

# Nurses and contracts

Understand the basics so you can protect your interests.

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**MOST NURSES** don't learn about contracts in nursing school, so they're left to wander through the contracting maze not knowing how to negotiate or avoid traps that might create long-term implications. Understanding basic terminology, the pitfalls you may encounter, and the relationships among parties to a contract can help you protect your self-interests and ensure a successful experience.

## When do nurses contract?

Nurses contract in their personal and professional lives. For example, those seeking employment may be offered contracts that cover a specified period. Nurses may contract as individuals with other individuals or business entities owned by a for-profit or non-profit healthcare system, hospital, or practice. Traveling, temporary/per diem, and dialysis nurses frequently sign employment contracts, and faculty contract with schools to delineate their roles, responsibilities, and expectations. Nurse administrators, nurse scholars publishing books, and nurses presenting at conferences also sign contracts. In our personal lives, we might contract for goods and services, credit cards, or social media accounts.

## What is a written contract?

A written contract represents a binding, legally enforceable agreement between two or more parties for consideration to perform or refrain from performing an act. Attorneys frequently use the terms "contract" and "agreement" interchangeably, but key differences exist. An agreement is an arrangement or understanding between two or more parties. A contract provides legally enforceable terms and conditions, and it memorializes discussions and terms during the negotiation process. The elements of a contract include offer, acceptance, and consideration.

- An *offer* is an invitation to a contract. It's



the promise to do or not do something. The parties may come to full agreement immediately or they may negotiate to reach an agreement. The terms of the contract will delineate the actual expected actions or inactions.

- *Acceptance* occurs when the parties mutually negotiate to reach an agreement. In everyday life, this agreement could be to purchase an item at a store at the labeled price, to accept terms of use by clicking on a website, to make an online agreement to engage in or use a service, or by winning a bid on an eBay auction. Professionally, acceptance occurs when nurses purchase liability coverage, determine risk tolerance, agree to coverage limits, and sign a contract.
- *Consideration* may be to make a financial payment or provide a service. For example, you agree to work in a clinical setting for an approved salary.

**Example:** A nurse practitioner-run practice needs a temporary nurse to replace a full-



## Common clauses

Most contracts contain some or all of the following clauses:

- Alternate dispute resolution
- Assignment
- Compensation
- Contract renewal
- Duration of the contract
- Governing law
- Intellectual property
- Liability insurance coverage
- Notice
- Preamble
- Recitals
- Scope of work
- Severability
- Termination
- Waiver (hold harmless)
- Waiver of right to a jury trial
- Warranties

Contracts also may contain restrictive clauses:

- Evergreen
- Noncompete
- Nondisclosure

time employee taking parental leave. The job requirements include patient education, immunizations, treatments ordered by the providers, and telephone triage. The practice

creates an offer by advertising for a nurse to cover the period of the leave. Several nurses apply for the position, and the practice selects an applicant that best meets its needs. The applicant accepts an offer to work as a temporary nurse. As consideration, the practice agrees to pay the nurse \$55.00 per hour as an independent contractor, not as an employee. The nurse will pay for their own malpractice insurance, taxes, social security, and Medicare. The nurse signs the agreement after reviewing it with a lawyer familiar with employment law.

### What are standard contract clauses?

Contracts include several standard clauses. Understanding what each entails will aid your negotiations. (See *Common clauses*.)

**Preamble:** The preamble to the contract identifies all the parties (typically two). Only the individuals or businesses identified in the preamble sign the contract and subsequent addendums. After the contract is signed, all parties must agree to any changes.

**Recitals:** Recitals explain why the parties entered into the contract and provide important context to the operating terms. For example, in a publishing contract, the preamble may identify you as a nurse with expertise in working at the bedside or in hospice care. This identification is important because the publisher wants you to write a book on this topic.

**Duration:** This clause provides the contract's starting and ending date and time.

**Scope of work:** This section defines the deliverables of the party offering a service or other activity. The details may appear in an appendix. The contracting party may use the volume of work produced, user satisfaction of the service, or a product as a measure of whether the deliverables have been met. Poor performance may result in reduced salary, bonuses, or payments for work completed. For example, compensation for writing a textbook may depend on meeting deadlines for submitting all or parts of the manuscript from the initial draft to the final edit.

