terminate the agreement without cause with sufficient advance written notice?

➤ **Partnership**

- What should the agreement state about the future prospects of partnership? How much detail should be included, even if it is conditional?

**Employees/Dental Professionals**

➤ **Binding Terms**

- Verbal agreements can be enforceable; how early in the negotiations should you retain assistance from professionals (attorney, CPA, etc.)?

➤ **Start Date**

- If you are coming out of a training program, will you have sufficient time to relocate or prepare before you start working full-time?
- If you are transiting from another practice, how much notice must be given to your current employer to terminate the relationship? Does the agreement have restrictive covenants? If so, are these covenants enforceable?

➤ **Duties, Schedule and Resources**

- Does the agreement accurately reflect your duties, work schedule and resources to be provided by the practice? Who will be responsible for arranging and paying for professional liability insurance?

➤ **Outside Activities**

- Does the agreement permit you to participate in outside activities, such as other part-time dental work or consulting?

➤ **Restrictive Covenants**

- Does the agreement contain restrictive covenants? Covenants not to compete and not to solicit may be enforceable against dental professionals in Massachusetts.

➤ **Salary, incentive compensation and benefits**

- Will you receive guaranteed compensation or is the compensation based on productivity? Are you eligible for incentive compensation if you meet certain productivity targets? Is the formula clearly defined? Is the compensation package competitive – health insurance, retirement benefits, continuing education, vacation time, malpractice insurance?

➤ **Partnership Terms**

- If the practice offers you a partnership opportunity are there any details about the financial terms in the agreement? Is there a set time frame or conditions precedent to partnership established?