

Stay on the Right Side Of Employment Laws

As physicians know, operating a medical practice involves more than treating patients. Physicians not only have to hire the right people for the positions they need to fill, but they also must have a system in place to ensure that the office complies with the pertinent labor and employment laws. Federal, state and

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local laws govern today's workplace, and ignoring or neglecting to comply with these laws are sure to cause potential legal problems.

"It is very expensive to defend against employment discrimination charges, not to mention time consuming, even if you do win," says Karen Zupko, president of the Chicago-based practice management consulting and training firm, Karen Zupko & Associates.

Federal employment laws are designed to take care of a number of issues, such as making sure that workers are paid at least the minimum wage, that they are not discriminated against in hiring or on the job, and that the appropriate taxes are withheld from their paychecks. Just like business owners, physicians want to create a workplace where everyone combines his or her energies for the common good.

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Job descriptions should focus on qualifications such as necessary skills, education, experience and licensure. Try to be as specific as possible when you describe the duties and responsibilities of each of the jobs in your practice.

In addition, it is a good idea to describe the position's responsibility to your patients, the responsibility for the appearance of the work area (if it applies) and the type of paperwork the job holder must regularly complete. A clear job description makes it simple

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to draft a classified advertisement or job posting. It also makes the job of evaluating the performance of your staff members easier.

Recruiting good staff today utilizes multiple approaches and media, depending on the position, says Ms. Zupko. There are on-line sources such as *www.healthcareers.com* and *CareerBuilder.com*, where you can post openings and attract potential candidates. Advertising in your local paper

also will produce an array of potential candidates.

In addition, Ms. Zupko says that it is important to listen to your staff. They may detect gaps in competency and other concerns that you and your partners overlook. Encourage staff to add value to the recruitment process by taking their comments seriously.

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Interviewing Prospective Employees

It is very important to hire the right people for your practice. Employee turnover is costly; so are potential legal tussles with employees who turn out to be the wrong fit for your practice. A good way to minimize turnover is to thoroughly screen candidates before you hire them and place them on the payroll.

Before interviewing prospective employees, be sure to draw

up a set of questions focusing on the job duties as listed in the job description for the position.

In an article in the June 2003 edition of *Family Practice Management*, Dr. Peter Cardinal, vice president of medical affairs at Gettysburg Hospital in Gettysburg, Pa., recommends composing a wide variety of questions that will help you evaluate a candidate's skills and personality. Questions addressing professional ability should be mixed with those that address attitude and values. He writes that a key concept to remember is to hire for values, attitude and aptitude first, and skills second.

Here are some of the questions that Dr. Cardinal recommends you ask when interviewing candidates for your medical office. The answers will help guide your evaluation of each candidate:

■ Describe what you think this type of job involves and what you

Screening Prospective Office Managers

When looking for an office manager, Karen Zupko, president of the Chicago-based practice management consulting and training firm Karen Zupko & Associates, has prepared an extensive set of questions that she says are important to ask prospective candidates for this key position in the medical practice. Her questions include the following:

1. Can you describe a significant project you initiated and completed in your current position?
2. What else do you do in your current job that increases your value to your employer?
3. What are some of the most difficult tasks or responsibilities of your current position?
4. Provide two examples of things you've done professionally to show your willingness to work hard.
5. Compare and contrast what will be different as the manager of our practice with your current position? What are the perceived advantages of this new position?
6. How do you keep physicians updated on the status of projects?
7. If we offer you a job, how will you win allegiance with the staff?

Ms. Zupko says that it is also important to establish the actual start date at some point during the second interview. Some practice managers and administrators may need to give four weeks' notice to their current employers, she adds.

might like and dislike about the work.

- Describe a conflict you've had with other staff members and how you resolved it.
- Explain a time when you saw room for improvement in some area of your work environment or process that could be more efficient. What did you do to change the status quo?
- Describe a time when your job required you to perform a task that you didn't know how to do. How did you respond?

Checking References

The last question to ask when interviewing a prospective employee is whether it is possible to contact the individual's previous employers for a reference. Checking references is an important part of hiring staff, yet some medical offices fail to do a complete reference check.

