

What is a professional practice statement?

Professional Practice Statements developed by the Association Forum are provided as a management tool for associations and individual association professionals, developed by experts in the industry, and recommended as a means to achieve excellence in managing associations and other nonprofit organizations.

BACKGROUND

Employment agreements can benefit both the Association and the Chief Executive Officer and are consistent with prudent, professional association governance. The CEO's position responsibilities, employment conditions, and benefits differ from those of other staff positions and thus warrant an employment agreement.

Because of the link that exists between staff leadership continuity and overall organizational performance, it is in the best interest of the association to ensure stability in the CEO position. In an employment environment, where the association competes with for-profit and not-for-profit organizations, an agreement can help to contribute to stability. More importantly, providing a degree of employment protection through the agreement can mitigate the impact of organizational politics on operational outcomes, encouraging prudent decision making and candid communication between the CEO and the association's governing bodies.

A written employment agreement between an association and the CEO should clearly set out the mutual expectations for the association-CEO relationship. It should clarify the extent of and limitations on the executive's prerogatives and the actual employment relationship, documenting those conditions and relationships for governing bodies where volunteer members change regularly.

The agreement should clearly identify the relationship between the association and the CEO, including the obligations each has to the other. Ideally, the CEO should know what is expected in terms of responsibilities and the association should have a clear definition of its responsibilities to the CEO.

POLICY POSITION

The Association Forum believes that every association should enter into a written employment agreement with its CEO to define the employment arrangement and clearly articulate obligations of both the CEO and the association.

PROFESSIONAL PRACTICES

The following issues should be considered when developing a CEO employment agreement. Not every agreement provision described below will be appropriate in all situations, and some matters not described below may be appropriate in particular circumstances.

Legal Counsel Review. The association and the CEO should have their respective legal counsel review the employment agreement.

Identify the Parties and their Engagement. The opening of the agreement should be clear about the parties involved and whether the employer is the parent or a subsidiary. It should also reflect mutual agreement to engage.

Term of Agreement. The agreement may specify the term of employment and/or it may simply provide that the agreement will continue indefinitely until terminated by either party as provided in the agreement. Where a fixed term is specified, it should include options for renewing, including whether the agreement renews automatically, notice of non-renewal, and the term of the renewal.

Duties. The CEO's duties and responsibilities should be set forth in the agreement. The agreement may incorporate a separate job description and should refer to the CEO's obligations under the laws of the land and the association's bylaws, policies and procedures.

Location. It is advisable to specify the location of the CEO's principal work location. Typical issues to address may include multiple offices, telecommuting and association relocation.

Hierarchy. The agreement should clearly identify the party or parties to whom the executive reports. It should also set forth the extent and limitations of the CEO's authority.

Performance Evaluation. The agreement should provide for an annual evaluation and the evaluation process used. (For additional detail, refer to the Forum's professional practice statement entitled "Evaluating the Performance of the Association Chief Executive Officer".)

Compensation and Benefits. The agreement should specify the compensation and benefits to be provided to the CEO. In addition to salary, specified benefits may include health, life and other insurance; vacation and other leave; bonuses and incentives; deferred compensation and retirement benefits, professional memberships and professional education, and others agreed to by the parties.

Conditions for, timing of, and types of salary increases and other compensation changes should be specified in the agreement. These may include cost-of-living, merit and/or performance-based increases. (For additional detail, refer to the Forum's professional practice statement entitled "Evaluating the Performance of the Association Chief Executive Officer".)

Business Expenses. In broad terms, indicate what is covered.

Death or Disability. The agreement should specify terms of how death and disability will be addressed.

Termination. The agreement should contain provisions regarding the circumstances under which the parties may terminate the agreement and the obligations of each with respect to such termination.

- **Termination "for cause."** The association should retain the right to terminate the CEO "for cause"; e.g. actions by the CEO involving gross negligence, willful misconduct or material breach of the employment agreement, or other grounds agreed to by the parties including but not limited to death or disability. The agreement should include provisions for due process in which the CEO receives prior written notice of the reasons for termination and an opportunity to respond to them in a confidential hearing with the decision makers.
- * **Termination "without cause."** Either party should be permitted to terminate the agreement without cause upon written notice to the other. The agreement should set forth the length of notice that must be provided, as well as the rights and obligations of each party during the notice period. Messaging may be addressed.
- **Severance.** The agreement should set forth the circumstances under which the CEO will be provided severance and the amount of severance that will be paid. Severance can be a set amount or a formula based, among other things, on salary, benefits, length of service and the like. The agreement also may include other terms specifically negotiated by the parties, such as comprehensive outplacement services, assistance in career plan development and job searches, continued insurance coverage following termination, etc.
- **Rights and obligations following termination.** The agreement should make provision for each party's rights and obligations following termination (e.g. a requirement to return association-owned equipment, keys, and documents, confidentiality requirements, etc.).

Indemnification and other special insurance. The agreement should reflect the association's agreement to indemnify the CEO for any liability and expenses arising from the performance of his or her duties, except those involving gross negligence or willful misconduct, within the scope of controlling law, and should indicate the period of time the CEO will be indemnified.

Non-compete and confidentiality agreements. Under certain circumstances it may be reasonable for an association to include a non-compete provision in the agreement. Any such provision must be reasonable in terms of both time and geographic scope. Confidentiality and non-solicitation provisions also should be addressed.

Other. Include the state that will control the agreement's enforcement. Consider methods for dispute resolution such as arbitration.

DISCLAIMER

The Association Forum expressly disclaims any warranties or guarantees, expressed or implied, and shall not be liable for damages of any kind, in connection with the material, information, or procedures set forth in these Statements or for reliance on the contents of these Statements. In issuing these Statements, the Association Forum is not engaged in rendering legal, accounting, or other professional services. If such services are required, the services of a competent professional should be sought.

REFERENCES

Samples of association CEO contracts may be obtained from the Association Forum. The Association Forum's Resource Library and website has sample contracts developed by several law firms that specialize in association law and employment agreements.

ASAE's model association executive employment contract may be accessed on its website at <https://www.asaecenter.org/Career/content.cfm?ItemNumber=15973&navItemNumber=51892>.

"Compare and Contract" by Steven Williams, *Association Management*, April 2001.

"Smart Contracts: What to Look for the Next Time Around" by Carole Schweitzer, *Association Management*, May 1999.

"Give a Little, Take a Little" by Margo Vanover Porter, *Association Management*, April 2001.

"Legal: Key Elements in Association Executive Employment Contracts" by Jerald A. Jacobs, *Association Management*, April 2000.

"Rewards on the Rise" by Tracy Casteuble, *Association Management*, February 2000.