

Employment Basics

Presented by David D. Schein, Claremont Management Group, Inc.

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Part 1: Review

Employment Basics



Employment Application
(quick review)



Job Description Outline
(quick review)

Posters and Pre-Employment Paperwork:*

1. Wage- Hour Poster from USDOL (US Department of Labor) – coverage at \$500,000 annual income (Provided)
2. Unemployment and Final Pay Act – TX poster – All TX employers (Provided)
3. Workers' Compensation Notice – TX Poster – All TX employers (Provided)
4. Federal Polygraph Notice – USDOL – All employers - (Provided)

*Note that there are various vendors that provide consolidated and laminated posters combining many of these posters into one large poster. Check to make sure the one purchased has all of the ones you need, or add the missing ones.

Posters and Pre-Employment Paperwork (cont):

1. Uniformed Services Employment and Reemployment Rights Act - USERRA Notice – USDOL – All employers - (Provided)
2. EEO is the Law – All employers with at least 15 employees (Provided)
3. OSHA Poster – USDOL – All employers - (Provided)
4. FMLA Poster - All employers with at least 50 employees (Provided)

Most employers display employment posters in a break room or employee changing area so that employees will see them on a regular basis. As a practical matter, very few display them where applicants will see them.



Part 2: Proper
Interview Approach

Employment Basics

The “Big Picture”:

The primary purpose of an employment interview is to elicit and describe an applicant's behavior in order to predict future job performance. Following are tips to help in both eliciting and describing interviewee behavior. The interviewer should have a thorough understanding of the behavior requirements of the job. The general tips which follow need to be utilized with judgment.



A. Conducting the Interview:

1. Additional Questions from the Application (Review application, resume, and attachments carefully):
 - a) Frequency of job changes – why?
 - b) Order of jobs held – increase or decrease in responsibility and pay?
 - c) Breaks in employment – why?

A. Conducting the Interview (cont):

2. General:

- a) Be on time - they, of course, should be early
- b) Be consistent with your greeting – shake everyone's hand; formal or informal (Mr. or Mrs., John or Mary)
- c) Establish a relaxed atmosphere – give overview of the interview, then ask easy questions first.

A. Conducting the Interview (cont):

2. General (cont):

- d) Maintain an informal and interested atmosphere.
- e) Do not criticize.
- f) Explain the next step in the process.
- g) If a drug test or other testing, general background checks, criminal background checks or credit checks will be required, be sure to discuss those with the applicant.

A. Conducting the Interview (cont):

3. Guideline for Asking Questions:
 - a) Be non-judgmental.
 - b) Ask relevant, open-ended questions.
 - c) Ask some value judgment, not just factual questions.
 - d) Ask some questions on subjects external to the interviewee.
 - e) Ask basic questions in the interviewee's field of expertise.
 - f) Maintain an interested, soft, conversational tone.
 - g) Use short phrases for questions.



A. Conducting the Interview (cont):

3. Guideline for Asking Questions (cont):

- h) Do not anticipate your next question.
- i) Probe unusual situations.
- j) Try not to interrupt unless the interviewee strays from the answer.
- k) Reflect the interviewee's statements.
- l) Respond with appropriate emotional interest.
- m) Avoid any questions which relate to the physical attributes or disabilities of the applicant

A. Conducting the Interview (cont):

4. Question Concepts:
 - a) Self-appraisal: "Everyone has their strengths and weaknesses. How would you describe yours?"
 - b) Future plans: "Where do you see yourself in 1 year or 5 years?"
 - c) Ask at the end: "Is there anything we haven't covered which you feel is important and that you think I should know?"
 - d) Close the interview by telling the applicant what the next step is. Avoid saying or doing anything which could be construed as a firm offer of employment.

