Terminating an Employee: Don’t Risk a Lawsuit

Firing an employee, though it may be difficult and unpleasant, is sometimes necessary. The key is to avoid making the dismissal unnecessarily disagreeable, and to steer clear of potential lawsuits.

First, ascertain whether the individual is employed on an at-will basis, meaning that the employee can be terminated for any reason, with or without cause. If you are unsure, consult with your risk manager, human resource manager or lawyer to ensure that the dismissal does not violate a contractual agreement or federal, state or local laws, including statutes that protect against discrimination based on age, race or gender.

Along with your facility’s policies and procedures manual, always keep a record of your facility’s disciplinary policies and performance standards on hand. Make sure you have complete and accurate documentation on the employee. The employee’s file should include any performance evaluations, along with records of progressive discipline, including verbal and written warnings or eyewitness accounts of misconduct or unsatisfactory performance. If you’re sued for wrongful dismissal, the documentation could be used as evidence in your defense.

When you inform the employee of the termination, have another member of the staff present, if possible. But avoid giving the impression that you are ganging up on him or her by, for example, having just one person speak. Be direct yet courteous. Clearly and firmly explain the reasons for the dismissal. Present the employee with a written agreement for a severance package and inform her about COBRA coverage, if applicable. The employee should be informed of her rights if she signs the agreement.

Determine how long it will take to finish or hand off the terminated employee’s current patient load. Then arrange for a quick and graceful exit. If circumstances permit, allow the employee to return to work and complete any remaining tasks before the termination date. To avoid a similar situation, demonstrate a firm commitment to the hiring of persons with a criminal record. Organizations should review these provisions with legal counsel before hiring an individual.
FOCUS ON: Preparing for the Hiring Process

Negligent hiring litigation is a growing problem. According to a recent CNA article, employers lose 79% of all negligent hiring suits. USA Today reported that the average plaintiff award in employment law cases exceeds $1.6 million.

Damas are often awarded because of employer negligence and failure to perform a reasonable search into the employee’s background prior to hiring. Courts have ruled that an employer has a general duty to check criminal records for employees who will interface with the public or who could have a foreseeable opportunity to commit a violent crime against someone in the course of their employment.

So, what actions should you take into consideration when hiring new employees so you can avoid being sued for employer negligence due to inadequate hiring practices?

PRELIMINARY CHECKLIST

Before you even begin the hiring process, there are steps you can take that can complement your employee background and drug screening program, and can help safeguard your practice.

1. Seek legal employment counsel to determine all county, state and federal laws within your operating states.
2. Place prominent signs around your office that state you require new employees to indicate in writing that they have read the job description, reviewed it with their supervisor and understand what is expected of them.
3. Place a notice on your Web site stating the same, in multiple languages.
4. When you are ready to advertise a job opening, consider placing the following words after the ad: “backgroundchecks required.”
5. Web the help of your lawyer, write a background screening policy and plan on distributing it to all potential employees. This will advise applicants that your company performs background checks.
6. Create background screening authorization forms for applicants and try to obtain their authorization in advance. Think about doing this before they complete your employment application.
7. Require vendors and independent contractor companies who are on your premises to perform background checks on their employees.
8. Employers lose 79% of all negligent hiring suits. USA Today reported that the average plaintiff award in employment law cases exceeds $1.6 million.

What will you need to do to ensure that you are hiring for the right reasons?

Newly hired employees should undergo an orientation process that gives them the opportunity to learn about the organization, ask questions, attend to administrative matters, and meet future co-workers. A thorough, consistent orientation process plays an important part in integrating new employees into the workplace and preventing future misunderstandings.

Confidentiality statement: To comply with the Health Insurance Portability and Accountability Act of 1996, healthcare organizations must make all reasonable efforts to disclose the minimal amount of protected health information necessary to accomplish the intended purpose of the disclosure. You can reduce the risk of violating statutory privacy protections by requiring new hires to sign a confidentiality agreement that prevents them to protect sensitive information and prohibits the release of unauthorized patient care data. The executed agreement should be maintained in the employee’s personal file. See insert for a sample agreement.

Sample employee confidentiality agreement

As a staff member of (insert your facility name), I recognize that candid and objective discussions of patient conditions are necessary for effective care and management. I further acknowledge the right of each patient to not have personally identifiable medical and/or other information disclosed to any third party without the express informed consent of the individual patient. I agree to respect and maintain the confidentiality of all discussions, deliberations, information and records whether in written, electronic and/or other formats, generated in connection with the care of patients.

I understand that by signing this agreement I am binding myself by contract to maintain such confidentiality and I agree that I will not make any voluntary disclosure of such confidential information except to persons authorized to receive it. This obligation of strictest confidence shall survive the termination of my employment.

Signed _________________________________

Date __________________

Position or Title ___________________________

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6. Create background screening authorization forms for applicants and try to obtain their authorization in advance. Think about doing this before they complete your employment application.
7. Establish a policy to insist that your temporary employment agency perform criminal background checks and get copies of these reports before employing any temporary worker.
8. Require vendors and independent contractor companies who are on your premises to perform background checks on their employees.

Focus on Preparing for the Hiring Process

9. Determine if Web-based services can assist you in convenient, simple compliance of your substance abuse program.

Adopting these precautionary measures is the first step in establishing your organization’s health and safety culture, and can help avoid long-term financial and operational problems. Selecting skilled, dependable employees is your next move. This can be accomplished during the interview process, if you know what to look for.

WHAT A NON-VERBAL RESPONSE CAN SAY...

A successful interview requires that the interviewer be perceptive to non-verbal signals. While interview questions must focus on performance of the essential job functions, taking note of the manner and gesture in which an applicant responds to a question can be just as revealing as the verbal answer.

The following questions are intended to elicit responses that may help you evaluate an applicant’s suitability for your facility.

• Describe how you would gain the trust of a patient?
• Recount a stressful work experience and how you recently coped with it?
• List three conditions you disliked about your former work environment?
• Articulate how you approach cooperative co-workers and patients?

Cautionously note when an applicant responds to the above questions with frustration or sudden anger. A quickness to blame others or the system for failings of the past may signal an unwillingness to accept responsibility for actions. If an applicant has difficulty describing positive work relationships, it may be indicative of poor interpersonal skills.

Stressful situations can be commonplace in healthcare. If a

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