



**CAIS 2018
TRUSTEE/SCHOOL HEAD
CONFERENCE**

HEAD OF SCHOOL EMPLOYMENT CONTRACTS

EXPLAINED AND ANALYZED

CAIS 2018

Trustee/School Head Conference

Head of School

Employment Contracts

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An Almost Exhaustive List of Contract provisions.

1. Term.
2. Renewal/Extension.
3. Powers and Duties.
4. Compensation:
 - (a) Annual Base Salary.
 - (b) Annual Incentive Compensation.
5. Annual Evaluation.
6. Benefits and Reimbursements:
 - (a) Standard Benefits.
 - (b) Tuition Remission.
 - (b) Deferred Compensation .
 - (c) Life and Disability Insurance.
 - (d) Vacation.
 - (e) Travel, Business Expenses.
 - (f) Spousal Expenses.
 - (f) Automobile.
 - (g) Communications.
 - (h) Professional Activities.
 - (i) Relocation Expenses
 - (j) Attorneys and other Advisors Fees.
 - (k) Babysitters.
 - (l) Clothing allowance.
7. Housing.
8. Tax Reporting.
9. Termination:
 - (a) Termination For Cause.
 - (b) Termination Without Cause.
 - (c) Termination for Good Reason.
 - (d) Disability.
 - (e) Death.
 - (f) Voluntary Termination by the Head.
10. Outside Activities.
11. Non-Competition/Non-Solicitation.
11. Indemnification.
12. Confidentiality.
13. Mediation.
14. Arbitration.
15. Notice.

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4 Stages of HOS/School Contract Negotiations.

- First-time head, first contract for the head.
- Experienced head going to a new school.
- Mid-career contract extension or revision.
- Final contract before anticipated retirement.

There are many different fact patterns in and around these four: the school could be a new school hiring an experienced head; interim headships with the possibility of permanence; event-driven transitional head . . . But the dynamics of the four stages are generally very different and it is important for both parties to keep that in mind.

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Offer Letter.

- Usually will outline some key terms (e.g., pay, benefits, housing, tuition remission).
- Seldom mentions consequences of early contract termination or other negative rules.
- Best practice: Offer letter with a draft contract attached from which negotiations proceed.
- It should be possible to complete contract negotiations in a week.

Announcement and Introduction.

- Should follow agreeing on an actual contract.
- Probably will not, impetus to announce is nearly irresistible.

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Term.

- Initial Term.
- Renewal or Extension.

How long does the contract last: 1 year, 2 years, 3 years, more? The Term is aspirational, the contract may end early.

Does it renew or extend automatically? If yes, for how long?

What's the process for deciding if the contract will be renewed?

Most important, how much advanced notice if there is no renewal or extension?

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Compensation.

- Base Salary.
- Bonus.
- Retirement Plans: 401(k), 403(b),
Supplemental.
- Benefits: Standard Benefits.
 Executive Benefits.

This is where the Board, the Head and the Head's family see what is important to the other and what is possible. e.g., money for babysitters, supplemental retirement, extra life insurance.

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The Trump Tax Act

- Few changes affecting school employment contracts, but at least two of them might affect your school:
 - Executive pay for certain highly compensated employees subjects the non-profit employer to an excise tax of 21% on pay in excess of \$1 million and certain severance payments.
 - Moving expenses are no longer deductible to the employee—whether reimbursed by the employer or paid entirely from the employee's pocket.
 - Unrelated business income tax will be assessed on certain employer-supplied fringe benefits, including on-site athletic facilities.

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Annual Evaluation.

This is extremely important. A robust evaluation process that includes frequent checking-in on progress can save a headship that the board believes is going astray, can encourage honesty, and should eliminate or reduce surprises at year end.

This is a key piece of relationship building.

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- **Confidentiality**

- A good Agreement should make clear that the Head must not disclose the School's confidential information. This is a permanent restriction. Even if the contract has no such requirement, it exists as an element of common law.

- **Non-Solicitation**

- I see more and more contracts that impose a prohibition on soliciting employees, students, families, and donors once the Head moves on. These seem fine to me but ought to be tailored to the situation.

- **Non-Competition**

- This also has become more common. But not in California which has an almost complete prohibition on competition limitations.

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Early Contract Termination . (*Thinking about the unthinkable.*)

- Without Cause.
- For Good Reason.
- For Cause.
- Disability.
- Death.
- Quit.

This is, of course, almost always painful. As difficult as it is, It ought to be a learning experience.

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Questions

Comments

Advice

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Thank you very much.

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Thank you very much.

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