B. After the Interview:

1. If you are using a list of prepared questions, leave space so that you can write in the answers. You can then just keep the form with the list of answers in the file. If there is anything unusual about a particular search, then prepare a written report as soon as possible after the interview with the following guidelines in mind:

B. After the Interview (cont):

1. If you are using a list of prepared questions ... (cont)
 - a. Determine relevant vs. irrelevant information.
 - b. Look for evaluative information – attitudes, values, and reactions.
 - c. Be open-minded – wait until all the information is in.
 - d. Be aware of your biases – do not stereotype.

B. After the Interview (cont):

1. If you are using a list of prepared questions ... (cont)
 - e. Look for positive information rather than negative.
 - f. Compare or contrast the job to be filled with the applicant's previous job experience, preferences and interests.
 - g. Document as much as possible, and do this with facts, not hunches.

B. After the Interview (cont):

2. Follow-up with the interviewee as promised. If the next step is delayed, contact the applicant and let them know the decision is delayed.
3. Use caution when using email and voicemail. These are just as much documentation, and therefore risk, as a written document.

C. Some Common Problems:

1. Interviewer Talks Too Much.
2. Interviewee Tries To Run the Interview:
 - a. Refocus the interviewee's attention gently.
 - b. Caution interviewee if it continues.
 - c. Ask the question until it is answered.

D. Small Group Interviewing Exercise:

- Attendees will be divided into groups of 3, will decide on a common dental practice employee position, and will prepare some interview questions for that position.
- **First Break**
- Upon Returning – Different groups will report to the full group the position selected and some of their sample questions.





Part 3: Hiring

Employment Basics

A. Getting Started:

1. Probationary period term explained
2. Orientation – handbook – Discussed Next
3. Get required forms completed, including I-9 (Provided)

A. Getting Started (cont):

4. Give EIC notice (Provided) for low income employees
5. New Employee Disclaimer Document
6. Confidentiality/Non-Disclosure Agreement with HIPAA language

B. Exempt v. Non-Exempt:

1. This issue has bedeviled employers for 80 years.
2. Non-Exempt – track all hours worked. Pay OT after 40 in a defined work week. Virtually all support staff and technicians will be non-exempt. Federal = \$7.25/hour
3. Exempt – professional employees – for practices, generally dentists and perhaps office manager and if an in-house lab, the lab manager. Must be on salary.
4. Note pending proposed increase in minimum pay from \$23,660/year to \$35,000/year

C. "Hiring Mistakes Prove Costly to Dentists" (by Dennis Beaver, January 18, 2019):
<https://www.times-standard.com/2019/01/21/you-and-the-law-hiring-mistakes-prove-costly-to-dentists/>



Part 4: Employee
Handbooks

Employment Basics

A. Sample Table of Contents:
Review sample Handbook TOC

B. Designation of Paydays:

1. Paydays at least twice a month for non-exempt and once a month for exempt.
2. NOTE: Pay calculations are not a simple matter, nor are withholding taxes and government required deductions. For most practices, a contract payroll service may be a very helpful vendor. Select a vendor with care due to liability issue.

C. Wage Deductions:

1. Wages can only be withheld if the employer is specifically authorized to do so under federal or state law.
2. Courts can require withholding for children support and spousal support.
3. Employee gives written authorization for lawful reasons. Use standardized authorization forms for deductions.
4. Texas does not have routine wage garnishment.

D. Earnings Statement:

Under the Texas Minimum Wage Act, employers are required to provide earning statements listing the name, pay rate, deductions, net pay, and hours worked as applicable under state law. This will also be in compliance with Federal law.

E. Final Paycheck:

Texas Final Payday Law: Full pay at the next regularly scheduled payday if an employee leaves voluntarily, or issuance of payment within six days if an employee is terminated.

F. At-Will Employment:

Statement that handbook does not create an employment contract and only the top person can create one and it must be in writing.

