

RISK MANAGEMENT ARTICLE

Adhere to Proper Personnel Practices to Reduce Liability Risk

Most dentists are aware of potential risks of liability related to clinical practice, but they may fail to recognize the need to protect themselves against legal action related to human resources decisions. Areas where dentists can find themselves vulnerable include hiring, supervising, firing practices, etc. Following the guidelines presented here, along with consulting an attorney or human resources consultant, will help reduce the risk of successful legal action brought by a disgruntled employee or by a patient who is harmed by an employee's action.

Hiring effectively

Hiring the right people protects the dentist against the risk of liability. Having the right team is also an important factor in ensuring the dentist's practice functions well with minimal conflict. Dentists should have policies in place that specifically relate to human resources, including hiring, supervising, terminating, etc.

To hire a new employee, start by crafting an advertisement that clearly describes the position and how to apply. Including minimal requirements, such as degrees and years of experience, helps reduce the number of nonqualified applicants and saves time. Mention that the practice is an equal opportunity employer, and advertise online in addition to print to ensure a large response.

Review the applications to determine those who best meet the practice's needs. You may want to consider conducting short telephone interviews to further narrow the candidate pool.

During the interview, focus on what the applicant can bring to the practice. For example, perhaps the current office manager is less knowledgeable about electronic health records, and the planned additional receptionist who is an expert on computers could fill that gap. Avoid illegal questions such as those related to age, race, national origin, gender, marital status, sexual orientation, etc.

Be alert to red flags during the hiring process. For example, if it is difficult to schedule an interview time with a potential employee, one has to wonder about the person's true interest in the position. Ask the receptionist's perspective about applicants. In some cases, an applicant can be pleasant during the interview but rude to the receptionist.

It is also wise to have other employees meet the final two or three candidates to assess how potential new hires will fit into the existing office culture. Be clear, however, that you will make the final decision. Employees also need to understand the types of questions they are legally permitted to ask.

Making a decision

Before deciding on the new employee, review interview notes, solicit staff input, and check references, a step that too often is overlooked. Incorrect information related to references (for example, overstating the applicant's contributions to the organization) and people listed as references, but who do not seem forthcoming with praise for the applicant, should alert you to potential problems and signal the need to select another applicant.

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You may choose to conduct a criminal background check but before doing so, consult an attorney to ensure correct adherence to state and federal laws and regulations.

Once a verbal offer has been made and accepted, prepare a written agreement that the employee signs before starting work. The agreement should include payment, benefits, and start date. The agreement should also be congruent with the "at-will" employment stance you should have as a policy. According to the U.S. Small Business Administration (SBA), "at-will" means an employer "may terminate any employee at any time, for any reason, or for no reason at all." Every state except Montana allows employers to adopt an at-will employment policy. The new employee should receive one copy of the signed agreement, and the original should be placed in the employee's file.

New employees also need to complete required forms such as Form W-4 for taxes and Form I-9, which requires the employer to examine documents to confirm the employee's eligibility to work in the U.S. The completed Form I-9 should be kept on file for 3 years after the date of hire or 1 year after the date of termination, whichever is later.

Proper orientation

It is tempting to immediately start the new employee working at the job he or she was hired for. However, allow time, if possible, for the employee to become oriented to the environment and the job. Otherwise, the employee could later claim he or she was not oriented to the position and use that as an excuse for poor performance.

Hanging a welcome sign, giving a card signed by all current employees, and readying the person's work area are simple steps that help employees feel welcomed to the practice. You or someone on your team should take the new employee to lunch on the first day.

Give the new employee a checklist of competencies which may include any required training, such as training in OSHA and HIPAA laws and regulations; once completed, retain the checklist in the employee's record. For those who will be directly caring for patients, such as dental hygienists, ask another person to work with the new employee. The team member can orient the new staff person to equipment and processes while assessing competencies.

Allow time for new employees to read your employment handbook and job description, and review policies and procedures. Employees should sign a form attesting they have read the material; keep the form in the employee's record. It is also helpful to have the new person meet with other staff members to understand team roles.

Supervising

Your responsibility continues after the person has been hired and completed orientation. The American Dental Association (ADA) Code of Ethics states that dentists are "obliged" to assign personnel only duties that can be legally delegated and to supervise patient care provided to those "working under their direction." Supervising includes at least annual performance reviews; however, depending on the position, you may want to consider quarterly reviews. Continued competence should also be assessed at least annually. A checklist ensures the process is consistent from year to year.

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Unfortunately, not every employee will be successful. It is wise to move quickly to terminate employees with performance issues. (See Dealing with termination, below.)

Record keeping

Keeping accurate employment records is essential so documentation can be retrieved and used to support you and your practice in the event of a legal action. Keep education records, copies of performance reviews (have employees sign to acknowledge receipt), details of any disciplinary actions, etc.

The ADA suggests that dentists keep applications for those not hired for 3 years, and to retain personnel records for those who leave employment for 7 years. However, retention time frames may vary per state, so consult an attorney or human resources expert.

Dealing with termination

No one wants to terminate an employee, but sometimes it is necessary. It may help to consider that an employee who does not work well in one practice may succeed in another. For example, some dental hygienists may do well in a busy practice but languish in a practice that is less busy. The following guidelines can help dentists who must fire an employee:

- **Have a disciplinary policy in place.** The policy should outline a step-by-step approach that begins with a verbal warning and ends with termination if behavior doesn't improve.
- **Know when you cannot fire an employee**, which, according to the SBA, includes discrimination based on age, race, gender, religion, or disability; complaining about any illegal activity, health, and safety violations, or discrimination or harassment in the workplace; and taking family or medical leave, military leave, or time off to vote or serve on a jury.
- **Conduct the termination interview early in the week** so the employee can start planning his or her next steps.
- **Prepare by talking with a human resources expert**, which helps protect the dentist from legal action and clarifies the employer's responsibilities, according to federal and state laws and regulations. For example, dentists in a large practice (more than 20 employees) with a group health plan will need to notify the plan administrator within 30 days of terminating the employee to start the COBRA process.
- **Have a list of documented performance problems to refer to as needed** during the termination interview.
- **Be direct;** employees should already know they are not performing well.
- **Plan on how to handle the employee's final check.** Some states may require the employee receive immediate payment. To learn more, contact your state's labor office (www.dol.gov/whd/contacts/state_of.htm).
- **Unless there are specific concerns, allow the person to leave the building without an escort** to avoid fostering resentment that could later prompt the terminated employee to bring legal action.
- **Document the conversation in the employee's record** and remember to eliminate the person's security access.
- **Give the employee a letter with the termination notice** and any additional information, such as final payment plans.
- **Be respectful.**

Sources: Beesley C. How to fire an employee and stay within the law. U.S. Small Business Administration. April 20, 2012.

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Partnering for success

A well-functioning team is essential for a successful dental practice. By taking care in hiring staff, working with them effectively, and terminating when necessary, dentists can ensure continued success—and reduce their risk of being sued.

Resources

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