Financial: N/A
Research: N/A
Legal Consult/Expert Witness: N/A
Organizational: N/A
Gifts: N/A
Other: Speaking Honoraria: AAAAI and ACAAI
Disclaimer: The contents of this talk do not constitute legal advice.
Disclaimer

This presentation is for informational purposes only. It does not constitute legal advice. You should seek the advice of counsel if you need legal assistance.
Why Have a Handbook?

• **Communication Resource**
  • Company mission, values, policies, procedures and benefits

• **Limits Legal Liability**
  • Protects against discrimination and unfair treatment claims
  • Explains applicable laws

• **Administrative Time Saver**
  • Helps orient new employees
  • Answers questions that arise during employment
What is a Handbook?

- Management communication tool
- Summary of benefits and the Practice’s most important policies
- Sets out the Practice’s expectations of its employees and what its employees can expect from the Practice
- Should positively reflect the values of your Practice and create an employee friendly environment
Employment Policies

• Policies serve to establish rules of conduct, set expectations and ensure employees are treated consistently
• A few policies are required by law (sexual harassment, FMLA)
• But, broadly written policies might expose employer to liability if not consistently enforced
Employment Policies (cont)

- Determine what policies are appropriate for your practice
- Communicate these policies, including through employee handbook
- Enforce them consistently so not open to claim of discriminatory or unfair treatment
- Review and update regularly
What is a Handbook . . . Not?

- Not a Personnel Policy Manual
  - These are procedural guides for managers on how to do their jobs
  - Usually not given to employees
- No substitute for good practices
  - Policies are worthless unless management follows them
- No substitute for personal interaction
Risks & Benefits

- Benefits:
  - Helps clarify your rules and expectations
  - Provides valuable information to your staff
  - Supports termination for cause if employee violated a policy or standard listed in Handbook

- But: Can be a double-edged sword: You could be sued if the Handbook includes definite policies and procedures and you fail to follow them
To Reduce Risks:

- Avoid using words that create rights (guarantee, entitled, always)
- Disclaimers
- Use clear and concise language
- Maintain as much flexibility as possible
Before Drafting

• Consider the message you want to send – “Our practice is a great place to work!”
• Professional, clear, easy to read, neat & well organized
  – Use of headings and lots of white space
• Avoid using punitive & dictatorial language
  – Tone should be professional, not paternalistic
Topics to Include
• Welcome employees
  – Letter from practice’s founder or managing physician
• History of the practice & plans for the future
• Practice philosophy & mission statement
• Portray the practice in the most positive light; make new employees feel proud of their new practice
Disclaimer

- Problem: Handbook can create unilateral contract absent clear and prominent disclaimer
- Must be prominently displayed
  - Highlighted/underlined/capitalized
  - Included at front of handbook
  - State law
Disclaimer

• Employment at Will
  – Employer or employee may terminate the employment relationship at any time, for any reason, with or without notice

• Employee Handbook not a contract

• Practice may unilaterally modify Handbook

• Benefit information is a general summary and terms of benefit plans govern
Equal Employment Opportunity Employer

- An equal employment opportunity (EEO) policy statement reaffirms your practice’s commitment to fair employment practices
- Applies to all facets of employment
- Not legally required to be included in handbook but strongly recommended – EEOC will look for this
- (15 or more employees)
Sample EEO Policy

“In order to provide equal employment and advancement opportunities to all individuals, employment decisions will be based on merit, qualifications and abilities. Our office does not discriminate in employment opportunities or practices on the basis of race, color, religion, sex, national origin, age, disability or any other characteristic protected by law. This policy governs all aspects of employment including selection, job assignment, compensation, discipline, termination and access to benefits and training. Any employee engaged in a discriminatory practice is subject to discipline, up to and including discharge.”
Anti-Discrimination and Harassment

- Practice does not tolerate discrimination or harassment based upon race, gender, age, disability, etc.
- Employees who witness/experience harassment *must* report those incidents directly to management officials.
  - Failure to report to management can serve as a defense.
- Give employees the option to report harassment claims to someone other than Practice Manager.
Anti-Discrimination and Harassment

• All reports of harassment will be investigated and disclosures made only when necessary to investigate any incident or as required by law
• No retaliation for reporting a claim of harassment
Employment Status

- Exempt: Employee meets specific requirements established by FLSA & is exempt from OT requirements
- Non-Exempt: Employee does not meet requirements & is entitled to be paid 1.5 times regular pay rate for hours worked in excess of 40 hours in any one week
• Introductory Period

• Regular Full-Time (NOT “Permanent”):
  – Employees who have completed their 90 day Introductory Period
  – Regularly scheduled to work more than ___ hours per week;
  – Eligible for Practice’s benefit package subject to terms, condition, & limitations of each benefit plan.