**Compensation:** Most contracts involve payment. This section should discuss all aspects of compensation or provide a detailed explanation in an appendix.

• **Salary:** In an employment contract, salary is the first item most people identify in a

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compensation package. Some potential workers prioritize salary, but others may be more interested in benefits such as insurance or schedule (for example, no night shifts.).

- **Other compensation:** Time off (vacation, sick days, holidays) and bonus structures also are important considerations.

**Warranties:** Warranties protect the buyer of goods and services when the product or service fails to meet the expectations of the contracting party. Warranties can be spelled out in the agreement or implied. Sellers may disclaim warranties by selling products “as is,” but the Uniform Commercial Code requires this to be in writing.

**Liability insurance coverage:** This clause spells out who provides liability coverage—the business entity or the nurse through an individually purchased policy. No matter who provides the policy, it should cover professional licensure claims and legal actions after the nurse leaves the practice. (Learn more about liability insurance at [myamerican-nurse.com/individual-nurse-liability-insurance/](http://myamerican-nurse.com/individual-nurse-liability-insurance/).)

**Intellectual property:** Nurses may produce an idea, service, or product during the period of the contract. In most cases, the contracting business entity, not the nurse, owns any ideas and items created during performance under the contract, including anything created using equipment owned and maintained by the contractor. This clause requires the nurse to sign over all rights to ideas, inventions, and other property.

**Assignment:** Assignment clauses state whether a party can assign its rights under the contract to someone else. For example, if you work for someone who sells their business while you’re fulfilling your part of the contract, you may need to complete unfinished work for the new owner.

**Contract renewal:** This clause provides information about the need to provide notification when you won’t be renewing the contract, such as when a change in employment or other life event occurs. Failure to comply with this clause could impact the payout of unused benefits and forfeiture of other rights under the contract. Typically, employment contracts don’t automatically renew unless expressly stated.

**Governing law:** The governing law refers

to which state’s rules and regulations govern the agreement between the parties. When the parties can’t agree on the governing law, they omit this clause in the contract and let the courts decide.

**Alternate dispute resolution:** Most contracts require parties to agree to resolve all disputes through alternate dispute resolution (ADR), such as arbitration or mediation. In arbitration, the parties present evidence to the arbitrator, who decides based on that evidence. In mediation, a neutral third party works with the contracting parties until both agree to a resolution. The contract may require ADR before the parties can file legal actions in court or may mandate that the arbitrator’s decision legally binds both parties and prevents court involvement completely. Conversations between the parties before signing the contract are excluded in a dispute unless the aggrieved party proves that a party to a contract acted in bad faith.

**Waiver of one’s right to a jury trial:** Parties can agree to waive their right to a jury trial, which means that in a legal action a judge or panel of judges hears the matter and passes judgment in a dispute. Most legal experts don’t recommend agreeing to this provision because it ties the hands of one or both parties, primarily when an unanticipated outcome to an activity or dispute arises.

**Notice:** A notice clause defines how the parties communicate with each other after the contract becomes enforceable. These clauses define required written notice and the method of delivery. Sending an email about a contract renewal or a request for an amendment may not meet the requirements set out in this clause. Failure to follow the requirements could result in unintended consequences, such as automatic renewal of a contract. When in doubt, send written notice by certified, signed recipient, return notification mail.

**Waivers:** A waiver clause provides a legally binding provision in which one or more parties relinquishes a right or a privilege. Waivers frequently reference a release from liability or to hold harmless. For example, the parties agree to mutual release from the contract during a natural disaster or other events outside their control.

**Severability:** Many contracts contain a

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severability clause, which states that if any agreement provision becomes unenforceable under current or future laws, the rest of the contract continues to bind the parties.

**Termination:** Most contracts have a termination with cause clause in the event one of the parties fails to meet their obligations. A contract should never contain a termination without cause because that negates its purpose.

### What's the worker's employment status?

Employment criteria must be clear, consistent, and well-documented to protect both employees and employers. Two types of employment that can be confusing for nurses are employment at will and contracted employee.