G. Payment of Accrued Vacation Time or PTO Upon Separation:

1. Employees are only entitled to unused paid time off (PTO) that has accrued if there is a written policy in place or employee is under contract that stipulates this.
2. Employers in Texas need to carefully review their policies and procedures to be certain that they are very clear before they pay out any accrued PTO, including vacation or sick time, when an employee leaves.
3. Note Austin and San Antonio municipal rules.

H. Health Care Continuation:

1. Texas group health plans issued to employers generally require that continuation coverage be extended for nine months to individuals not covered by the federal Consolidated Omnibus Budget Reconciliation Act (COBRA) (i.e., employed by an employer with fewer than 20 employees) and for an additional six months following COBRA coverage to individuals covered by federal COBRA.

H. Health Care Continuation (cont):

2. Dependent coverage may be extended for up to three years under certain circumstances.
3. Be aware that where there is overlap between federal, state and/or local law, complying with the law that offers the greatest rights or benefits to the employee will generally apply.

I. Weapons in the Workplace:

1. An employer has the right to prohibit individuals with a valid license from carrying a handgun on its premises.
2. The employer must communicate orally or in writing that entering or remaining on the property with a handgun is forbidden.
3. Written communication may be provided in the form of a card or other document, or a clear and conspicuous sign. The law includes specific language and signage requirements.

I. Weapons in the Workplace (cont):

1. TX law specifically permits licensed gun holders to have a weapon in their auto even in the employer's parking lot.
2. To prevent patients from bringing guns into your practice, be sure to comply with TX signage requirements by your entry door.

J. References

1. A Texas employer that releases information about a current or former employee to a prospective employer is immune from civil liability, unless it is proven by clear and convincing evidence that:
 - a) The employer knew the information was false at the time the disclosure was made, or
 - b) The disclosure was made with malice or in reckless disregard for the truth or falsity of the information.
2. Be aware that where there is overlap between federal, state and/or local law, complying with the law that offers the greatest rights or benefits to the employee will generally apply.

K. Employee Injuries

1. Be sure to follow a standard procedure.
2. Employees report all injuries promptly
3. Terminating an employee with a recent Workers' Compensation claim can be a big problem.

L. Performance Reviews

1. Most larger employers do performance reviews regularly. They are often used to determine promotions and pay raises. For smaller organizations, this is much more of a hit or miss proposition.
2. Performance evaluations done right help to improve performance and give employees critical feedback. Done wrong – expect EEO complaints and employees moving to competing practices.

M. Small Group Discussion:

1. Small Group Discussion on Employee Handbook Topics
2. **Lunch Break**



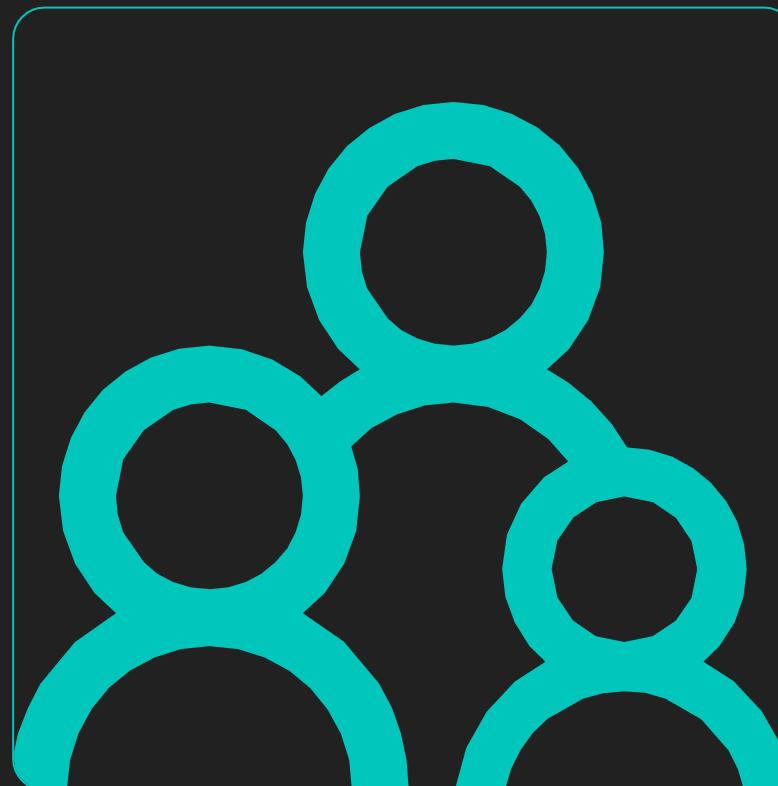
Part 5: Equal
Employment
Opportunity
Awareness

