

# Amid COVID-19 upheaval, know your rights as an employed physician

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The United States has surpassed more than half a million confirmed cases of COVID-19 and as the pandemic continues, businesses of all kinds continue to struggle as they face complex decisions. For hospitals and health systems, the transition to providing only urgent, essential services has been particularly difficult. Many health care organizations are determining whether to modify or sever existing employment or service arrangements with employees, including physicians.

In an effort to help physicians better understand these complicated situations brought about by COVID-19, the AMA has developed the “Know Your Rights: Navigating Employment During COVID-19,” a guide that concisely covers key strategic, legal, and contractual considerations. The information is not to be construed as legal or financial advice, but it is meant to help physicians understand their rights and the opportunities available to them.

“From protecting fair and just working conditions to helping offset financial hardship, the AMA is working to help all physicians who are facing remarkable, unforeseen challenges due to COVID-19,” said AMA President Patrice A. Harris, MD, MA, in a statement announcing the guide and additional guidance on financial relief for physician practices. “These timely and topical resources were designed to help physicians focus on what they do best: treat patients and save lives.”

Learn more with the AMA about the first COVID-19 financial relief payments issued to physician practices, hospitals and other health care organizations. The AMA also has developed this resource page to help overcome sustainability challenges during COVID-19.

Stay up to date on the latest on the pandemic with AMA’s COVID-19 resource center and consult this physician’s guide to COVID-19. Additionally, JAMA Network™ has a comprehensive overview of the coronavirus—including epidemiology, infection control and prevention recommendations—available on its JN Learning website.

## Know your rights

It is important for all physicians to review and understand the work details and expectations documented in their contract, particularly with regards to expected duties. That knowledge can become useful if physicians shift their duties to aid in pandemic relief or are unable to perform their day-to-day responsibilities.

Prior to the COVID-19 global pandemic, hospitals and health systems were bound to comply with specific federal laws—including the Stark law—that prohibit compensation to a physician that is above “fair market value.” The pandemic, however, led the federal government to create waivers for these laws and state that, to some extent, they will not be enforced during the public health emergency.

That temporary change in policy means that physicians have added flexibilities when it comes to negotiating compensation packages.

Among other things, this means that:

- A physician can negotiate a higher payment rate per hour for work performed outside of normal duties in order to address COVID-19 patient care needs in the form of hazard pay.
- A hospital can agree to guarantee a certain level of financial compensation for physicians who are paid based on their productivity, but whose production has decreased due to the inability to perform elective surgeries.
- A physician and employer can mutually agree to a one-time severance agreement that pays the physician a defined amount of compensation in case of termination.

Although certain federal laws may not be enforced at this time, similar state laws may not be waived. Physicians should consult with health care regulatory and employment counsel to have a full understanding of policies and limitations enforced at the state level.

## Understand employer flexibilities

Just as it is imperative to know what rights are set out in a contract, it is also important for physicians to recognize the opportunities to negotiate should their employer terminate their employment. These negotiations can make an enormous difference in the physician’s next job location or how quickly they need to find a new position.

As the COVID-19 pandemic continues, hospitals and health systems will have an added amount of flexibility in the agreements they are able to make with physicians who negotiate as part of the

termination process.

For example, physicians whose positions are terminated can try and negotiate for:

- Severance packages.
- Waivers of noncompete clauses that would allow the physician to continue practicing in the immediate vicinity of the employer.
- Access to the employer's electronic health record or other technology and resources at a free or reduced rate for the duration of the COVID-19 pandemic.

The AMA guide includes additional examples of employment-related concessions that terminated employees can seek from their employer.

## **Advocate for patient rights**

One right the AMA continues to stand behind is advocating on behalf of patients' best interests. Within the past few weeks, news outlets across the country have told the stories of doctors who reported they were fired for discussing unsafe hospital conditions during the pandemic.

In response to the growing number of accusations, Dr. Harris issued a statement on behalf of the AMA, which "calls for reinforcing the principle that places patients' welfare as the first priority in any situation where the interests of physicians and hospitals are in conflict. No employer should restrict physicians' freedom to advocate for the best interest of their patients."