

[9 Southeast Transaction Guide § 165.200](#)

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§ 165.200 Basic Employment Contract

[1] Comment

[a] Use of Form.

This form contains general provisions that can be used in drafting any type of employment contract. It serves mainly as a checklist, containing the basic provisions that are included in most employment contracts and directing the attorney to more detailed provisions covering specific items. For other complete **employment agreements** covering specific types of employees, see [Sections 165.201 through 165.203](#). An employment contract in letter form is [illustrated in Section 165.204](#).

For a guide to drafting an employment contract [see [§ 165.120](#)].

[b] Essentials of Employment Contract.

The essential elements of an employment contract must be stated with definiteness and certainty. Elements most often cited by the courts as being essential include (1) the term of employment; (2) the nature and extent of the duties to be performed by the employee; (3) the place where the employment is to be performed; and (4) the compensation to be paid by the employer [see [Muller v. Stromberg Carlson Corp.](#), 427 So. 2d 266 (Fla. 2d DCA 1983); [Far v. Barnes Freight Lines](#), 97 Ga. App. 36, 101 S.E.2d 906 (1958); [Harris-Cortner & Co. v. Morgan](#), 214 Ala. 599, 108 So. 449 (1926)]. For further discussion of the requisites of an employment contract [see [§ 165.31](#)].

Although an employment contract may be enforceable if it contains only those provisions considered to be essential, most employment contracts are much more detailed. A thorough and well-drafted employment contract results in: (1) better employer-employee relations; (2) avoidance of the expenses of litigation; and (3) assurance that all matters will be resolved in a manner satisfactory to the attorney's client, usually the employer.

An attorney drafting an employment contract usually represents the employer and therefore is primarily concerned with the interests of the employer. However, the attorney should always bear in mind that the contract is usually intended to commence a harmonious and long-lasting relationship between the employer and the employee. Therefore, it is in the best interests of the employer that the contract be a fair one from the employee's standpoint, so that it will not create any ill will or resentment.

[c] Statute of Frauds.

An agreement not to be performed within a year from the time it is made comes within the statute of frauds and is invalid unless it is in writing and signed by the party to be charged or by his or her representative [[Fla. Stat. § 725.01](#); [O.C.G.A. § 13-5-30\(a\)](#); [Ala. Code § 8-9-2\(1\)](#)]. An **employment agreement** that by its terms cannot be performed within a year from the time of its making is therefore unenforceable unless it is in writing. For a more complete discussion of the statute of frauds in relation to employment contracts [see [§ 165.30](#)].

[2] Form

EMPLOYMENT CONTRACT

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This **Agreement** is made this _____ day of _____, 20____ between _____ [name of employer] (the “Employer”), having a principal place of business at _____ [address], and _____ [name of employee] (the “Employee”), _____ [address]. In consideration of the mutual covenants contained in this Agreement, the Employer and the Employee hereby agree as follows:

ARTICLE 1 TERM OF EMPLOYMENT

The Employer employs the Employee and the Employee accepts employment with the Employer for a period of _____ [number] _____ [months or years] beginning on the _____ day of _____, 20____; however, this Agreement may be terminated earlier as provided in Article 8 or in Paragraph 2.04, 3.07, 7.01, or 7.02 of this Agreement.

[For alternative provisions regarding the term of employment, see [§§ 165.210–165.212](#).]

ARTICLE 2 DUTIES OF EMPLOYEE**Specific Duties**

2.01. The Employee is employed as a _____ [e.g., bookkeeper]. The Employee shall _____ [set forth specific duties, e.g., carefully and accurately prepare and keep books of account and balance sheets and perform all duties commonly discharged by bookkeepers, and such other duties of a similar nature as may be required from time to time by the Employer].

[For alternative provisions regarding the employee’s duties, see [§§ 165.220–165.225](#).]

Other Duties of the Employee

2.02. In addition to the foregoing duties, the Employee shall perform any other work that may be assigned to _____ [him or her], subject to the instructions, directions, and control of the Employer. Any additional duties assigned by the Employer under the terms of this Agreement shall be required to be performed only during the hours and at the place of employment specified in this Agreement.

