

MANAGEMENT & MARKETING

This column is compiled by JCO Contributing Editor Robert S. Haeger, DDS, MS. Every few months, Dr. Haeger presents a successful approach or strategy for a particular aspect of practice management. Your suggestions for future topics or authors are welcome.

Every office should maintain a current employment manual that lets all employees know exactly what your expectations are. For example, are team members allowed to carry their cell phones during the workday? What is the office policy for snow days? Does a staff member receive bereavement pay for attending a mother-in-law's funeral? Such questions are certain to come up sooner or later, and written policies will make it easier for all parties to avoid conflict.

Many state dental associations provide employment manual templates, and that's a good place to start to ensure compliance with specific state regulations. The chapter devoted to employee and staffing issues in the AAO's *Legal Handbook for Orthodontists** is another excellent resource.

In this month's column, John McGill highlights what *not* to include in an employment manual. As a long-time fan of the McGill newsletters, I find his articles extremely valuable in running my practice. I highly recommend that you consider this list of potential pitfalls when it's time for you to update your own practice's employment manual.

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Top Ten Personnel Manual Errors

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Your office personnel manual is designed to help employees understand their work requirements and benefits. While it is not intended to be a legal document, it may end up having the force of an employment contract. Review your personnel

manual now to eliminate these errors before they turn into costly legal problems.

Most doctors consider their personnel manual a low-key presentation of job requirements and benefits, not a legal document. Unfortunately, employment lawyers may find your manual a gold mine for pressing costly claims against your practice. Courts are siding more often with employees, rather than employers, so now's the time to review your manual and to eliminate these all-too-common errors.

1. Promising "permanent" employment.

Many personnel manuals state that new hires will be on probationary status for the initial 90 days of employment, and upon successful completion of this term, employment will become "permanent". Many courts have ruled that this wording negates an employer's right to fire an unsatisfactory employee "at will", so avoid the phrase "permanent employment".

2. Not including an "at will" employment disclaimer.

Doctors should eliminate any uncertainty by letting employees know that there is no contract between the employer and an employee, and that employment may be terminated "at will", where permitted by state law. As such, either party may end the relationship at any time, for any reason, unless terminating the employee is for a bad (discriminatory) reason.

3. Including termination "for cause" wording.

Many personnel manuals provide that employees may be terminated only "for cause". While doctors may interpret this to mean that they can fire

*Chapter 4, Appendix 4.02.5-A, *Legal Handbook for Orthodontists*, American Association of Orthodontists, St. Louis. Available to members and nonmembers; e-mail: info@aaortho.org.

employees if they have a good reason to do so, an employment lawyer may use these words to require you to prove that “cause” existed, and furthermore that it was a good cause.

4. *Outlining specific benefits.*

Specifically stating your employee benefits can be held against you, if the practice later changes these arrangements. For example, promising specific types and levels of health insurance coverage and other benefits may come back to haunt you, if the personnel manual is not updated in response to later benefit changes. Accordingly, doctors should delete specific descriptions of benefits. Instead, the personnel manual should simply refer employees to the actual benefit plan documents. If doctors prefer describing their benefits, be sure to include the following protective language: “The material in this manual represents our summary of benefits at the time of publication. These benefits are subject to change at any time, and accordingly, employees are directed to review the summary plan description and/or insurance subscription agreements for a full description of each plan’s benefits and limits. If any provisions are inconsistent with this manual, the formal plan documents are controlling. We reserve the right to change or terminate any benefit plan at any time in accordance with the formal plan documents.”

5. *Forbidding wage discussions.*

A common provision forbids employees from discussing their wages and salaries with each other. Unfortunately, employment lawyers believe that this violates the National Labor Relations Act allowing employees to organize in a workplace setting. Accordingly, if you have such a rule in your personnel manual, delete it.

6. *Failing to provide Equal Opportunity Employer information.*

Doctors should make sure that their manual specifically provides that the practice will not discriminate in its hiring practices.

7. *Specifying pre-firing procedures.*

Many personnel manuals set forth a specific set of progressive disciplinary steps if infractions occur. Courts have routinely held employers liable for “wrongful discharge” if those published steps

were not followed. Likewise, language indicating that discharge will be only in response to certain types of behaviors (for cause) may make a termination illegal if you do not, or cannot, document that those specific behaviors occurred, even if more egregious, but unlisted, behaviors did.

8. *Withholding the final paycheck.*

Some manuals threaten to hold an employee’s last paycheck hostage for any number of reasons. Unfortunately, most state laws require that the employee’s last paycheck be paid to them within a specific time limit, except in highly unusual circumstances. Most states do allow accrued vacation time to be forfeited under certain conditions (e.g., failure to give a two-week notice of termination), as long as those contingencies are expressly spelled out in the personnel manual.

9. *Referring to broader coverage.*

Many practices are exempt from certain federal and state employment laws (e.g., Family Medical Leave Act), due to their relatively small number of employees. However, if your personnel manual specifically provides that your practice will offer the benefits provided under those laws, you are bound to do so, even if you later elect to change your mind. Accordingly, we recommend deleting all references to specific federal or state benefits laws, since that may otherwise end up binding your practice.

10. *Failing to obtain a signed receipt.*

Many practices provide a copy of the personnel manual to current and new employees without requiring a receipt. As a result, an employee may later claim she never received the manual and thus was unaware of its provisions. Accordingly, each employee should sign a notice acknowledging that she has received the personnel manual and has been told to read it. Moreover, we also recommend that each employee later sign a statement that she has read the manual and understands its provisions.

Employment laws vary significantly from state to state. Accordingly, your local attorney should also review your manual to assure that its contents do not create potential problems based on your state’s law.

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