*Employment at will* operates under the assumption that work continues at the will of both employer and employee, giving each party the ability to end the relationship at any time. Most healthcare entities hire nurses under employment at will.

*Contracted employees* (independent contractors) don't receive the benefits and tax advantages of at-will employment. However, as an independent contractor, the nurse doesn't have an employee-employer relationship with the entity, which they may find preferable. Before choosing to work as an independent contractor, consult with a tax accountant and an attorney.

### Contracted employee agreement clauses

**Restrictive clauses:** Noncompete, nondisclosure, and evergreen clauses are examples of restrictions placed in a contract.

A *noncompete clause* impacts your ability to perform a similar service for a specified time period after a contract ends. It may limit the location of a future workplace or your encounters with patients. For example, a nurse might sign a noncompete clause that prevents them from working within a 5-mile radius of an employee-owned entity with the belief that they could find employment outside of the agreed radius. However, the entity owns clinics and other businesses throughout the city and the metropolitan area. Working in an outlying area might be the nurse's only option for employment for 1 year after leaving the entity. Some states, such as California, prohibit this clause, mak-

ing them invalid if they appear in a contract signed by a California resident or with a California company.

*Nondisclosure clauses* typically pertain to employer information and trade secrets potentially leaked by the contracted worker after employment termination. Other laws (the Health Insurance Portability and Accountability Act and the Health Information Technology for Economic and Clinical Health Act) offer special federal protections to all patients.

*Evergreen clauses* automatically renew the agreement without the parties' consent unless a party proactively follows the process outlined in the contract within the time designated. For example, this type of clause might require that the parties give 90-days' notice of nonrenewal or to renegotiate the contract terms.

**Liability insurance coverage:** In an employment contract, all nurses need liability coverage provided by either an employer or themselves. Typically, nurse liability policies provide \$1 million for each claim and \$3 million in the aggregate. You should know that attorney fees may be outside the policy limits or included. For example, in most cases, it's action by the board of nursing, rather than a malpractice claim, that results in a nurse needing to defend their license. Some insurance providers don't cover licensure defense, so this should be addressed within the "coverage" portion of the policy. Whether the employer is providing the coverage or you're working directly with the insurance provider, ask these questions: Will this policy cover licensure defense? What are the limits? Is the policy occurrence or claims-based? Does the policy contain a tail?

**Equipment:** Employers should provide equipment necessary for the nurse to complete the functions of their position. This clause frequently provides workspace information, computer use and access, printers, and other items. It may include a cell phone or a monthly stipend to cover use of the nurse's personal cell phone when at work or on call. The equipment clause also outlines returning equipment when the contract ends.

### Protect your interests

Nurses encounter contracts in their personal and professional lives. Knowledge of the

contracting process and problematic clauses provides you with a frame of reference when entering into a contract. Working with a licensed attorney who specializes in nursing, healthcare professions, or employment law in your state will help ensure your interests are protected. (See *Contract review*.) **AN**

Access references at [myamericannurse.com/?p=317236](http://myamericannurse.com/?p=317236).

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**Editor's note:** This article is not intended to provide legal advice. If you need assistance in contracting, contact an attorney, preferably one who specializes in nursing, healthcare professions, or employment law in your state.

## Contract review

Perform each of these steps, in consultation with a lawyer, to ensure a successful contract review.

### Pre-negotiation

- Learn about the company you're contracting with.
- Talk with others who have knowledge of the entity to learn about issues that might prevent a successful outcome.

### Post-negotiation

- Read the contract in its entirety.
- Identify the benefits of accepting the contract.
- Identify the negatives of accepting the contract
- Negotiate terms you think are restrictive or might prevent successful employment or project completion.

### Pre-acceptance

- Consider acceptability of the contract terms.
- Determine whether the contract clearly states the negotiated terms, deliverables, and responsibilities of each party.
- Seek legal counsel to review and verify all issues.

### Acceptance

- Both parties agree to the terms of the contract and sign it.
- Maintain a copy of the signed agreement as documentation of the contract.

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