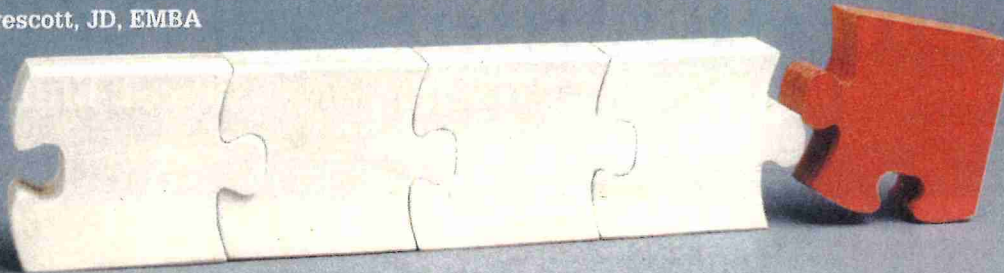


Proper termination of an employee

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PRACTICE OWNERS OFTEN WAIT TOO LONG before terminating a problem employee. When they do terminate someone, they risk legal action, which is why proper documentation is essential. If they do not terminate the problem employee, there could be the loss of morale among staff members who *do* perform well. Practice owners should always address disciplinary and performance issues immediately. With effective disciplinary policies in place, termination should not come as a surprise to any employee being let go.

EMPLOYEE DISCIPLINE

All practices should have an up-to-date employee handbook. This should address not only performance, but all factors affecting patient care, practice operations, attendance, dress, and social media. It should also include an employee policy that designates a first warning, second warning, and then termination. A statement should be included that allows the practice to accelerate the disciplinary process at its discretion, including immediate termination.

In addition to an up-to-date handbook, practice owners should periodically consider authorizing an update of the provisions if there's any change to the laws in the state where the practice is located. They should engage an employment attorney who can advise the practice about any necessary changes. Employment laws are state specific and change periodically.

Practice owners should consider using a disciplinary form that includes the date of the offense, the specific policy violated, any witnesses, and the consequences of subsequent offenses. An employee acknowledgement form should also be included. Following the disciplinary interview, practice owners should have the employee sign the form, and then retain

it in the employee's personnel file. If the employee is unwilling to do so, note the refusal to sign on the form.

The practice should always comply with its employee handbook and policies, be consistent with past practice for similar behavior, and consider all alternatives before terminating employment.

CONTRACTUAL ISSUES

Employment at-will

Many practices prefer at-will employment relationships with employees, which means that they or the employee can terminate the relationship at any time, with or without cause. The employment-at-will doctrine is subject to a growing list of limitations. Practices may inadvertently abandon employment at-will without intending to do so, such as by making promises to employees, drafting incomplete policies or manuals, or inadequately documenting general business practices. If employment is not deemed at-will, then the practice is limited to termination of employment only for just cause.

Unlawful practices

The employment at-will doctrine will not be an effective defense to a claim of discharge for an unlawful reason. Under federal and

state discrimination laws, it's unlawful to discharge a person based on race, national origin, religion, gender, age, disability, veteran status, military status, or any other group or status protected by law.

Laws also prohibit discharge of employees who are whistleblowers, reporters of unlawful practice conduct, or who have asserted legal rights in the course of their employment. For example, it's unlawful to terminate an employee because they reported a perceived violation of the Occupational Safety and Health Administration's (OSHA) bloodborne pathogens regulations, filed a worker's compensation claim, filed a discrimination claim, or filed a claimed wage and hour violation with the Department of Labor.

Just cause discharge

In most cases, practices, at least from their own perspective, have cause for discharge related to performance problems or misconduct of an employee. But the question is one of "just cause." The definition of just cause should be included in the handbook. Examples of just cause for discharge may include absenteeism, theft, antisocial behavior with coworkers or patients, insubordination, on-the-job drug or alcohol use, and violation of safety or other work rules. Proper documentation of a just cause event is imperative.

THE TERMINATION PROCESS

It's a good idea for practice owners to rehearse delivery of the termination message. They should then schedule the

termination meeting in advance and minimize contact with other employees. The end of the day is usually best. Then determine in advance what will be communicated with other employees.

The meeting should be decisive, honest, and brief. If appropriate, thank the employee for their service with the practice. Do not give any indication that the decision is not final. The employee should be allowed to ask questions or respond, but without argument.

The termination interview

In most instances, termination of an employee will be in a face-to-face conversation in which the employee is told that their employment has been terminated, and the reasons for the decision. It's good practice to conduct such an interview with a witness so that it's clear later, if necessary, what was said during the interview. A witness should typically be an administrator or office manager. A written summary of the interview should be placed in the former employee's personnel file.

Property of the practice must be returned. Provide a final paycheck, including any accrued vacation pay. Discuss any state health continuation coverage and any retirement plan account balance, if applicable.

Policy regarding references of former employees

Consider references for all former employees in the same way. If a subsequent employer asks practice owners for a reference, the safest policy is to provide the dates of employment and the former employee's duties. Providing a glowing recommendation for a quality former employee and giving only the dates of employment and duties of a terminated employee could subject the practice to an employment claim by the terminated employee.

Not only do some practice owners wait too long before deciding to terminate a problem employee, but they often delay addressing problem and exemplary behavior. Practice owners should always maintain an effective disciplinary policy and have it periodically updated by an employment

lawyer. Employment laws are very state specific and periodically change. **DE**



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