



# Sample CEO Employment Contract

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This agreement, made and effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, between (name of Hospital), a corporation, and name of CEO.

WHEREAS, the Hospital desires to secure the services of the CEO and the CEO desires to accept such employment.

NOW THEREFORE, in consideration of the material advantages accruing to the two parties and the mutual covenants contained herein, and intending to be legally and ethically bound hereby, the Hospital and the CEO agree with each other as follows:

1. The CEO will render full-time professional services to the Hospital in the capacity of Chief Executive Officer of the Hospital corporation. He will at all times, faithfully, industriously and to the best of his ability, perform all duties that may be required of him by virtue of his position as Chief Executive Officer and all duties set forth in Hospital bylaws and in policy statements of the Board. It is understood that these duties shall be substantially the same as those of a chief executive officer of a business corporation. The CEO is hereby vested with authority to act on behalf of the Board in keeping with policies adopted by the Board, as amended from time to time. In addition, he shall perform in the same manner any special duties assigned or delegated to him by the Board.
2. In consideration for these services as Chief Executive Officer, the Hospital agrees to pay the CEO a salary of \$\_\_\_\_\_ per annum or such higher figure as shall be agreed upon at an annual review of his compensation and performance by the Board. This annual review shall occur three months prior to the end of each year of the contract for the express purpose of considering increments. The amount of \$\_\_\_\_\_ shall be payable in equal monthly installments throughout the contract year. The CEO may elect, by proper notice given to the Hospital prior to the commencement of any calendar year, to defer such portion of his salary to the extent permitted by the law for such year to such date as he may designate in the notice of election, such deferred amounts to be credited with periodic interest in accordance with policies established by the Hospital.
3. (a) The CEO shall be entitled to \_\_\_\_ weeks on compensated vacation time in each of the contract years, to be taken at times mutually agreed upon between him and the Chairman of the Board.  
  
(b) In the event of a single period of prolonged inability to work due to the result of a sickness or an injury, the CEO will be compensated at his full rate pay for at least \_\_\_\_ months from the date of the sickness or injury.  
  
(c) In addition, the CEO will be permitted to be absent from the Hospital during working days to attend professional meetings and to attend to such outside professional duties in the healthcare field as have been mutually agreed upon between him and the Chairman of the Board. Attendance at such approved meetings and accomplishment of approved professional duties shall be fully compensated service time and shall not be considered vacation time. The Hospital shall reimburse the CEO for all expenses incurred by the CEO incident to attendance at approved professional meetings and such entertainment expenses incurred by the CEO in furtherance of the Hospital's interests, provided, however, that such reimbursement is approved by the Chairman of the Board.  
  
(d) In addition, the CEO shall be entitled to all other fringe benefits to which all other employees of the Hospital are entitled.

4. The Hospital agrees to pay dues to professional associations and societies and to such service organizations and clubs of which the CEO is a member, approved by the Chairman of the Board as being in the best interests of the Hospital.

5. The Hospital also agrees to:

(a) insure the CEO under its general liability insurance policy for all acts done by him in good faith as Chief Executive Officer throughout the term of this contract;

(b) provide, throughout the term of this contract, a group life insurance policy for the CEO in an amount equivalent to \$\_\_\_\_\_, payable to the beneficiary of his choice;

(c) provide comprehensive health and major medical health insurance for the CEO and his family;

(d) purchase travel accident insurance covering the CEO in the sum of \$\_\_\_\_\_;

(e) furnish, for the use of the CEO, an automobile, leased or purchased at the beginning of alternate fiscal years, and reimburse him for expenses of its operation; and

(f) contribute on behalf of the CEO to a retirement plan qualified under the Internal Revenue Code, at the rate of \$\_\_\_\_\_ per month.