Mutual Consent to Change of Duties

2.03. The duties of the Employee may be changed from time to time by the mutual consent of the Employer and the Employee. Notwithstanding any such change, the employment of the Employee shall be construed as continuing under this Agreement as modified.

Change of Duties if Employee Disabled

2.04. If the Employee at any time during the term of this Agreement should be unable because of personal injury, long-term illness, or any other cause to perform the duties under this Agreement, the Employer may assign the Employee to other duties and the compensation to be paid after the reassignment shall be determined by the Employer in its sole discretion. If the Employee is unwilling to accept the modification in duties and compensation made by the Employer, or if the Employee’s inability to perform is of such an extent as to make modification of duties not feasible, this contract shall terminate immediately.

Place of Employment

2.05. At the commencement of the employment, the Employee shall perform _____ [his or her] duties at the office of the Employer located at _____ [address]. However, at any time deemed necessary or advisable by the Employer for business purposes, the Employee shall work at any other place or places that may be designated by the Employer. [If contract will include a covenant not to compete, add: The Employee shall operate in an area, called the “Territory,” which shall comprise _____ (e.g., the following counties: _____ or the 100-mile radius surrounding the office of the Employer specified in this paragraph).]

Hours of Employment

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2.06. The Employee shall work _____ [number] hours during the times to be designated by the Employer during five (5) days each week, for a total of _____ hours per week actually devoted to the business of the Employer.

Engaging in Other Employment

[Choose one of the following paragraphs:]

2.07. The Employee shall devote _____ [his or her] entire productive time, ability, and attention to the business of the Employer during the term of this contract. The Employee shall not directly or indirectly render any services of a business, commercial, or professional nature to any other person or organization, whether for compensation or otherwise, without the prior written consent of the Employer.

[OR]

2.07. The Employee during the term of this contract may _____ [specify nature of other employment, e.g., engage in any other business or professional activity provided that none of it is done during normal working hours or at the place of business of the Employer or act as a sales representative for any other person or organization that does not compete with the business of the Employer in any manner whatsoever or continue _____ (his or her) present work as consultant for _____ Corporation].

[Continue with the following:]

ARTICLE 3 COMPENSATION OF EMPLOYEE

Basic Compensation

3.01. As compensation for services rendered under this Agreement, the Employee shall be entitled to receive from the Employer a salary of \$ _____ per year, payable in equal _____ [specify time period, e.g., weekly or semimonthly] installments of \$ _____ on [specify payment dates, e.g., Friday of each week or the fifteenth and final days of each month] during the period of employment, prorated for any partial employment period.

[For alternative basic compensation provisions, see [§§ 165.240–165.246.](#)]

Overtime Work Requirement

3.02. Whenever requested by the Employer or required by the nature of the Employee's duties, the Employee shall work as many hours in a given workday, in addition to the regular _____ [specify number, e.g., eight (8)] hours, as are reasonably necessary to complete the work assigned by the Employer, not to exceed a maximum of _____ hours in any single day.

Overtime Compensation

3.03. The agreed compensation under this Agreement is for a workweek of _____ [specify number, e.g., forty (40)] hours. In the event that the Employee shall be called on to work more than that number of hours in any week, _____ [he or she] shall be entitled to compensation for the time actually devoted to overtime employment.

Changes in Rate of Compensation

3.04. The _____ [e.g., total annual] compensation specified in Paragraph 3.01 shall _____ [specify basis for future changes in rate of compensation, e.g., be increased by \$ _____ per year, with each year's increase to take effect on the anniversary date of this Agreement].

Cost of Living Increase

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3.05. The basic compensation provided in this Agreement shall be adjusted _____ [e.g., annually] to reflect the increase, if any, in the cost of living by adding to such basic salary an amount obtained by multiplying the basic salary by the percentage by which the level of the Consumer Price Index for all urban consumers for the United States, as reported for the last day of the _____ [e.g., annual] period by the Bureau of Labor Statistics of the United States Department of Labor, has increased over its level as of the _____ [specify date, or date of the commencement of this Agreement]. The adjustment shall take place on _____ [e.g., December 31 each year] and the Employer shall begin paying the adjusted salary on _____ [e.g., January 15 each year].