Employment Basics

A. EEO Laws in the United States:

Most Employees are protected under one of more provisions of the Civil Rights Act and related laws:

- Gender Bias and Sexual Harassment
- Pregnancy
- Equal Pay Act (“EPA”)
- Race or Color
- Age – No mandatory retirement except in specific instances
- Religion



A. EEO Laws in the United States (cont):

Most Employees are protected ... (cont):

- Disabilities
- Veteran or Disabled Veteran Status
- National Origin
- Genetic Information
- Retaliation

B. Gender:

1. Equal opportunity is the law of the land. There are very few exceptions for gender issues in employment.
2. Pregnancy discrimination is prohibited
3. Equal Pay for the same or equivalent positions is required.

B. Gender (cont):

- Sexual Harassment is prohibited (cont)
 - Two Types
 - Hostile Environment
 - *Quid pro quo* harassment
 - Exposure for harassment
 - Acts of others – Vendors and Patients
 - Co-workers – all levels
 - Supervisors

B. Gender (cont):

4. Sexual Harassment is prohibited (cont)

- c) Possible Employer Defense: That the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and (b) that the plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.

B. Gender (cont):

4. Sexual Harassment is prohibited (cont)
 - d) Exposure - U.S. Equal Employment Opportunity Commission ("EEOC") and State/Local Agencies not the worst problem. Possible Causes of Action:
 - Intentional infliction of emotional distress.
 - Invasion of privacy.
 - Assault and/or battery - criminal & civil.
 - Defamation.
 - Interference with contractual relationship.





B. Gender (cont):

4. Sexual Harassment is prohibited (cont)
 - e) Diligent approach avoids company liability
5. Sex discrimination - replacing a woman with a man, for instance, but not sole issue. Overshadowed by sexual harassment issues.

B. Gender (cont):

6. Homosexuals and Transvestites:

- a) Not protected in most jurisdictions, but check Austin
- b) Same sex or homosexual advances are sexual harassment as determined by the US Supreme Court in *Oubre*.
- c) Best approach: Do not permit any harassment in workplace, designate complaint procedure and train supervisors and employees.

C. Race or Color:

1. The “Old” Civil Rights Act protects persons based on race. This dates to the Civil War.
2. The Civil Rights Act of 1964 was primarily promoted based on providing equal employment opportunities which were still being denied minority populations.

D. Age Discrimination:

1. There is no longer an age limit in the United States except for some specific positions, mostly in the public sector, like police officers.
2. Special problem: Releases for employees over 40 covered by Older Workers Benefit Protection Act requires specific terms and conditions for an effective release.

E. Religion:

1. This has been law for a while, but was not an active area of the law. After 9-1-1, many persons who appeared to be of Middle-Eastern heritage experienced workplace difficulties.
2. Other issues involve time off for religious holidays and work with 24-hour shifts.

F. Disabilities:

1. In 1990, the Americans with Disabilities Act, "ADA," was enacted. It requires "reasonable accommodation" for persons who are either disabled or perceived to be disabled. This law was amended fairly recently and the new interpretations are still being determined in the courts.
2. "regarded as disabled," another trouble spot for employers. It indicated that employers must be careful not to use stereotypes to avoid hiring people.