Ms. Zupko says that many physicians have been burned for failing to check references or investigating candidates' backgrounds. "You are making an investment in any employee who will have significant influence in your practice. Taking a little extra time to verify that candidates are who they say they are,

Useful Government Websites

- The U.S. Department of Labor (www.dol.gov) offers a wealth of information on compliance with Federal employment regulations. The site has a special section for employers and also provides a quick link to an employment law guide. The guide includes chapters on wages and hours and safety and health standards. Each chapter lists the phone numbers of the Labor Department agency that administers the laws.
- For more facts and guidance on workplace discrimination laws, log on to the U.S. Equal Employment Opportunity Commission's Website at www.eeoc.gov.
- For more information on employers' obligations regarding the nation's immigration laws, go to U.S. Citizenship and Immigration Services (www.uscis.gov).
- For information on workplace safety, visit the Website of the Occupational Safety and Health Administration (www.osha.gov). The site offers publications tailored to specific types of employers and free worksite posters.

have the degrees they say they do and can make their promised contribution to your practice is a worthwhile exercise,” she adds.

Reference checking also may help you prevent negligent hiring. It is possible that you may be sued for negligent hiring if a patient or someone else is injured or has property stolen or damaged by an employee whose background you failed to check carefully. When reviewing a candidate’s work history, it’s also a good idea to ask applicants to provide information on any gaps in employment history.

Get in touch with at least two or three previous employers or co-workers and ask about any attitudinal questions you may have that you were not able to nail down during the interview with the candidate. When checking on a prospective candidate, you should also find out how the individual dealt with patient service, what his or her work habits were like and whether the candidate displayed enthusiasm for working in a medical office.

Unfortunately, it can be difficult to get relevant information from past employers. The general rule that most employers follow is that they will give out only neutral references, says attorney Paul J. Cherner, a partner in the law firm Hinshaw & Culbertson in Chicago. “With this policy, employers will simply confirm that a person worked for them, provide the dates of employment and that the individual worked at a particular job,” he explains. To obtain additional information, the prospective employee must give the previous employers permission to provide more data by completing a permission form, he explains.

There also are questions that you shouldn’t ask prospective employees because these inquiries may lead to the filing of a formal legal complaint. Examples include questions that have to do with a candidate’s religion, political affiliations, age or plans to have children; these questions are off limits.

Here again you may want to use the services of professionals to help you perform pre-hire screening and background checking of

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potential candidates. Screening firms are experienced in how to handle these inquiries. Background inquiries will include a check of criminal, motor vehicle, consumer and commercial credit, education, license verification and worker's compensation histories. In addition, you may also outsource the checks of a candidate's references.

Once you have hired a staff person, be sure you send an offer letter outlining the terms of employment. The letter should describe the position, salary, benefit package and additional compensation arrangements if any exist. Further, be sure to stipulate the date, time and location of the individual's first day as an employee. The employee should sign a copy of the offer indicating his or her acceptance and send it back to your office.

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An employee handbook is a useful tool for the medical office

because it covers general employment practices and helps communicate what is expected of staff members. Most handbooks include details on your practice's policies and information such as your office's working hours, who qualifies for overtime and how it is authorized.

A handbook is also the place to give a thorough description of employee benefits, including health insurance coverage, vacation, personal leave, sick leave, maternity policy and a list of the holidays the practice takes each year. When describing compensation and benefits, you may want to explain how the office determines salaries and the practice's policy on raises.

Use the handbook to explain policies regarding employee performance reviews. Specify the frequency of performance reviews and what employees can expect during these reviews. Performance reviews generally help improve performance by focusing on specific areas you want each employee to address.

Your handbook should also describe the types of behavior—employee theft, violence, lateness and poor work performance—that are grounds for immediate dismissal. Further, attorneys Lisa

Guerin and Amy DelPo, authors of *Create Your Own Employee Handbook* (Nolo, 2005), maintain that a handbook imparts the culture of your office as well as its values.

They write that a handbook promotes positive employee relations by ensuring that all employees are treated consistently and fairly. In addition, a handbook may help you avoid possible lawsuits because your medical practice will have documented, consistent policies.

'At-Will' Employment

Another important element to include in your handbook is the fact that employment with your practice is "at will." This means that the practice has the right to end the employment relationship at any time without cause, and employees have the right to leave at any time. It is important to include this "at will" statement in your handbook as well as on application forms and any offers of employment so that an employee cannot claim you made promises of a long-term work contract.

Legal experts point out that unless an employer enters into a specific contract with an employee, the employment relationship is always considered to be "at will." You do not want to lose your right to end an "at will" relationship by creating an implied contract with an employee by saying, for example, that employees will only be fired for certain reasons. To further protect yourself in this area, you can ask employees to sign a statement indicating that they understand that they are considered "at will" employees.

In addition, if questions should arise about a particular employment policy, having a well-written employee handbook will help provide the appropriate response. It is important for everyone to follow the employment policies outlined in the handbook. You may face legal hassles if your handbook says one thing, but you and the other physicians in the practice are doing and saying something else.