6. The Board may at its discretion terminate the CEO's duties as Chief Executive Officer. Such action shall require a majority of vote of the entire Board and become effective upon written notice to the CEO or at such later time as may be specified in said notice. After such termination, all rights, duties and obligations of both parties shall cease except that the Hospital shall continue to pay the CEO his then monthly salary for the month in which his duties were terminated and for 24 consecutive months thereafter as an agreed upon severance payment. During this period, the CEO shall not be required to perform any duties for the Hospital or come to the Hospital. Neither shall the fact that the CEO seeks, accepts and undertakes other employment during this period affect such payments. Also, for the period during which such payments are being made, the Hospital agrees to keep the CEO's group life, health and major medical insurance coverage paid up and in effect, and the CEO shall be entitled to outplacement services offered by the Hospital. The severance arrangements described in this paragraph will not be payable in the event that the CEO's employment is terminated due to the fact that the CEO has been charged with any felony criminal offense related to substance abuse or to the operation of the Hospital.

7. Should the Board in its discretion change the CEO's duties or authority so it can reasonably be found that the CEO is no longer performing as the Chief Executive Officer of the Hospital and/or its parent corporation, the CEO shall have the right, within 90 days of such event, in his complete discretion, to terminate this contract by written notice delivered to the Chairman of the Board. Upon such termination, the CEO shall be entitled to the severance payment described in Paragraph 6, in accordance with the same terms of that paragraph.

8. If the Hospital is merged, sold or closed, the CEO may terminate his employment at his discretion or be retained as President of the Hospital or any successor corporation to or holding company of the Hospital. If the CEO elects to terminate his employment at such time, he shall be entitled to the same severance arrangement as would be applicable under Paragraph 6 if the Hospital had terminated his employment at such time.

Any election to terminate employment under this Paragraph must be made prior to the Hospital's merger, sale or closure, as applicable.

If the CEO continues to be employed by the Hospital or its successor organization, all of the terms and conditions of this Agreement shall remain in effect. The Hospital agrees that neither it nor its present or any future holding company shall enter into any agreement that would negate or contradict the provisions of this Agreement.

9. Should the CEO at his discretion elect to terminate this contract for any other reason than as stated in Paragraph 7, he shall give the Board 90 days' written notice of his decision to terminate. At the end of the 90 days, all rights, duties and obligations of both parties to the contract shall cease and the CEO will not be entitled to severance benefits.

10. If an event described in Paragraph 6, 7, or 8 occurs and the CEO accepts any of the severance benefits or payments described therein, to the extent not prohibited by law, the CEO shall be deemed to voluntarily release and forever discharge the Hospital and its officers, directors, employees, agents, and related corporations and their successors and assigns, both individually and collectively and in their official capacities (hereinafter referred to collectively as "Releasees"), from any and all liability arising out of his employment and/or the cessation of said employment. Nothing contained in this paragraph shall prevent the CEO from bringing an action to enforce the terms of this Agreement.

11. The CEO shall maintain confidentiality with respect to information that he receives in the course of his employment and not disclose any such information. The CEO shall not, either during the term of employment of thereafter, use or permit the use of any information of or relating to the Hospital in connection with any activity or business and shall not divulge such information to any person, firm, or corporation whatsoever, except as may be necessary in the performance of his duties hereunder or as may be required by law or legal process.

12. During the term of his employment and during the 24-month period following termination of his employment, the CEO shall not directly own, manage, operate, join, control, or participate in or be connected with, as an officer, employee, partner, stockholder or otherwise, any other hospital, medical clinic, integrated delivery system, health maintenance organization, or related business, partnership, firm, or corporation (all of which hereinafter are referred to as "entity") that is at the time engaged principally or significantly in a business that is, directly or indirectly, at the time in competition with the business of the Hospital within the service area of the Hospital. The service area is defined as [describe by counties, zip codes, a mileage radius, etc.]. Nothing herein shall prohibit the CEO from acquiring or holding any issue of stock or securities of any entity that has any securities listed on a national securities exchange or quoted in a daily listing of over-the-counter market securities, provided that any one time the CEO and members of the CEO's immediate family do not own more than one percent of any voting securities of any such entity. This covenant shall be construed as an agreement independent of any other provision of this Agreement, and the existence of any claim or cause of action, whether predicted on this Agreement or otherwise, shall not constitute a defense to the enforcement by the Hospital of this covenant. In the event of actual or threatened breach by the CEO of this provision, the Hospital shall be entitled to an injunction restraining the CEO from violation or further violation of the terms thereof.

