



# LEGAL RECRUITER FEE AGREEMENT CHECKLIST

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With a parade of court cases between law firms and legal search firms featured in legal news, recruiters across all industries are reminded of the importance of formally executing a fee agreement with prospective clients. While the ideal fee agreement may look vastly different to each party, it is valuable to know the fundamentals of all fee agreements so that recruiters and their clients can come away feeling well-served by the agreement. The ability to quickly but thoroughly flesh out issues and reach consensus can make for a more fruitful relationship in the near term while also avoiding headaches months and even years down the road.

## KEY PROVISIONS

The following list of provisions of contract terms is divided between what we believe are the most consequential and/or negotiable parts of a recruiting fee agreement and those that are less so.

### ✓ Agreement Type

Legal recruiting fee agreements typically fall under one of three categories: contingency, retainer or a hybrid of the two (commonly referred to as “container”).

Contingency agreements are the most common type of fee agreement and require the client to pay the recruiter only upon the completion of a successful placement. Unless agreed to on a search-by-search basis, such agreements are generally not exclusive and multiple recruiters typically have such agreements with an employer. As a result, the competition to place prospects by recruiters signed to contingency agreements can be fierce.

Retainer agreements, on the other hand, tend to be of an exclusive nature and guarantee payment to the recruiter whether it be entirely upfront or in installment payments. In their purest form, retainer agreements do not require successful procurement of talent to secure payment although it is generally understood that the recruiter will assertively work on the employer’s behalf until the position has been filled.

Container agreements contain elements of both contingency and retainer agreements to varying degrees. While an otherwise contingent relationship can have a nominal retainer fee, what is commonly referred to in today’s marketplace as retainer agreements are in fact container agreements (as a final payment installment is typically tied to the recruiter filling the position).

The type of agreement a recruiter works under depends on a variety of circumstances. While the majority of agreements are of a contingent variety, retainer (and “retainer-type” container) agreements are used when it is desirable to secure the focus and commitment of one recruiter.

### ✓ Fee Percentages and Limitations

Another main term in an agreement is the fee percentage. Percentages may vary for a number of reasons, such as type of position, urgency of need, sliding scale for placement of multiple attorneys, and general economic conditions. In addition, caps are sometimes included in a fee agreement at the direction of



clients for the purpose of limiting placement fees in larger transactions. Of course, recruiters and their clients are free to negotiate fee percentage in tandem with a cap (when applicable) in order to arrive at collective fee terms that both sides find fair.

### ✓ **Guarantee Terms**

An inexperienced recruiter may not pay much attention to the guarantee terms in a fee agreement. They may also operate under the assumption that a breach of guarantee terms happens so infrequently as to not warrant their attention. After first experiencing such a breach, though, these now-grizzled veterans make it a point to dissect and negotiate such terms.

There are typically three points covered in the guarantee section of all fee agreements: the length of the guarantee period, the calculation method for the refunded amount and the amount of time granted to the recruiter for repayment of the refund.

### ✓ **Payment Terms**

The most common payment terms in any fee agreement are the date of payment by the employer to the recruiter and a payment installment schedule, if applicable.

### ✓ **Length of Candidate Ownership**

A relevant term that can often be overlooked pertains to candidate ownership. While competing with other recruiters to get a candidate submitted promptly is something we are all mindful of, knowing when an ownership period ends or needs to be re-tolled can be crucial for seeing through a placement process that has run longer than anticipated.

## **ADDITIONAL PROVISIONS**

While the above criteria are most consequential and negotiable to a fee agreement, the following are not to be overlooked.

### ✓ **Personnel Type**

With recruiting functions becoming more standardized, most large law firms have drafted multiple fee agreements to address their various functions. These functions typically include partners/practice groups, counsel/associates, staff (including paralegals and patent agents) and contract/temporary positions. Confirming at the beginning of the process that you are working off the right fee agreement will go a long way towards avoiding any hiccups and unpleasant surprises along the way.

### ✓ **Proper Submission Procedures**

As law firms have grown larger in recent decades, efforts have been made to streamline the recruiting process to avoid confusion. This has typically meant directing resume submissions to assigned recruiting or administrative personnel in each specific office. In recent years, however, the use of portal websites has centralized the streamlining of submissions through one contact point for the entire firm. While some recruiters prefer sending the resume directly to a specific contact at the firm, submitting candidates through the portal has become a non-negotiable policy for gaining submission credit at most firms that use them.



### ✓ Fee Agreement Expiration

Most fee agreements are written for a finite amount of time, with some fee agreements only good through the calendar year. While terms may not change drastically from year-to-year, it is worth the time to check that your fee agreement is still valid and therefore accurate before presenting a client with prospects.

### ✓ Non-Solicitation Policy

One consequence of a successful placement is often the activation of the non-solicitation policy that most clients include in fee agreements. Such a policy dictates that a newly-placed employee not be solicited at any time during their tenure with the client by the recruiter who placed them; this requirement is also stipulated in the NALSC Code of Ethics, providing an additional layer of assurance for compliance to this term when working with a NALSC member recruiter.

Firms often also include a non-solicitation policy that applies to a broader range of attorneys in the firm for a negotiable period of time. A point to clarify is whether the non-solicitation (to attorneys other than the placed employee) applies to attorneys only in the office where a placement was made or to the firm overall.

### ✓ Allocation of Vetting Responsibilities

Most agreements will articulate the client's expectations pertaining to a recruiter's vetting of prospects they are submitting. Such provisions typically require that the recruiter take rudimentary steps in assuring that the prospect's resume is accurate and that any red flags stemming from their research of a prospect are disclosed early in the process. More thorough background and criminal checks as well as conflicts checks are handled by the client, who typically incurs the cost of such research.

### ✓ Dispute Resolution

In the event of a later dispute between a recruiter and client, fee agreements generally include provisions on how and where such disputes are resolved. Jurisdiction and venue for litigation are determined and often arranged for the convenience of the client. However, arbitration or mediation are often agreed to as lower cost and more amenable alternatives to both parties. Assignment of responsibility for costs incurred in resolving such disputes is also articulated in this section of the agreement.

### ✓ Compliance & Indemnity

A thorough fee agreement will typically also include language pertaining to both parties' compliance with applicable hiring laws. In addition, indemnity clauses are added to make whole the client and/or recruiter for legal liabilities incurred in the context of their working relationship.

## CONCLUSION

While the terms of a proper fee agreement can seem daunting, most legal employers include similar terms in their agreements and you will become familiar with them over time. Since terms will vary by client, it is helpful to keep a spreadsheet or other database for organizing the most relevant terms in each agreement. Having a quick reference guide can prove immensely helpful in being aware of the specifics in each agreement as well as keeping track of important dates in the ongoing recruiter-client relationship.