An employee handbook also provides some amount of legal protection if you are challenged by an employee in a court proceeding. It shows not only that you adopted fair and uniform policies, but that you set up a written complaint procedure for employees to use if they have a work-related problem.

When new employees join your staff, be sure they spend time reading the handbook. Some experts say it is a good idea to ask new hires to sign a form stating they have read and understand the manual. The signed form should be placed in the employee's personnel file.

You can use an employee handbook template developed by practice management consultants to help you get started. It is important to personalize it for your practice to reflect the specifics of your employment practices. Ms. Zupko recommends having your handbook reviewed by an attorney familiar with your state's laws on employment practices. Be sure to update it periodically, as laws and practice needs change.

Once you've hired staff members, there are a number of state and federal laws with which you must comply regarding payroll tax withholding. Designate someone on your staff, such as your accountant or financial person, to take care of withholding and remitting payroll taxes to the proper entities.

Practice management consultants recommend putting together a packet of forms and other necessary paperwork that new

Federal Withholding Requirements

Employers are responsible for withholding the following federal taxes from employees' paychecks:

■ **Income taxes.** To know how much federal income tax to withhold from employees' wages, you should have a Form W-4, Employee's Withholding Allowance Certificate, on file for each employee. According to the Internal Revenue Service, the amount of any federal income tax withholding must be based on marital status and withholding allowances. Your employees may not base their withholding amounts on a fixed dollar amount or percentage. However, an employee may specify a dollar amount to be withheld in addition to the amount of withholding based on filing status and withholding allowances claimed on Form W-4.

■ **Social Security and Medicare taxes.** The Federal Insurance Contributions Act (FICA) provides for a federal system of old-age, survivors, disability and hospital insurance. The first three are financed by the Social Security tax, while hospital insurance is financed by the Medicare tax.

Employers must withhold Social Security and Medicare taxes from

employees must complete when they first start working in your practice. The packet may include IRS form W-4, an employee information sheet, an insurance information form, a payroll deduction form and employee handbook.

Because of its importance, many employers are including their sexual harassment policy in the packet. Experts say the policy should define sexual harassment, explain how to file a complaint and describe the action that will be taken if anyone in your practice is accused of sexually harassing an employee.

If you can't free up staff time for the job of taking care of the withholding and paying of payroll taxes, you can use an outsourcing service to accomplish the task. The service will prepare all the necessary filings and take care of paperwork requirements. Check with several outsourcing companies to find the best rates, which are generally affordable even for smaller medical practices. These professional employer organizations provide a variety of support functions without a large overhead. For example, they can also perform benefits management and government

employees' wages and pay a matching amount. The tax rate for Social Security is 6.2 percent; this amount must be withheld from your employees' checks, and a matching amount must be paid by you. This amount is applied to earnings up to the wage base limit, which is \$90,000 for 2005. The employee tax rate for Medicare is 1.45 percent, and the employer tax rate for Medicare tax is also 1.45 percent (2.9 percent total). There is no wage base limit for Medicare tax; all covered wages are subject to Medicare tax.

■ **Federal unemployment tax.** The Federal Unemployment Tax Act (FUTA), together with state unemployment systems, provides for payments of unemployment compensation to workers who have lost their jobs. Most employers pay both a federal and a state unemployment tax. Only the employer pays FUTA tax; it is not deducted from the employee's wages. For 2005, the FUTA tax rate is 6.2 percent, applicable to the first \$7,000 that you pay to each employee as wages during the year.

For more information, consult IRS Publication 15, Employer's Tax Guide, which is accessible from the IRS Website (www.irs.gov/publications/index.html).

compliance functions.

Keep in mind that each employee must fill out federal Form W-4, which indicates how many exemptions he or she wishes to claim for federal tax purposes. The federal government expects employers to

The Internal Revenue Service requires employers to keep complete payroll records. These include each employee's name, address and Social Security number; amount of Social Security withholding tax collected and date it was collected, and total amount and date of each wage payment and the period of time the payment covers.

keep this form on file. The form lets you know the proper amount of federal and state income tax to withhold from each employee's paycheck, as well as the employee's share of Social Security and Medicare tax. At the end of the calendar year, employers are responsible for sending each employee a Form W-2, which reports how much he or she earned as well as the amount of withheld taxes.

Depending on your state's requirements, unemployment and disability deductions also need to be withheld from each staff member's paycheck.

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Wage and Hour Regulations

You should be aware of the Fair Labor Standards Act, which regulates the minimum wage and overtime for workers in all businesses and organizations. The U.S. Department of Labor (www.dol.gov) enforces the Fair Labor Standards Act and can provide information on your requirements as an employer. It also is important to check local minimum wage laws as well because they may supersede the federal law, Mr. Cherner says.

