Proper drafting of physician compensation formulas is important for a physician practice, especially when a physician’s termination is imminent.

It’s impossible to draft a physician employment contract that takes into account every possible scenario that can arise between a physician and his or her employer. However, when it comes to the financial relationship between the parties, proper planning and experience can assist a practice in avoiding unnecessary conflict (and related legal fees) when there is a termination of employment.

In one dispute on which I recently worked, a physician was provided notice of termination by the employer. There were a multitude of issues involved, and the employer elected to provide notice without-cause so as to minimize conflict. The employer also did not want the physician to provide any services during the notice period, but was obligated to compensate the physician during such time (sometimes referred to at my firm as a “stay home and watch cartoons” provision). The problem that arose upon termination was due to the fact that the physician was compensated based on production and, since she was not being permitted to work, it was unclear what should be paid to her during the notice period.

There are certain approaches that can be used when terminating a physician who is paid based on production if the physician’s contract does not already address this scenario. One idea is to simply pay the physician the same “draw” that she was receiving during the notice period. Although this may seem reasonable, you can expect the physician’s counsel to argue that payment of draw does not take into account the amounts by which the physician may have regularly exceeded her draw through bonuses, if applicable. If the physician did in fact greatly exceed her draw, this approach would result in her being paid less during the notice period.

Since not allowing a physician to work during the notice period is usually related to performance or discipline issues, this may not necessarily be an unfair outcome for the group, particularly if there were grounds to terminate immediately for-cause. This is a fairly simple contractual method to address this potential situation and will avoid the need for negotiation at the time of termination. I often recommend this approach to my clients.

When the employment contract does not dictate the approach to be used and payment of a “draw” is rejected, one possibility is to pay the physician the average of what all the other physicians receive as compensation during the notice period. This may not be fair if the terminated physician’s productivity was lower than others in the group for the period prior to notice of termination.

A more fair approach might be to pay the terminated physician the average amount that was paid to her as compensation during the prior six-month period. Undoubtedly, the terminated physician will argue that she should be paid more for a variety of reasons: her practice had recently seemed busier, she had intended to start working more hours before she was given notice, etc. Regardless of these arguments, using the production of others in the group, or the physician’s own production prior to termination, will often result in a satisfactory resolution to the issue. If one of these approaches is appealing, I again recommend adding it to your physician contracts in advance of a termination. Other issues which often arise when terminating a physician who is paid based on productivity relate to non-insurance covered goods and services, particularly with regard to dermatology and plastic surgery practices, such as profits from Botox and other types of injectables. I will address some production and termination related concerns related to these items in a future blog.

One final note on other sources of income to the practice which can be an issue, such as EHR incentives, product rebate, and quality incentives related to the group’s performance under insurance contracts. These funds are rarely addressed in physician contracts but should be to avoid conflict, especially upon termination of a physician when every cent can be contested. Proper drafting of physician compensation formulas is important for a physician practice, especially when a physician’s termination is imminent. Make sure your practice addresses the particular concerns created by the type of medicine you practice and the manner in which you compensate your providers.