

Navigating Employment Issues to Reduce Turnover and Risk

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About Our Presenter



Guillermo J. Beades, Esq., is a Partner in Frier Levitt's Healthcare Litigation Department and Co-Chairs the firm's Insurance Defense Group.

Guillermo represents healthcare professionals in a broad range of administrative, civil and criminal healthcare matters. Guillermo has extensive litigation experience before state licensing authorities and Medical Boards (e.g., NJ BME, OPMC), federal healthcare agencies (e.g., OIG, CMS, DEA) and state healthcare agencies (e.g., NJ Medicaid Fraud Division, NY OMIG). He represents practices and healthcare professionals in matters concerning credentialing and denial of privileges, administrative discipline, Medicare audits, hospital fair hearings, post-payment demands and pre-payment audits.

Employment Issues: The Basics

- Most employees in New Jersey are considered “at will”
- Employee Manuals can reduce risk and turnover
- Compliance in healthcare is highly regulated (e.g. HIPAA)
- Standard Operating Procedures can reduce risk (e.g. reviews)



Recruitment

The interview process should determine the following:

- Why is a candidate interested in your practice?
- What is their skill set?
- How do they fit into the culture?
- Potential and willingness to grow

Do not set unreasonable expectations

Employee Handbooks

- Every medical practice should have an employee handbook
- Employee handbook should offer guidelines for employees to follow
- Clearly explain the policies and procedures of your office
 - HIPAA Compliance
 - Social Media Policy
 - PTO/Family Leave
 - Trade Secrets/Patient List
- Include an Acknowledgment form that employees sign



Performance Evaluation

- Every employee needs to have an accurate **Performance Evaluation**
- Do not simply “check the box” - risky if you try to terminate for cause later!
- Ongoing feedback: there should be no surprises at evaluation time
- No need for elaborate documentation; address the essential functions of the position, organization expectations, and if those expectations are being met or not, and why

Performance Evaluation

Employee files should be updated on an ongoing basis

Documentation needs to be clear and specific; not voluminous

Keep a file or notebook of the good, the bad, and the ugly

Some employees are willing and able to change their conduct if brought to their attention

Termination

- To lower risk, clearly document the reason for termination
- Employees fired for performance reasons, when there is conflicting or no documentation, can lead to wrongful termination lawsuits
- Some employees are willing and able to change their conduct if brought to their attention



Termination

Once you have made your decision to terminate an employee:

- Meet in a private area and have a witness from the management team
- Explain why the employee is being terminated
- Benefits and final pay must be discussed
- In the event a termination requires a severance agreement, the employee cannot be asked to sign any agreement on the spot

No amount of precautions can guarantee an employee will not claim wrongful termination, but showing efforts were taken to be fair and reasonable in the decision to terminate will help in the event of a lawsuit

Case Study

An employee is terminated for excessive lateness.

- The lateness was documented in the employee's performance evaluation and in documentation in their personnel file.
- The employee's termination letter stated that they were terminated because of their excessive lateness and the letter referenced the employee handbook policy that stated that excessive lateness may lead to termination.
- All new hires are required to sign an acknowledgement form for the employee handbook and it is retained in their personnel file



The employee files for unemployment. Will they be able to collect?

Case Study (*Continued*)

- In this case study, the State denied the employee's claim for unemployment.
- The State requested a copy of the termination letter and a copy of any written documentation that was used to terminate the employee.
- The employer was able to show that the employee knew the rules, received proper written warning and signed the employee handbook.



Closing Thoughts

- Take your time when looking to hire the right employee.
- Both the employer and employee need to be reading from the same sheet of music. What are the expectations and are they being met?
- If expectations are not met, discuss them and any remedial action.
- Revisit issues in the performance evaluation.
- Take your time to document everything salient and be accurate.



Questions?



Let's continue the conversation.

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