

# EMPLOYMENT AGREEMENT



# Employment Agreement Overview

**WHAT IT IS:** This agreement sets out the terms of employment between you and an employee you hire.

**WHAT IT DOES:** This agreement sets expectations and outlines terms for you and your employee. Among other things, this agreement:

- Establishes the duties of the employee
- Outlines how and how much they will be paid
- Outlines when you can fire them and when they can quit, making a potential termination easier if the employee is not performing part of their job description
- Helps ensure that they won't steal your customers or other employees and that they'll keep your secrets
- Establishes liability limits for both parties

**WHY YOU NEED IT:** To help prevent misunderstandings and disagreements with your employee. Depending on your state, you may not be required to have an employment agreement, but it's strongly recommended that you have one anyway. If you don't and something goes wrong, your "implied" employment agreement may be governed the state and federal laws. Do you know what those laws are? Are you okay with them? If not, creating an employment agreement will make it crystal clear what both you and your employee are agreeing to. Without a signed agreement like this in place, you may have challenges with regard to proper employee expectations, limited protections for your business (i.e. no noncompete or nonsolicitation clauses), and even issues if termination of employment is later needed.

**WHEN TO USE IT:** Every time you hire someone to work in your business as an employee. (Is the person you're bringing on an independent contractor or an employee? To understand the difference between an independent contractor and an employee, read this IRS article. If you're bringing on an independent contractor, use the "Independent Contractor Agreement – Personal Training Services" described above.)

# Clause-By-Clause Explanations and Instructions

**Editing Instructions:** The first time you go through the template, customize it to your business according to the instructions below. Sections that should be filled in, altered to suit your needs, or deleted if they're not applicable to you are in **red**. Leave the signature section at the bottom and the **[Client Name]** in the recitals (the part between the title and the sections) blank for now. Then save the document – this will be *your* template going forward. Each time you bring on a new client, use your template and update the recitals with the client's name where it says **[Client Name]**.

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## THE TITLE

On the top of the page, insert your business name in **[Company, LLC or Individual]**. The remainder of the Agreement uses the word “Company” so that you only need to change your business name here and at the signature line.

## THE RECITALS

In the part between the title and the numbered sections, insert your business name in **[Company, LLC or Individual]**. The remainder of the Agreement uses the word “Company” so that you only need to change your business name here and at the signature line. When you bring on a new client, insert the client's name where it says **[Client Name]**. Client Name can be an individual, business name, or LLC. The remainder of the Agreement uses the word “Client” throughout.

## 1. Duties

**Purpose:** This clause establishes your expectations of the employee. This becomes very important as the relationship continues in the event the employee is not performing one of the duties. It's also important to list out physical requirements of the position.

**Instructions:** Draft very detailed **[duties]** that are required by this position. You can google job descriptions for the position for other terms.

## 2. Employment At-Will

**Purpose:** The purpose of this clause is to make clear that employment is “at-will” as opposed to a set time. This means they can quit any time and you can terminate them any time.

**Instructions:** None.

## 3. Compensation and Benefits

**Purpose:** To make clear what you are providing to the employee in exchange for the duties listed in section 1. Additionally, many states require that you inform your employees at the time of hire the basic information about their wages (how much, when getting paid, where getting paid, etc.).

**Instructions:** List the details of compensation and any benefits the employee will receive.

## 4. Covenants of Employee

**Purpose:** These are very important sections to protect your business. There are a few important clauses. The noncompete protects the company so that an employee that you train cannot leave and compete directly against you within a limited geographic area. Enforcement of noncompetes vary from state to state and are generally disfavored so make these as narrow as possible to protect your business. Next, the nonsolicit. These are more favored by courts and they prevent a departing employee from contacting your clients. In other words, keeps an employee from poaching clients or employees.

**Instructions:** Carefully review these provisions and only extend the time and geography as necessary to protect your business. Pro Tip: Less is better. Many states will throw out the entire clause if it is deemed “overly broad,” so be sure to narrowly tailor this. You will define these in the definitions below.

## 5. Definitions

**Purpose:** These definitions support the covenants in Section 4.

**Instructions:**

You must update Section 5(f) Restricted Area and input the smallest geographic area you can to protect your business. You can list your city or a number of miles from your business address. It's important to not make this overly broad or else it is likely unenforceable. You would rather have a smaller but enforceable clause than an unenforceable one.

You must update Section 5(g) Restricted Period regarding the time frame that employee may not solicit or compete.

Review the other sections to ensure they are consistent with your needs

## 6. Notices

**Purpose:** This clause determines when notice shall be made under this agreement.

**Instructions:** You do not have to change this section; however, you can list specific addresses for notice to be delivered if you choose to do so.

## 7. Equitable Remedies

**Purpose:** This clause is designed to allow you to act before an employee breaches a provision under Section 4 or 5 for the reason that once the breach occurs, the damage is difficult to limit. For example, if the employee releases confidential information, it's hard to put the cat back in the bag (plus it is unlikely that the employee could adequately compensate you for the damage). Hopefully, this clause never comes into play in your business but it will be there if you need it.

**Instructions:** None.

## 8. Severability

**Purpose:** The severability clause allows the main part of the contract to remain in effect even if certain clauses are illegal or unenforceable. On the off chance that a clause is unenforceable, this provision guarantees that one bad clause does not break or "sever" the deal completely. This is one of those "boilerplate" clauses that's really important.

**Instructions:** None.

## 9. Waivers

**Purpose:** In the case that your company to waive a section within this contract (or do so inadvertently), this clause maintains your cause of action. For example, you will not lose a cause of action just because you are delayed in responding to it. This preserves your ability to enforce all provisions so long as you do so within the statute of limitations.

**Instructions:** None.

## 10. Assigns

**Purpose:** This clause allows you to sell your company and assign the rights to this agreement to the company. Now, because this agreement is at-will the employee could still quit but this does technically allow the buyer to take over with same rights you have.

**Instructions:** None.

## 11. Entire Agreement

**Purpose:** The purpose of this clause is to ensure that all of the terms and conditions of your agreement with your client is set out in a single contractual document. An entire agreement clause promotes certainty of obligations and prevents either party from relying on conversations or preconceived notions outside this contract.

**Instructions:** None.

## 12. Governing Law

**Purpose:** This clause clarifies what laws will govern this contract. Contract laws vary state-to-state, so the contract must clarify what state laws govern this particular agreement.

**Instructions:** Replace [CHOOSE STATE] with your state and county of your company's primary location.

## 13. Prevailing Party

**Purpose:** This clause explains if your company or the client is responsible for attorneys' fees. If there is a dispute that requires retaining attorneys, whomever prevails from the dispute will be reimbursed for their attorneys' fees. This clause is incredibly important should you need to retain an attorney as it makes it more cost effective because now your Client may have to reimburse you for legal fees.

**Instructions:** None.

## 24. Electronic Signature and Counterparts

**Purpose:** To allow you and your client to sign this agreement with the same power and authority as signing in person.

**Instructions:** None.

### SIGNATURE BLOCK

Lastly, insert your business name, name of owner/president, and name of client in the signature block. If you are an LLC, always sign as a representative of the LLC. For example, “Wesley Henderson, Member.”

All of your hard work does little good when you go to collect on an unpaid invoice if you do not have a signed copy of this agreement, so be sure to **get it signed and keep a copy**.