Additional Compensation

3.06. The Employee shall be paid such additional compensation from the Employer for the services rendered under this Agreement as may be determined, from time to time, in the sole discretion of _____ [the Employer or the Employer's Board of Directors].

Compensation During Instruction

3.07. (a) It is understood by and between the parties that in order for the Employee to be able to perform the duties required under this Agreement, it is necessary for the Employee to complete a preliminary period of training, which will last for a period of _____ [specify period of time, e.g., five (5) weeks]. As the Employee's total compensation during the training period, the Employee shall be entitled to the sum of \$ _____ per week.

(b) In the event that after completion of the training period, the Employee does not, in the opinion of the Employer, show sufficient aptitude to perform the work required under this Agreement in a satisfactory manner, the Employer shall have the option of terminating this Agreement or of requiring the Employee to complete an additional period of training.

(c) On successful completion of the training period and on the determination of the Employer that the Employee is competent to perform the work required under this Agreement, this Agreement shall take effect for the period specified and the Employee shall be compensated for services rendered at the rate provided in this Agreement.

[For provisions regarding deferred compensation, see [§ 165.247](#).]

ARTICLE 4 EMPLOYEE BENEFITS

Medical and Dental Benefits

4.01. The Employer agrees to include the Employee in the hospital, surgical, and medical benefit plan adopted by the Employer on _____ [date]. The Employee shall be entitled to participate in the plan _____ [immediately or at the time specified in the benefit plan rules].

Group Life Insurance

4.02. The Employer agrees to include the Employee under the Employer's group term life insurance policy _____ [set forth amount of coverage, e.g., in an amount equal to twice the annual salary of the Employee].

Vacation Pay

4.03. After the Employee has been in the employ of the Employer for _____ [specify length of time, e.g., one (1) year], the Employee shall be entitled to an annual vacation leave of _____ [specify length of time, e.g., two (2) weeks] at full pay. After the Employee has been in the employ of the Employer for _____ [specify length of time, e.g., three (3) years], the Employee shall be entitled to an annual vacation leave of _____ [specify length of time, e.g., three (3) weeks] at full pay. The time for the vacation shall be selected by the Employee and approved by the Employer, and it must be taken within _____ [specify length of time, e.g., one (1) year] after it has accrued.

Holidays

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4.04. The Employee shall be entitled to a holiday with full pay on each of the following days each year: _____ [specify, e.g., New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day].

Paid Sick Leave

4.05. The Employee, on completion of _____ [specify length of time, e.g., three (3) months or one (1) year] in the service of the Employer, shall be entitled to _____ [specify number, e.g., eight (8)] days per year as sick leave with full pay. Sick leave may be accumulated up to a total of _____ days, but the Employee shall not be entitled to compensation for any unused sick leave on termination of employment.

Continuation of Salary

4.06. If the Employee becomes disabled during the employment term because of sickness, physical or mental disability, or for any other reason, so that _____ [he or she] is unable to perform the duties under this Agreement, the Employer agrees to _____ [specify disability compensation, e.g., continue the Employee's salary or pay the Employee _____ (e.g., fifty (50)) percent of _____ (his or her) salary] during the period of disability, but not beyond the date specified in this Agreement for the end of the employment term.

ARTICLE 5 REIMBURSEMENT OF EMPLOYEE EXPENSES

Business Expenses

5.01. The Employer, in accordance with the rules and regulations that the Employer shall issue from time to time, shall reimburse the Employee for business expenses incurred in the performance of the Employee's duties.

Moving Expenses

5.02. In the event that the Employee is transferred by the Employer to a new principal place of work during the term of this Agreement, the Employer shall be liable only for such moving expenses as are duly authorized in advance in a writing given to the Employee by the Employer in accordance with the then regular policy of the Employer.