13. The CEO shall not directly or indirectly through his own efforts, or otherwise, during the term of this Agreement, and for a period of 24 months thereafter, employ, solicit to employ, or otherwise contract with, or in any way retain the services of any employee or former employee of the Hospital, if such individual has provided professional or support services to the Hospital at any time during this Agreement without the express written consent of the Hospital. The CEO will not interfere with the relationship of the Hospital and any of its employees and the CEO will not attempt to divert from the Hospital any business in which the Hospital has been actively engaged during his employment.

14. Terms of a new contract shall be completed, or the decision made not to negotiate a new contract made, not later than the end of the tenth month. This contract and all its terms and conditions shall continue in effect until terminated.

15. This contract constitutes the entire agreement between the parties and contains all the agreements between them with respect to the subject matter hereof. It also supersedes any and all other agreements or contracts, either oral or written, between the parties with respect to the subject matter hereof.

16. Except as otherwise specifically provided, the terms and conditions of this contract may be amended at any time by mutual agreement of the parties, provided that before any amendment shall be valid or effective it shall have been reduced to writing and signed by the Chairman of the Board and the CEO.

17. The invalidity or unenforceability of any particular provision of this contract shall not affect its other provisions, and this contract shall be construed in all respects as if such invalid or unenforceable provisions had been omitted.

18. This agreement shall be binding upon the Hospital, its successors and assigns, including, without limitation, any corporation into which the Hospital may be merged or by which it may be acquired, and shall inure to the benefit of the CEO, his administrators, executors, legatees, heirs and assigns.

19. This agreement shall be construed and enforced under and in accordance with the laws of the State of \_\_\_\_\_.

This contract signed this \_\_\_\_\_ day of \_\_\_\_\_, 199 \_\_\_\_.

(NAME OF HOSPITAL)

WITNESS: \_\_\_\_\_ BY: \_\_\_\_\_ (Chairman of the Board)

WITNESS: \_\_\_\_\_ BY: \_\_\_\_\_ (CEO)

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## **ANNOTATIONS TO CHIEF EXECUTIVE OFFICER CONTRACT (Long Form)**

This contract is the "long form" CEO contract. It is somewhat more formal than the letter agreement and specifically lays out some of the minimal benefits that a CEO should receive. Its formality and extensiveness make it more applicable as part of the negotiations for a new relationship than as a contract proposed during an existing one. It should be examined so that the items covered are raised in the negotiations rather than for the exact benefit and salary structure stated. Some benefits will be agreed upon and some not. That is the purpose of a contract negotiation.

### **PARAGRAPH 1**

This paragraph sets forth the duties of the chief executive officer in very general terms. The specific duties of the CEO are not spelled out in the contract itself for two reasons. First, since the CEO should be involved in virtually every area of hospital operations, he must not be hamstrung by a limited laundry list of duties that narrowly circumscribe the scope of his responsibility. Such lists relegate the CEO to the status of a hired hand. In addition, since the duties of the CEO constantly change as the hospital changes, it is unwise to lock him and the hospital into a set routine from the start. The contract likens the CEO's role to that of a CEO in a business corporation to underscore the broad responsibility entrusted with him.

### **PARAGRAPH 2**

This paragraph contains the financial terms of the contract, specifically, the CEO's salary. An annual figure is inserted in the first blank, while his monthly pay rate should be included in the second blank. The latter, or course, can be a weekly or bimonthly rate, depending on how the hospital or executive payroll is so structured. After each annual salary review, the CEO's salary will presumably increase. New salary levels should be contained in a letter to the CEO from the board chairman, which will become incorporated into the initial contract. By the contract language the CEO is also permitted the discretion to direct that a portion of his salary go into tax shelters as deferred income to the extent permitted by the law.