F. Disabilities (cont):

3. Employee can perform "essential functions" of position with or without reasonable accommodation. The Employer decides these functions, and, if a written description is prepared before advertising for or interviewing applicants, this description shall be considered evidence of "essential functions".
4. "Reasonable Accommodation" - This is judgment call. Physical modifications in proportion to size of your practice





F. Disabilities (cont):

5. How Much Accommodation? The limitation relating to reasonable accommodation requires employer to show that corrective actions will cause "Undue Hardship."
6. "Undue Hardship" - "Significant difficulty or expense."

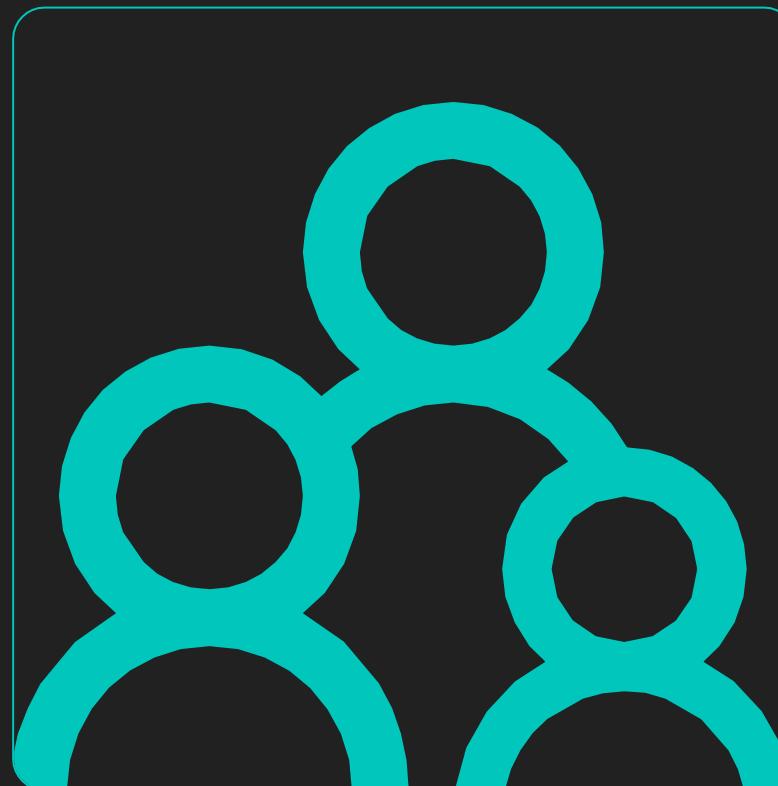
F. Disabilities (cont):

7. Some Sensitivity Issues:

- a) The term is now "person with a disability" not "handicapped" or "crippled".
- b) A person "uses" a wheelchair, they are not "confined to one."
- c) Be available to assist a disabled person. Do not assume that they need more help than they requested. Common courtesy issues, such as holding a door open, or assisting with packages, should be applied to all business visitors and guests.
- d) Employees should be familiar with the availability within your practice of accommodation aids such as a wheelchair accessible ramps.

G. National Origin:

1. National origin discrimination involves treating people, applicants or employees, unfavorably because they are from a particular country or part of the world, because of ethnicity or accent, or because they appear to be of a certain ethnic background (even if they are not).
2. Additional discrimination issues with the Immigration Reform Act of 1986 that mandated the I-9 Form and also prohibited denying employment opportunities to persons with the legal right to work in the United States.





H. Veterans:

1. Veterans from the Vietnam Era were protected. Due to so many having retired from the workforce, this is rarely an issue today.
2. Disabled Veterans have preference in Federal hiring and have protection in addition to the ADA.
3. Any person who volunteers or is called-up for regular military service or the reserves is guaranteed an opportunity to return to work with the same pay and benefits.

