



## TenStep Supplemental Paper

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### Employment Contracts Gain Ground

Employment contracts, confidentiality agreements, and non-compete and non-solicitation clauses are not just for top executives anymore.

With the advent of the virtual world, employment contracts have gained ground. Many companies today give their new recruits written employment contracts, whereas a few years ago the idea was virtually unheard of. A well-written contract can be a boon to both sides. Employees feel more secure, and the company knows it has set boundaries for hiring, firing, compensation and other sticky details.

Interestingly, employers use employment agreements with middle managers as well as top executives. The trend now seems to be going deeper into the organization than it ever did in the past, as we move from a manufacturing economy to a service economy.

Companies want employees to sign secrecy agreements and non-compete agreements. Employees, in turn, are getting sophisticated about the advantages of equity ownership and the importance of locking in benefits and salary. These factors are working together to create a situation in which more employers are using employment contracts for more of their employees than they ever did before.

An employment agreement is a document that expresses the agreement of the employer and employee regarding wages, compensation, bonuses, vacation, medical leave, possible stock options and termination provisions. It can include a confidentiality agreement, a non-compete agreement and a non-solicitation agreement as well.

In the IT field or other fields in which employees deal with sensitive information, employees often sign written confidentiality agreements. An agreement of secrecy typically will require employees not to disclose company proprietary information to anyone during or after their employment.

A non-compete agreement—also called a restrictive covenant—typically prevents employees from competing with their employer after employment for a limited period of time and limited geographic area. The non-compete agreement can include two non-solicitation agreements. There's a non-solicitation of customers agreement, which means for a limited period of time after an employee leaves, he or she won't solicit the former employer's customers or prospective customers. There is also a non-solicitation of employees agreement, which means for a limited period of time after an employee leaves the company, he or she can't attempt to recruit former colleagues.

A good employment agreement describes the employee's position, specifies the duration of the contract, and specifies wages and other compensation and benefits. It'll say whether termination can be by either party at will, or whether the employment agreement will be for cause—that is, the employee can't be fired for whatever period of time the agreement covers unless he or she has given cause, such as dishonesty or conviction of felony.



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Employers are requested not to mention permanent employment because it conveys to employees that they have a permanent job.

The benefit of contracts to employers is that the obligations they have are clearly spelled out in writing. The disadvantage is that sometimes employment contracts eliminate some flexibility that a company might otherwise have or want.