### **PARAGRAPH 3**

This paragraph deals in general with compensation for time spent by the CEO away from the hospital, including vacation, sick leave and out-of-hospital business. An alternative to laying these benefits out in the contract is to include them in a separate letter agreement.

Subparagraph 3(a) deals with vacation time for the CEO. Vacation time is compensated at the CEO's full rate, and can be accumulated over the life of the contract.

Subparagraph 3(b) deals with sick leave in a similar fashion except that, unlike vacation time, it is not accumulated but rather is limited to a specified number of months. Thus the paragraph deals with disability payments in the event of a major sickness or injury to the CEO. It can take the place of or supplement any disability insurance policy that the CEO may have in effect.

Subparagraph 3(c) permits the CEO to attend professional or hospital association meetings. The meetings to be attended should be agreed to in advance, or expense accounts approved after the fact by the chairman of the board. According to this clause, the CEO is entitled to reimbursement for all his expenses and for his full salary while in attendance at these meetings. Also, the travel expenses of the CEO's spouse and any necessary business entertainment expenses are also paid for. It should be stressed that the chairman of the board should approve all expense accounts of the CEO, for the CEO's own protection.

#### PARAGRAPH 4

The CEO's dues for professional associations, service organizations or clubs that he belongs to are paid for by the hospital, so long as his membership in them is reasonably related to the interests of the hospital. It should not be necessary that these be approved in advance, but the chairman of the board should approve what organizations the CEO joins.

#### PARAGRAPH 5

Subparagraph 5(a) requires the hospital to include for coverage the CEO under its general liability insurance policy for any acts done by him in good faith during the course of his duties. This is absolutely essential since CEO's are very often named in lawsuits by patients alleging negligence or by physicians alleging that a denial or termination of medical staff appointment was improper. The hospital must protect the CEO if he is to carry out his duties innovatively, aggressively and effectively.

The fringe benefit described in subparagraph 5(b) provides the CEO with a group life insurance policy, paid for by the hospital. Of course, the CEO may name the beneficiaries of this policy. Subparagraphs 5(c) and (d), respectively, provide for comprehensive health insurance and travel accident insurance paid for by the hospital. The health insurance package may be with Blue Cross/Blue Shield, a commercial carrier, or the Hospital's own self-insurance mechanism.

Subparagraph 5(e) provides for an automobile to be used by the CEO, the expenses of which are to be borne by the hospital. Finally, subparagraph 5(f) permit payments into a retirement plan that are over and above the CEO's base salary.

#### PARAGRAPH 6

This clause is commonly referred to as the termination provision. It is by far the most important part of the contract. In the event that a majority of the board decides the services of the CEO are no longer required, for whatever reason, the contract is terminated. However, the CEO will still be entitled to a stated amount of salary even though he is no longer working for the hospital. Also, the CEO's group life and health insurance benefits continue.

Outplacement services are also made available. The exact number of months of severance pay to which the CEO is entitled is of course the subject of negotiation. The figure determined upon should accurately reflect the risks and challenges of the position.

However, this provision relieves the Hospital from its obligation to pay the severance arrangements in the event that the CEO's employment is terminated due to the CEO being charged with a criminal offense.

The purpose of this clause is to protect the CEO from threats of termination aimed at making him act in his position with unnecessary caution. It is in the interest of the board, the hospital and the patients. The CEO must be able to exercise his authority to the fullest extent possible. He must also be able to make hard decisions without fear that his job may be in jeopardy simply because someone on the board or the medical staff did not like the choices he made.

#### PARAGRAPH 7

This paragraph is similar to Paragraph 6, except that it comes into play in the event that the board substantially changes the duties of the CEO, either by appointing another officer with similar duties or restricting the authority of the existing CEO. This would be one way to avoid the applicability of the severance provisions of Paragraph 6. As in the case of paragraph 6, the CEO in this case will be entitled to full salary for two years after termination plus group life and health insurance benefits.