Purchase of Employee's Home by Employer

5.03. If during the term of this Agreement the Employee is transferred to another principal place of work that is at least _____ [e.g., 100] miles from the then principal place of work of the Employee, the Employee shall have the option of selling to the Employer any residence owned and occupied by the Employee at that time. The sales price shall be the fair market value of the residence as determined by an appraiser selected by the Employer, less the amounts of a real estate broker's commission and other costs of sales customarily paid by sellers of residences of like value in the area of the location of the residence. The appraisal shall be made within _____ [e.g., thirty (30)] days after the time that the Employee is notified of the transfer. After the Employee is notified of the sales price and the amounts to be deducted for the commission and costs, the Employee shall have _____ [e.g., ten (10)] days in which to decide whether to exercise the option to sell to the Employer. The net sales price shall be paid by the Employer in cash to the Employee within _____ [e.g., ten (10)] days after the Employee notifies the Employer that the Employee is exercising the option to sell.

ARTICLE 6 PROPERTY RIGHTS OF THE PARTIES

Inventions and Patents

6.01. The Employee agrees that _____ [he or she] will promptly and fully inform and disclose to the Employer all inventions, designs, improvements, and discoveries that the Employee may create, conceive, find, or participate in during the term of this Agreement that relate to the business of the Employer or to any experimental work carried on by the Employer, whether conceived by the Employee alone or with others, and whether or not conceived during regular working hours. All such inventions, designs, improvements, and

discoveries shall be the exclusive property of the Employer. The Employee shall assist the Employer to obtain patents on all inventions, designs, improvements, and discoveries deemed patentable by the Employer and shall execute all documents and do all things necessary to obtain letters patent, to vest the Employer with full and exclusive title to the patents, and to protect the patents against infringement by others.

Payment of License Royalties

6.02. If the Employer licenses others to use any of the inventions, designs, improvements, and discoveries conceived by the Employee, the Employer shall pay to the Employee a portion of the royalties received as follows:

- (1) Of the first \$2,000 or any part thereof received in any one (1) calendar year, _____ [e.g., forty (40)] percent.
- (2) Of the next \$2,000 or any part thereof received in any one (1) calendar year, _____ [e.g., thirty (30)] percent.
- (3) Of all further sums collected in any one (1) calendar year, _____ [e.g., twenty (20)] percent.

All questions concerning whether, when, how, and to whom licenses shall be granted shall be determined in the sole discretion of the Employer. If an invention is conceived by various employees of the Employer or if the licenses granted involve other inventions in addition to that of the Employee, the royalties received shall be apportioned in the sole discretion of the Employer. In either case, the Employee shall receive the above percentages only on the proportion allocated to the Employee's invention or share of an invention.

Trade Secrets

6.03. The Employee during the term of **employment** under this **Agreement** will have access to and become familiar with various trade secrets, consisting of formulas, patterns, devices, secret inventions, processes, and compilations of information, records, and specifications, that are owned by the Employer and that are regularly used in the operation of the Employer's business. The Employee shall not disclose any of these trade secrets, directly or indirectly, or use them in any way, either during the term of this Agreement or at any later time, except as required in the course of employment with the Employer. All files, records, documents, drawings, specifications, equipment, and similar items relating to the business of the Employer, whether prepared by the Employee or otherwise coming into the Employee's possession, shall remain the exclusive property of the Employer and shall not be removed from the premises of the Employer under any circumstances whatsoever without the prior written consent of the Employer.

Noncompetition During Term of Employment

6.04. During the term of this Agreement, the Employee shall not, directly or indirectly, either as an employee, employer, consultant, agent, principal, partner, stockholder, corporate officer, director, or in any other individual or representative capacity, engage or participate in any business that is in competition in any manner whatsoever with the business of the Employer.

Post-Employment Noncompetition

6.05. In consideration of the Employer employing the Employee in a position in which the Employee will gain specialized knowledge and experience and will establish personal relationships with the Employer's customers, suppliers, and other employees, the Employee covenants and agrees as follows:

On termination of employment, whether by termination of this Agreement, by wrongful discharge, or otherwise, the Employee shall not directly or indirectly engage in competition with the Employer in the territory and for the period specified in this paragraph. As used in this paragraph, "competition with the Employer" means entering or engaging in the business of _____ [describe business, e.g., developing, designing, manufacturing, and selling solid-state electrical and mechanical systems] as _____ [specify capacity in which employee may not compete, e.g., a sales representative or an electrical engineer] either individually, as a partner or joint venturer, as an employee, or as an agent, officer, director, or shareholder of any entity or person. The Employee agrees not to engage in competition with the Employer in the Territory where the Employee is assigned to perform duties pursuant to Article 2 of this Agreement, for a period of

