

# DOCTOR of DENTISTRY

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## The Employer Procrastination Dilemma

By James D. Rosenblatt



It is human nature to procrastinate and I am as guilty as the next person. While I have spent a lot of time thinking about this article, I actually find myself writing this article shortly before the deadline. When it comes to employee issues, however, procrastination can truly make matters worse. Because an attorney generally becomes involved after the problems occur, the ability to advise is lost. I offer the following stories as examples from which to learn:

1. **Failing to keep employee files organized and complete.** After expending the time and energy to prepare a completely new set of employment documents, one client failed to have each employee execute the final paperwork. As with most small companies, this client struggled with having the in-house resources available to pay attention to the details. And the reality is that, status quo is generally acceptable. However, by the time employee paperwork becomes a problem, it is usually too late. In this particular case, the employment paperwork included an arbitration agreement, but my client had failed to obtain the necessary signatures. Of course, the oversight was not caught until after a problem arose, an attorney was hired by the former employee and a demand letter was received. Instead of having the protections afforded by the arbitration forum, the situation evolved into a protracted court battle ultimately requiring a large settlement.

The lesson: Take the time to review each employee's file, hire an independent consultant to review your employment paperwork and implement any new procedures as soon as practical.

### RULES TO FOLLOW:

- a. Periodically review employee files.
  - b. Implement a periodic program whereby employees verify information and update as needed.
  - c. Utilize an expert review to revise employee forms for compliance with current laws. For example, if your employment contract utilizes an arbitration agreement, recent caselaw requires most agreements be modified.
2. **Failing to utilize employee handbooks.** Unfortunately, all too many employers fail to appreciate that the time required to draft, review and implement an employee handbook, is usually the best defense available to many employee legal issues. An office policy that is incorporated into the handbook, allows an employer to assume an employee has read and understands the handbook and thus, the specific policy. Take the time to review your handbook and make a concerted effort to follow it. A complete handbook should contain the required various state and federal statements, employment statuses, pay information, types of leave and duration, conflict resolution, and other employment related issues. Any defense to an EEOC claim, unem-

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ployment claim or other employee issue, begins with a review of the employee handbook. Yet, even the best handbook, cannot protect against an employer's failure to utilize the procedures contained therein. Although compliance with an employee handbook is a common problem, it is much more difficult and expensive to defend against an employer's failure to have an employee handbook. Claims such as arbitrariness or discrimination can be easily addressed through compliance with the employee handbook.

## RULES TO FOLLOW:

- a. If you do not currently have an employee handbook, get one. While a generic form is often a good starting place, a handbook is only useful if it addresses your company's individual needs.
- b. Review your handbook, at least annually, and revise as necessary.
3. **The problem employee.** This is probably the worst area of employer procrastination. While it takes many forms, a most common example is the employee that continually shows up late. Inevitably, when the employer is finally ready to fire the employee, often after six months of abuse, the file is often void of any more than vague references to counseling at some point. Although the employer often feels quite justified, even feeling they have bent over backwards to be fair, the end result is a Bexar County jury trying to figure out why the employer REALLY terminated the employee. This process is generally very scary, expensive and weighted heavily in the employee's favor. Be wary against allowing problems to fester. If an employee has a bad habit, follow a deliberate plan of counseling, written memos concerning the need to improve and then termination. I have yet to

see a situation case where a problem employee was given a third, fourth or fifth chance, in writing, and finally got turned around. Unfortunately procrastination by an employer, can turn a justified termination into an employee payday.

## RULES TO FOLLOW:

- a. Place written memos in an employee's file regarding all verbal rebukes.
- b. If the action continues, utilize a written reprimand, reviewed with the employee and to which the employee has acknowledged receipt.
- c. If a written reprimand does not work, then terminate the employee.

These are simply a small number of the examples of problems resulting from employer procrastination. Being prepared, being proactive and consulting with an attorney prior to problems arising will generally reduce costs, headaches and additional problems later on.

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