I. Genetic Discrimination:

1. Title II of the Genetic Information Nondiscrimination Act of 2008 (“GINA”) prohibits genetic information discrimination in employment. Effective November 21, 2009.
2. Under Title II of GINA, it is illegal to discriminate against employees or applicants because of genetic information. Prohibits the use of genetic information in making employment decisions, restricts acquisition of genetic information by employers and strictly limits the disclosure of genetic information.
3. The EEOC enforces Title II of GINA.

J. Retaliation:

1. It is illegal to fire, demote, harass, or otherwise “retaliate” against people, applicants or employees, because they filed a charge of discrimination, because they complained to their employer about discrimination on the job, or because they participated in an employment discrimination proceeding such as an investigation or lawsuit.
2. For example, it is illegal for an employer to refuse to promote an employee because she filed a charge of discrimination with the EEOC, even if EEOC later determined no discrimination occurred

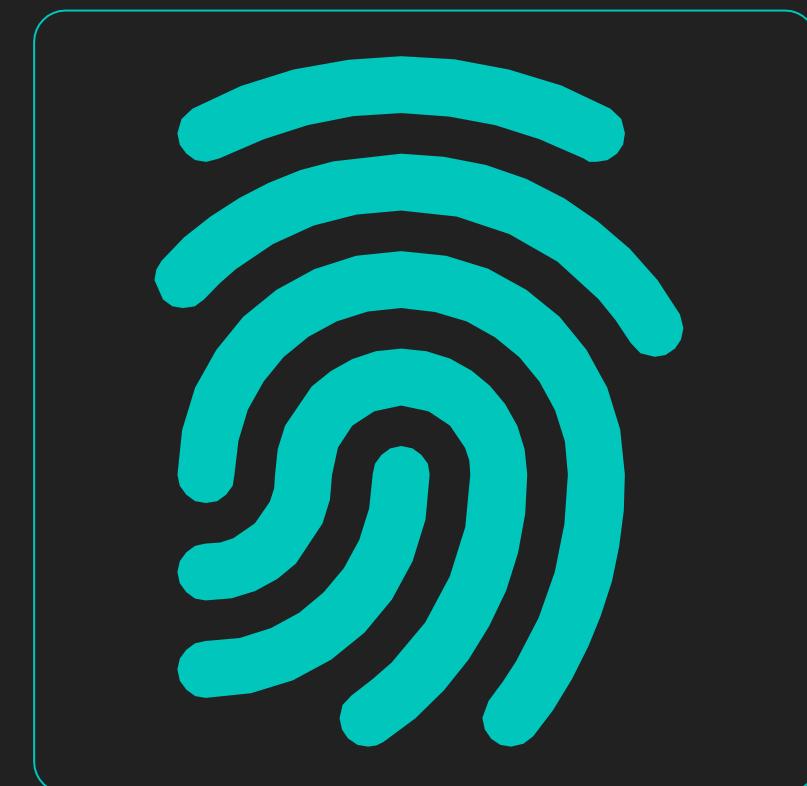


Part 6: Employee
Discipline

Employment Basics

A. Investigation of Possible Disciplinary Incidents:

1. In serious cases, consult your attorney or HR consultant first.
2. Collect all immediate information
 - a) Who was involved?
 - b) Any witnesses?
 - c) If not employed by the Company, how do we find them?
 - d) Physical evidence?



A. Investigation ... (cont):

3. In case of injury:

- a) Is a doctor or ambulance required?
- b) Is drug testing required?
- c) Were non-employees involved?
- d) Was the Insurance Company contacted?

A. Investigation ... (cont):

4. Interviews:

- a) Attorney-Client and Investigative Privileges.
- b) Do them in private.
- c) Do them “one-on-one”.
- d) Do them as soon as possible.
- e) Prepare interview reports.
- f) Do not prepare statements for witnesses to sign unless reviewed by an Attorney.