#### PARAGRAPH 8

This paragraph provides for severance payments in the event of merger or closure of the hospital.

#### PARAGRAPH 9

This clause allows the CEO to voluntarily terminate the employment relationship; but, if he does, no severance payment is made.

#### PARAGRAPH 10

This paragraph protects the hospital from needless future litigation by the CEO if the CEO accepts the severance benefits. This allows the hospital to conduct its business relationship with the CEO without unnecessary caution. It is in the interest of the board, the hospital and the patients. This waiver will be enforced to the maximum extent allowable by law.

#### PARAGRAPH 11

This provision protects the hospital from disclosure of confidential information by the CEO during and after his term of employment with the hospital. An employment contract with a key executive should contain a provision that prohibits the employee from disclosing to outsiders confidential information acquired by the employee during his term of employment without the express written permission of the employer. This provision should describe the applicable information so as to put the employee on notice as to what constitutes confidential information.

#### PARAGRAPH 12

An employment contract with an executive employee typically contains a covenant by the employee not to compete with the employer during the term of the contract and for a specified period following termination of employment. The covenant is essential to the employer in order to prevent the employee from dealing with the employer's customers or otherwise engaging in competitive activities with the employer immediately following

his termination of employment so as to cause material adverse financial consequences to the business of the employer.

Restrictive employment covenants have generally been held to be valid where the restraint imposed on the employee is no greater than necessary to protect the legitimate business interests of the employer and where neither the hardship to the employee nor the likely injury to the public outweighs the employer's need for protection. Thus, a covenant not to compete is usually upheld if it is clearly and reasonably limited as to time and area and does not extend beyond the duration and geographical scope necessary for the protection of the employer. However, it should be noted that such restrictive covenants are unenforceable in some states.

#### PARAGRAPH 13

This provision prevents the CEO, whose employment at the hospital has been terminated, for whatever reason, from recruiting other key executives to leave the hospital and join him in independent ventures excluding the hospital's involvement.

#### PARAGRAPH 14

This paragraph makes it simple for the hospital and the CEO to continue the agreement beyond its initial term by signing a simple letter agreement as an extension. The letter need only state that the initial contract has been extended for another specified period and set out the CEO's new salary. All of the initial provisions and benefits continue in force during the extension.

#### PARAGRAPH 15

This is a standard clause that appears in most contracts. It states that this particular contract embodies total agreement of the parties and supersedes any previous contract, in response to the so-called "parole evidence rule" of contract law. It eliminates any questions there may be as to the subject matter contained in the contract.

#### PARAGRAPH 16

This provision requires that any amendments to the contract have to be stated in writing. This prevents either side from claiming that an "oral understanding" superseded some portion of this contract. It is technically referred to as a "No Oral Modification" or "NOM" clause.

#### PARAGRAPH 17

This is known technically as a "savings clause." In the event that any portion of the contract is declared invalid or unenforceable by a court, the rest of the contract can therefore not be terminated on a "technicality."

#### PARAGRAPH 18

This paragraph keeps the contract in force even though the hospital may change its corporate structure or be sold to another owner. It also provides that any benefits provided under the contract, such as life or accident insurance, that survive the CEO upon his death, insure to the benefit of his estate or heirs.

#### PARAGRAPH 19

This clause stipulates what law applies to the contract. This is especially useful in hospitals near state lines. The law governing the contract should always be that of the state in which the hospital is located.

The execution of the contract should be authorized by the board. It should be signed by the chairman of the board and the CEO and should be witnessed by two individuals who are not on the board and who are not members of

the CEO's family. It should be filed along with other essential corporate documents. A copy should be given to the CEO. Needless to say, the terms of the contract, especially those relating to salary levels, fringe benefits and termination, should be treated as confidential.