_____ [e.g., one (1) year] after the date of termination of **employment** under this **Agreement**. This covenant shall be construed as an agreement independent of any other provision of this Agreement. The existence of any claim or cause of action of the Employee against the Employer, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by the Employer of this covenant. In the event of a breach or threatened breach by the Employee of the obligations under this paragraph, the Employee acknowledges that the Employer will not have an adequate remedy at law and shall be entitled to such equitable and injunctive relief as may be available to restrain the Employee from the violation of the provision of this paragraph. Nothing in this paragraph shall be construed as prohibiting the Employer from pursuing any other remedies available for breach or threatened breach of this covenant not to compete, including the recovery of damages from the Employee.

ARTICLE 7 OBLIGATIONS OF EMPLOYEE

Qualification for Surety Bond

7.01. The Employee agrees that _____ [he or she] will furnish all information and take any other steps necessary to enable the Employer to obtain a fidelity bond conditioned on the rendering of a true account by the Employee of all moneys, goods, or other property that may come into the custody, charge, or possession of the Employee during the term of employment. The surety company issuing the bond and the amount of the bond must be acceptable to the Employer in the sole discretion of the Employer. All premiums on the bond are to be paid by the Employer. Failure by the Employee to qualify for such a bond within _____ [e.g., thirty (30) days] from the date of this Agreement will result in immediate termination of this Agreement.

Satisfactory Performance of Duties

7.02. The employment of the Employee shall continue only so long as the services rendered by the Employee are satisfactory to the Employer, regardless of any other provision contained in this Agreement. The Employer shall be the sole judge as to whether the services of the Employee are satisfactory.

ARTICLE 8 TERMINATION OF EMPLOYMENT

By Employer for Cause

8.01. If the Employee willfully breaches or habitually neglects the duties _____ [he or she] is required to perform under the terms of this Agreement, the Employer may, at the Employer's option, terminate this Agreement by giving written notice of the termination to the Employee. Such termination shall not prejudice any other remedy to which the Employer may be entitled either at law, in equity, or under this Agreement.

Effect of Termination on Compensation

8.02. In the event of the termination of this Agreement prior to the completion of the term of employment specified in Article 1, the Employee shall be entitled to the compensation earned by _____ [him or her] prior to the date of termination as provided for in this Agreement, computed pro rata up to and including that date. The Employee shall be entitled to no further compensation as of the date of termination.

Damages for Breach of Contract

8.03. In the event of a breach of this Agreement by either the Employer or the Employee resulting in damages to the other party, that party may recover from the party breaching the Agreement any and all damages that may be sustained.

Arbitration

8.04. Any controversy or claim arising out of or relating to this Agreement, or the breach of this Agreement, shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment on the award rendered may be entered in any court having jurisdiction over the matter.

Attorneys' Fees and Costs

8.05. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs, and necessary disbursements in addition to any other relief to which that party may be entitled.

ARTICLE 9 GENERAL PROVISIONS

Notices

9.01. Any notices to be given under this Agreement by either party to the other may be effected either by personal delivery in writing or by registered or certified mail with postage prepaid and return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing in the introductory paragraph of this Agreement, but each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of _____ [e.g., one (1) day] after mailing.

Entire Agreement

9.02. This Agreement supersedes any and all other agreements, whether oral or in writing, between the parties with respect to the employment of the Employee by the Employer, and this Agreement contains all of the covenants and agreements between the parties with respect to the employment in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, that are not embodied in this Agreement, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement will be effective only if it is in writing signed by the party to be charged.

Governing Law

9.03. This Agreement shall be governed by and construed in accordance with the laws of the State of _____.

EMPLOYER

_____ [name of employer]

By: _____ [signature]

[typed name and title]

EMPLOYEE

_____ [signature]

[typed name]