5. Review Investigative Results with attorney or HR consultant.

B. Follow Practice's Procedures for Discipline:

1. Oral Reprimands for all disciplinary problems and violations of Company policies and procedures.
2. Repeat and/or serious violations require a written reprimand.
3. Where at all possible, an employee at a level above the employee should be present as a witness when a reprimand is discussed with an employee. Where possible, a same sex witness is preferred.
4. A reprimand must include a statement as to what took place.

B. Follow Practice's Procedures for Discipline (cont):

5. All written reprimands should include: "Further violations of this or any other policy may lead to termination."
6. Do NOT put probationary periods on reprimands.
7. The number of warnings/reprimands before termination depends on the type of offense. Usually two or three reprimands will result in termination, except something that is so serious that you cannot take a chance on another incident, such as theft or safety violations.
8. If a reprimand is considered "sensitive", it should be discussed with your attorney or HR consultant prior to issuance.

C. What **Not** to Say:

1. “Chronic” and “Habitual”: These are general and imply that the employee cannot change or that the practice has tolerated the behavior in the past.
2. If an employee cannot or is unable to do something, it is not her fault. If the employee will not do something, it is her fault.



C. What **Not** to Say (cont):

3. Avoid words like:

- a) "Cannot"
- b) "Could not"
- c) "Incapable of"
- d) "Inability to"
- e) "Poor or unsatisfactory performance"

C. What **Not** to Say (cont):

4. Instead, use “will not ...” or “failure to ...”
5. Be very specific in stating the violation.
6. Examples:
 - a) Instead of: “Inability to load trucks properly,” which is unclear, use: “Will not fasten loads down tightly inside the delivery trucks.”
 - b) Instead of: “Ray has a bad attitude,” use “Ray had three tardies during the last 14 days, fails to return to the office after completing deliveries, and doesn’t always follow instructions.”



D. Unemployment Claims:

1. Designate contact person so documents are not lost.
Agency documents usually have a short response time.
2. Fight them - get documents - set handling system.
3. Read your mail!
4. New TWC rule – you must provide all available documents with your first response.



D. Unemployment Claims (cont):

5. Reprimands –use where applicable: “Violations of Company Policy”
6. If an employee is repeatedly absent or tardy, you should require documentation as to the reason for being late or off work.
7. In an unemployment hearing, the claimant’s statement has credibility over that of your practice, unless you have written documentation or a witness. Generally, if it is just your word against the employee’s, you lose.

E. Documentation Tips:

1. Do it yourself or have a designated supervisor in larger practice.
2. Keep it confidential.
3. Do not make employee sign.
4. Record Keeping:
 - a) Employee succeeds.
 - b) Employee is terminated.

F. Common Problems:

1. Tolerating poor performance over a long period of time:
2. Failing to monitor new employee performance
3. Failing to provide prompt progressive discipline
4. Failing to document verbal and then written warnings
5. Failing to terminate employees at the right time



Part 7: Termination of
Employment

Employment Basics

A. Questions Regarding Poor Performance:

1. Is the same performance required of this particular employee as has been required of all others? Are there other employees with a similar record who were treated differently? What will the **documentation** show?
2. Have I communicated what is expected of the employee? Is the expected performance reasonably achievable?
3. Has the employee been given adequate training and been counseled on how to improve his/her performance? Has this all been documented?

A. Questions Regarding Poor Performance (cont):

3. Is there objective documentation of poor performance?
4. Has the employee been warned of the action that will be taken if performance fails to improve? Has the employee been given adequate time and opportunity to improve? Has this been documented? ("Opportunity to Succeed.")
5. Has consideration been given to other types of action besides termination if performance fails to improve? Has this been documented?

B. Policy Violations:

Supervisors should ask themselves:

1. Does the action of the employee violate a written policy? Has the policy been communicated clearly to all employees?
2. Is the action to be taken against the employee consistent with the action taken against all other employees who committed similar policy violations?

