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Terminating without Risk

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Although many different types of risks arise in running a dental practice, a significant number revolve around employee termination issues. The ability to control when and how employee terminations are handled can greatly affect such risks. The ten recommendations below are designed to assist an employer in managing the more commonly faced obstacles.

1. Provide employees with honest appraisals on a periodic basis. If an employee perceives their job performance is acceptable preceding the termination, the chances increase the employee will look for a discriminatory basis on which to blame the termination. Periodic evaluations provide the employee with a means and understanding of how their performance is evaluated. Although an evaluation need not be very complex, it should include some form of written evaluation and a follow up discussion with the employee to ensure a clear understanding. The most useful evaluations are based on actual events, providing examples of both noteworthy and weak performances. Obviously, the employer's appraisal must be honest or it will be useless.

2. Require employees to provide a self appraisal. One of the most telling signs of both inter-office communication skills and the abilities of an employee is the capacity of an employee to accurately evaluate their own performance. An employee's ability to acknowledge their weaknesses and improve upon the lacking skills will become an essential tool in the employer's termination decision.

3. Maintain an employee disciplinary folder. Without question, lack of documentation of prior verbal warnings is one of the easiest obstacles for an employer to avoid in evaluating whether a solid basis for an employee termination exists. If an employee is given a verbal reprimand, it is imperative that the employer document the employee's file, providing the date, time and the general context. Because these files often protect the employer from allegations of discrimination, all notations placed in the employee file should be based on known facts, without assumption or conjecture. For example, if an employee was present when cash disappeared, but there is nothing to substantiate that the employee actually took the cash, any documentation should be limited to mention of the employee's presence, without any accusations that the employee stole the cash.

4. Never threaten the next violation will lead to termination. Always remember, threats can only come back to haunt you. Although the employee's actions at the time may truly warrant termination upon further violation, the threat of future termination will lead to one of two results. Either the employee is fired after a subsequent violation or the employer's failure to fire the employee weakens an employer's effect on other employees, as well as potentially weakening the employer's legal position. The better action by the employer is simply stating that any further violations will lead to additional discipline, up to and including termination.

5. If at all possible, have another supervisor

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present for any termination. One of the obvious risks of termination is for the meeting to “go bad.” Employee claims often vary from a shouting or physical altercation to allegations of assault or harassment. The lack of a secondary supervisor may create a “he said-she said” scenario without the benefit of a third party to report the events as they actually happened. Accordingly, the secondary person should not participate, but only be present and observe.

6. Allow the employee an opportunity to comment, in writing, about the termination. I am continually amazed what employees will write when given the opportunity. Some employees will even confess to the actions supporting the termination, others will agree with the employer rationale and reasoning, and some will simply sign the termination form. Regardless of the employee’s comments, the written acknowledgement that the employee was terminated may prove to be useful at a later date.

7. Consult an attorney with any uncertainties. Any employer should have an attorney with whom they can consult with prior to any termination. The conversation need not be long or detailed. A legal review to ensure the employer has “crossed the t’s and dotted the i’s” may well save not only future headaches but also unnecessary litigation expenses. An attorney should not interfere with the termination decision, but instead highlight concerns and possible solutions.

8. If concerns arise, always be prepared to obtain a release from the employee. An employer always has the option of paying a money stipend to an employee to obtain a release. Prior to determining the settlement amount, however, an employer must balance the amount of monies to be paid with the risk of future problems. Obviously, the higher the risk of legal complications, the more the employer should be prepared to pay. By consulting with

an attorney prior to the termination, an employer should be better equipped to estimate potential risks and associated costs.

9. Be consistent. One of the main reasons an employer finds themselves in trouble regarding an employee termination is the employer’s failure to be consistent. Any violation of a rule should be treated consistently, regardless of the employee committing the infraction. Employees know how other employees are treated or disciplined. Inconsistencies in the treatment of employees provide disgruntled employees an open avenue in which to allege a discriminatory purpose for the termination.

10. Utilize an employee handbook and follow the proscribed guidelines. An employee handbook allows employees to better understand an employer’s processes and procedures and their rights and obligations. It can also justify a termination because the employer followed its own procedures. It also provides an employer with protections against discrimination allegations raised by terminated employees. Although an employee handbook is always a valuable tool for both the employee and the employer, an employer’s failure to follow the guidelines adopted by the handbook can create problems in the future.

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