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6 rules every dentist should follow to avoid frivolous lawsuits

Steven Abernathy and Brian Luster: January 21, 2014 Follow Author:

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Today's busy dentists are likely to delegate administrative tasks when possible, and, at first glance, an employee handbook might seem like it's the responsibility of the office manager or person responsible for HR issues ... but think again. This document establishes written guidelines for every aspect of the employer/employee relationship, such as policies regarding vacation, sick leave, jury duty (as well as other instances where an employee would be away from work for an extended period), office rules, expectations, and procedures.

When correctly executed, the well-written and well-maintained employee handbook is the first line of defense against a lawsuit. It could be worth its weight in gold, saving hundreds (if not millions) of dollars in potential litigation. No matter what size your dental practice is, a successful office is comprised of several moving pieces; the handbook ensures these pieces interlock effectively. Do not mistakenly think creating this guide is a needless administrative exercise since it provides a vehicle for a conscientious employer to articulate company policies and procedures, to frame codes of conduct and expectations, and to officially establish the "at will" employer-employee relationship.

As an employer, do you want to be vulnerable to lawsuits simply by not formally articulating and sharing the company's rules, regulations, policies, and procedures in one place? We didn't think so.

Our recommended "musts" for your employee handbook:

1. Verbiage clearly stating all employee relationships with the company are "at will." These two innocuous words are quite powerful as they constitute a legal term that can help preclude a wrongful termination suit. Without such a clause, a disgruntled employee might assert that he or she could not be fired unless it was for "just cause."
2. Verbiage acknowledging the "at will" employment clause is signed by the employee. We'll say it again—and you should too. Repeat the "at will" language on documents involving the employer/employee relationship from a work application to a performance evaluation. The employee's signature acts an acknowledgement of the clause. In many states, it provides indisputable contractual evidence: the employee was aware of the "at will" relationship.
3. Verbiage clarifying the agreement between employer and employee to define what it is ... as well as what it is not. This includes a few points:
 1. The handbook does not constitute an employment contract;
 2. The employer reserves the right to unilaterally change policies as he or she sees fit;
 3. The at-will relationship remains in effect notwithstanding any other clause in the handbook;
 4. Only the owner of the practice has the ability to change the at will relationship.
4. Any change in the employment relationship must be presented in writing. This includes

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changes in responsibilities, new titles, changes to the employment agreement, (i.e., a part-time employee becomes a full-time employee or vice-versa), and all policy changes.

5. A formal code of conduct. This puts employees on notice in regards to what behaviors are permitted as well as what are off-limits. Here, unambiguous language provides additional protection from lawsuits, such as the all-too-common sexual harassment variety. When policies are spelled out, a clause stipulating that all untoward conduct should be reported to the office manager (or something of that nature), there is clarity. This gives employers a first line of defense against any suit was filed frivolously or out of revenge. The code should also establish the protocol on how to report such behavior as well as include language explicitly prohibiting sexual harassment. This provides further evidence that such behavior is not tolerated.

6. Establishment of a solid procedural foundation. The paramount advantage of having an Employee Handbook is disclosure. By providing a snapshot of your business culture and delineating duties and expectations in writing, you do your staff a service by furnishing them with the rules of the office that should weather the cracks that may result from the wear-and-tear of the employment relationship. Here, we recommend including clauses regarding:

1. Jury Duty. This section might include clear policies such as: "Employees serving on juries will be paid for a maximum of one month..." and/or language stipulating that the employer may request the court to postpone service if the employee's civic duty becomes detrimental to the business.
2. Maternity Leave. Be sure your advisor takes the Family and Medical Leave Act (FMLA) into account. Such a violation can result in a most unwanted lawsuit – at a time when you will presumably be short-staffed!
3. Sick Leave and Workers Compensation
4. Holiday and Time-Off Policy
5. Health Benefits
6. Funeral Leave
7. Dress Code

It's also strongly recommended to include language indicating your business is an Equal Opportunity Employer (EOE). This provides protection from federal and state laws prohibiting discrimination on the basis of gender, race, national origin, or age (to name a few). To include the most up-to-date information, visit the Department of Labor (DOL) website.

Since the goal of an effective employee handbook is to serve as the document of record and policy for your company, it should be reviewed by an attorney versed in employment law in your state. While the best of handbooks may not guarantee you won't have legal claims against you, it certainly does not hurt to have a good one which communicates your company's policies, culture, expectations, and rules explicitly and clearly.

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