

Legal Contract Essentials for Eye Care Professionals

Katie Gilbert Spear, OD, JD, MPH

113 North Palafox Street

Pensacola, FL 32502

Kjgilbert77@gmail.com

Course Description: This course will educate attendees on the importance of reading all contracts before signing and alert them to important contract clauses commonly encountered in optometric practice.

Course Objectives:

- 1) Educate attendees on the elements of contract and legal considerations.
- 2) Educate attendees on the importance of reviewing all contracts before signing.
- 3) Educate attendees on the important contract clauses to be reviewed in all contracts.
- 4) Educate attendees on important considerations and clauses when reviewing purchase contracts.
- 5) Educate attendees on potential problems with lease contracts.
- 6) Educate attendees on important clauses in employee and employed doctor contracts.

Course Outline:

- 1) Contract Basics
 - a. Definition: legally binding agreement between two or more parties that outlines specific obligations and rights
 - b. Importance of a Contract
 - Clarity
 - Enforceability
 - Certainty
 - Risk Management
 - Legal Protection
 - c. Elements of a Valid Contract
 1. Offer and Acceptance: One party must make an offer, and the other party must accept it

2. Intention to Create Legal Relations: Both parties must intend for the agreement to be legally binding
3. Consideration: There must be something of value exchanged between the parties (e.g., money, goods, services)
4. Capacity: Both parties must have the legal capacity to enter into the contract
5. Consent: Both parties must freely consent to the terms of the contract without duress, fraud, or misrepresentation.
6. Legality: The purpose and terms of the contract must be legal and not against public policy.

3) Types of Contracts

- a. Written vs. Oral Contracts
- b. Express vs. Implied Contracts
 - Express: terms of the contract are explicitly stated by the parties involved, either verbally or in writing
 - Implied: contract and terms are not explicitly stated by the parties but are inferred from their actions and conduct
- c. Void vs. Voidable Contracts
 - Void: considered invalid from the beginning and have no legal effect, cannot be enforced by either party
 - Voidable: valid but can be voided by one or both parties due to specific circumstances such as fraud, coercion, or incapacity
- d. Bilateral vs. Unilateral Contracts
 - Bilateral: involve promises exchanged between two parties
 - Unilateral: involve a promise by one party in exchange for the performance of an act by another party

4) Key Clauses in Contracts

- a. Essential Clauses:
 - Parties Involved, Subject Matter, Consideration, Terms and Conditions
- b. Optional Clauses:
 - Termination, Dispute Resolution, Confidentiality, Indemnification

- 5) Breach of Contract: occurs when one party fails to fulfill their obligations as outlined in a legally binding agreement
 - a. Types of Breach
 - Material breach: where one party fails to perform a major aspect of the contract, significantly affecting the overall purpose of the agreement
 - Minor breach: occurs when a party fails to fulfill a minor aspect of the contract that does not fundamentally alter the agreement
 - b. Remedies for Breach: Damages, Specific Performance, Rescission, Reformation
- 2) Practice Purchase Contracts
 - a) Price and terms
 - b) Employee obligations and contracts
 - c) Noncompete clauses
 - d) Holdback clause to minimize risk
 - e) Assets and liabilities
 - f) Regulatory compliance
 - g) Transition period
- 3) Commercial Leases
 - a) Parties to the contract (personal versus entity)
 - b) Property description
 - c) Lease term and renewal
 - d) Maintenance: determine who is responsibility for repairs
 - e) Build-out of premises
- 4) Corporate Leases
 - a) Parties to contract
 - b) Renewal terms-consider your exit options
 - c) Clinic schedule
 - d) Compliance with federal and state healthcare laws
 - i) Corporate practice of medicine
 - ii) Anti-kickback statute
 - iii) Fraud and abuse laws
- 5) Insurance Contracts
 - a. Medical Insurance Contracts
 - b. Vision Insurance Contracts

- c. General Liability Insurance
 - d. Premise Liability Insurance
- 6) Important Clauses in Employee/Staff Contracts
- a) Compliance with labor laws: Ensure you are compliant with relevant labor laws, including minimum wage, working hours, anti-discrimination laws, and health and safety regulations
 - b) Pay and benefits: Specify salary, bonuses, benefits (health insurance, retirement plans), and any other compensation detail
 - c) Noncompete clauses and non-solicitation clauses
 - d) Termination: outline conditions under which employment can be terminated, including notice periods, severance packages, and procedures for handling disputes
- 7) Important Clauses in an Employed Doctor Contracts
- a) Authority to bill insurance under the doctor
 - b) Indemnification clauses: Include these clauses to reduce your risk and liability
 - c) On-call schedule: Outline expectations regarding on-call duties, emergency coverage, and how this time is compensated
 - d) Medical record ownership
 - e) Noncompete/Non-solicitation: ensure you are compliant with local and federal laws
 - f) Dispute resolution: Outline a procedure for resolving disputes that may arise during the contract term
- 8) Equipment Leases/Contracts
- a) Equipment Specifications: describe the equipment being leased, including make, model, serial numbers, and any included accessories or software
 - b) Lease Terms: Specify the duration of the lease, renewal options, and any early termination penalties
 - c) Payment Terms: Detail the payment schedule, including any down payments, monthly fees, maintenance costs, and late payment penalties
 - d) Maintenance and Repairs: Clarify responsibilities for maintenance, repairs, and servicing, including who bears the costs

- e) **Ownership and Title:** Indicate whether the equipment ownership will transfer to the lessee at the end of the lease term or if it remains with the lessor
- f) **Insurance Requirements:** Specify insurance coverage requirements for the leased equipment, including liability, theft, and damage
- g) **Warranty and Support:** Include details about any warranties on the equipment, and who is responsible for technical support or replacement in case of defects