• Regular Part-Time
Timekeeping

• For non-exempt employees
• Accurate recording of time
• No falsification
• No clocking in or out for others
• Report any errors
Hours Worked

- Practice hours
- Overtime
  - Must be approved in advance when practicable
  - However, must pay overtime regardless of whether approved
- What about time spent checking emails, etc?
Attendance

- Attendance and punctuality critical to success of practice
- Expectation – at work station at start of shift
- Consequences
- No-fault policy – problematic
Pay Practices

- Pay periods
- Deductions from pay
- Meals and rest periods. Not required in most states but if you promise to provide them, may be required. *Braun v. Wal-Mart*
Time Off

• What type of leave?
  – Vacation & sick leave or PTO?
  – Holidays
  – Inclement weather
  – How is time off earned?
  – What happens if time off not used during year?
    • Rolls over
    • Paid out
    • Lost
Leaves of Absence

- **FMLA**
  - FMLA applicable for employees who work in office with at least 50 employees within 75 mile radius who have worked for employer for at least 1 year
  - If not applicable, don’t include!

- **Non-FMLA**
  - Are there state laws that apply?
  - Unpaid leave of absence
Benefits

• List all benefits and other things of value that the practice provides to employees in addition to their pay

• Disclaimer:
  – Terms of individual Plan control
  – Practice may change any/all benefits offered at any time
  – Refer to Plan documents for specific information
Conduct and Performance Standards

- Confidentiality
- Attendance & Punctuality
- Drug & Alcohol Free
- Smoking
- Workplace Violence
- Safety & Security
Computer & Internet Usage

- Computer and internet for company use only
- Practice has right to monitor employees’ use of email, internet, etc
- No expectation of privacy
- However, some courts limit employers’ ability to monitor to legitimate business reason
Social Media

- **Employees are NOT prohibited from discussing terms and conditions of employment on social media sites**
- **Section 7 rights re: “protected concerted activity”**
  - Is the activity undertaken on authority from or on behalf of other employees?
  - Does the activity mention terms and conditions of employment?
  - Does evidence demonstrate group activities?
  - Is the individual activity a logical outgrowth of concerns raised by the group collectively?
  - Is the activity a circumstance in which an individual employee seeks to initiate or induce or prepare for group activity?
SOCIAL MEDIA

• BUT disciplinary action can be taken based on unprotected content appearing on the same Facebook wall as protected.

• *Karl Knauz Motors Inc. d/b/a Knaus BMW v. Robert Becker* (upholding termination of employee who posted photo and comments related to workplace incident that had nothing to do with terms and conditions of employment despite employee’s subsequent post and photo involving terms and conditions of employment)
Discipline

- Progressive Discipline
  - Flexibility is key
  - No absolutes!
  - “May”
- Immediate Termination for major offenses – can provide list “including but not limited to . . . .”
Termination of Employment

• Termination by Practice or Resignation of Employee
• Will unused vacation/PTO be paid out?
• Eligibility for rehire
• Return of Practice Property
• Exit Interview
Acknowledgment

- Employee received a copy of the Handbook
- Contains important information that I have read and understand
- Employment is at will and Handbook does not alter this nor does it create a contract of employment
By signing this form, I acknowledge that I have received a copy of the Practice’s Employee Handbook. I understand that it contains important information about the Practice’s policies, that I am expected to read the Handbook and familiarize myself with its contents, and that the policies in the Handbook apply to me. I understand that nothing in the Handbook constitutes a contract or promise of continued employment and that the company may change the policies in the Handbook at any time.

I acknowledge that my employment is at will. I understand that I have the right to end the employment relationship at any time and for any reason, with or without notice, with or without cause, and that the Practice has that same right. I acknowledge that neither the Practice nor I have entered into an employment agreement for a specified period of time.

Signed __________________ Date __________________
5 Biggest Mistakes in Handbooks

- Overly detailed discipline policy
- Not following policies in Handbook
- Not reviewing Handbook on regular basis
- Including policies not required by law
- Absence of clear disclaimer language
Review your Handbook

- Are there policies you aren't following? That are no longer relevant?
- Look for language that is problematic:
  - Unlimited advancement opportunities
  - Long-term or permanent employment
  - Fired only for “just cause”
  - Fired only after progressive discipline process
Redistribute

- After revising, redistribute to current employees
- Review during office meeting
- Have everyone sign a new Acknowledgment Form
- It’s a New Day!
Questions?

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