C. Summary:

Superiors have an EEO responsibility to:

1. Maintain a working atmosphere free of intimidation or harassment for any reason.
2. Assist employees in maximizing job effectiveness.
3. Practice consistency in establishing reasons for termination.
4. Rational, witnessed termination session.



C. Summary:

Superiors have an EEO responsibility to:

5. Have documentation of the discipline/termination interview.
6. Termination report - honest, confidential and non-defamatory.
7. Forward copies of the related documentation to employee's file.
8. No adverse reports to outsiders.



Part 8: Violence

Employment Basics



Unfortunately, in this modern world, this is an important topic. Consider having employees watch or participate in a "Run, Hide, Fight" program.



Very important - screen new employees carefully. Most employees with violence problems were like that when they were hired.



Design your location for security of employees. Receptionist behind a secure desk and a locked door blocks access to rest of the facility.

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- D. Most acts of violence are tied to psychological problems, family disputes and interpersonal disputes. Therefore, it is critical that supervisors observe their employees continually. Look for:
 1. Employee is going through separation, divorce, child custody or support legal fight, or similar situation.
 2. Employee has had an argument or appears to be agitated with managers or other employees.
 3. Employee has been in a disagreement with a patient.
 4. Employee's appearance changes. They stop dressing neatly. They look like they are not feeling good or getting adequate sleep.

- E. In a potentially volatile situation:
1. Heroism is highly discouraged. Call the police if weapons are involved, or if a violent incident is likely. It is better to call the police and not need them, than to delay calling them when you did need them.
 2. Based on various expert opinions, avoid touching an employee or patient who is upset. You could be accused of assault. You could also become the target of an attack when the employee or patient was simply being verbal and was not planning to escalate their behavior.



E. In a potentially volatile situation (cont):

3. Strength in numbers. When no weapon is evident, several employees coming forward and confronting a violent employee or patient sometimes has a calming effect – the person knows that they cannot intimidate a small crowd versus an individual.
4. Telling someone to “calm down” is the single best way to make someone more angry. Consider the last time you were angry. Think about your patient service training in approaching employees and patients. Ask them how you can help. Speak in a calm, even voice. Look at the person and acknowledge their humanity. If appropriate, you may want to mention the large number of witnesses or the presence of a video camera.

E. In a potentially volatile situation (cont):

5. If you have the opportunity, experience has shown that same sex and same ethnicity match-ups sometimes help to defuse the situation. For example, where a female is the potential problem, have a female employee speak with the person while others corral patients away from the problem area.
6. When employees are being disciplined, it was recommended above that two supervisors meet with the employee. One speaks, the other acts as a witness. This format also helps to avoid violence because literally, the employee is out-numbered.



Part 9: Employee
Training and
Development

Employment Basics



Because most dental practices are small, hiring will usually be focused on hiring employees who already have the skills required for your practice.



An effort should still be made to help new employees become part of your practice. The best way to do this is to review the employee handbook carefully with new employees, emphasizing the parts that have the most impact on your practice.

- C. In larger practices, it may be possible to assign a “mentor” employee to the new employee who has the same training.
- D. For many small practices, the best approach is often to overlap a leaving employee with the new employee to provide some first-hand training. This obviously cannot be done when the former employee was terminated for cause or quits suddenly.



Part 10:
Understanding Staff
Compensation

Employment Basics



In today's competitive job market, getting the best employees will require a competitive pay and benefits package. We discussed benefits elsewhere.



You should monitor the current wages for the positions in your practice. Some positions like dental hygienists have fairly well publicized wage ranges.



Once an employee is onboard, a common practice is to provide an adjustment at six months and then annually after that

Disclaimer – There is no legal advice provided in this program. This program is designed to be used all over Texas. Due to the large size of Texas, there may be some local ordinances that were not included in this review. Be sure to check with your local attorney regarding any municipal or country employment restrictions before adopting any policies and for help drafting legally related employment documents like employment contracts.