"There are some states that may require a higher minimum wage than the federal law, and these supersede the federal law if the state laws are more beneficial to employees," Mr. Cherner says. It is also important to determine which employees qualify for overtime pay. Under federal law, you are required to pay time

and a half to qualifying employees for all hours worked in excess of 40 hours per week unless they are “exempt.”

To be considered exempt, employees must meet certain minimum tests related to their primary job duties. The Fair Labor Standards Act provides an exemption from overtime pay for employees who work in executive, administrative or professional capacities. In addition, exempt employees must be paid a salary rather than an hourly wage. The minimum salary level to qualify for exemption from the overtime requirements is \$455 per week or \$23,660 annually; this amount was raised in 2004 from a decades-old threshold of \$155 per week. An employee paid below the minimum salary level is not exempt from the FLSA overtime pay rules even if the employee is an executive, administrative or professional.

The Department of Labor defines the exempt categories as follows:

■ **Executive.** The employee’s primary duty must be the management of the enterprise, or of a department or subdivision of the enterprise. The employee must customarily and regularly direct the work of at

Federal Employment Laws at a Glance

- **Title VII of the Civil Rights Act of 1964.** Prohibits employment discrimination based on race, color, religion, sex or national origin.
- **Fair Labor Standards Act.** Sets rules for minimum wage, overtime pay and child labor.
- **Americans with Disabilities Act of 1990.** Prohibits employment discrimination against qualified individuals with disabilities.
- **Age Discrimination in Employment Act of 1967.** Protects individuals who are 40 years of age or older from employment discrimination based on age, applicable to both employees and job applicants.
- **Older Workers Benefit Protection Act of 1990.** Prohibits employers from denying benefits to older employees.
- **Pregnancy Discrimination Act of 1978.** Prohibits discrimination on the basis of pregnancy, childbirth or related medical conditions.
- **Family and Medical Leave Act of 1993.** Allows eligible employees to take up to a total of 12 workweeks of unpaid leave during any 12-month period for specified medical and family situations.
- **Immigration Reform and Control Act of 1986.** Requires employers to hire only persons who may legally work in the U.S. and verify the identity and employment eligibility of anyone to be hired.

least two or more other full-time employees or their equivalent. The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

■ **Administrative.** The employee's primary duty must be the performance of office or non-manual work directly related to the

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management or general business operations of the employer. The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance. This category would include employees in the following areas: tax; finance; accounting; budgeting; auditing; insurance; quality control; purchasing; marketing; research; safety and health; personnel management; human resources; employee benefits; public rela-

tions; computer network, Internet and database administration; legal and regulatory compliance, and similar activities.

■ **Professional.** The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment. The advanced knowledge must be in a field of science or learning, and it must be customarily acquired by a prolonged course of specialized intellectual instruction.

Registered nurses who are paid on an hourly basis should receive overtime pay, says the Department of Labor. However, registered nurses generally meet the duties requirements for the learned professional exemption; if paid on a salary basis of at least \$455 per week R.N.s may be classified as exempt. Licensed practical nurses and other similar healthcare employees, however, generally do not qualify as exempt learned professionals, regardless of work experience and training, because possession of a specialized advanced academic degree is not a standard prerequisite

for entry into such occupations, and are entitled to overtime pay.

Under the Immigration Reform and Control Act of 1986, employers are responsible for ensuring that their employees are eligible for work in the U.S. Once you hire an individual, be sure he or she completes Form I-9 (Employment Eligibility Verification), attesting that he or she is eligible to work in the U.S. As an employer, you must certify that the documents the candidate presented appear to be genuine and relate to the individual who presented them.

Keep in mind that the employer sanctions provision of the Immigration Reform and Control Act prohibits employees from hiring, recruiting or referring for a fee aliens known to be unauthorized to work in the U.S. Violators are subject to a series of civil fines and even criminal penalties in some cases.

Complying with Employment Laws

Employees can bring workplace practice claims under a number of federal employment-related anti-discrimination laws, including the Americans with Disabilities Act of 1990, the Civil Rights Act of 1991, Older Workers Benefit Protection Act of 1990, the Pregnancy Discrimination Act of 1978 and the Family and Medical Leave Act of 1993.

Employment-related discrimination charges usually encompass failure to hire or promote, unjust demotion and discriminatory comments. Claims are usually based on race, creed, color, national origin, marital status, medical condition, sexual orientation or preference, religion, age, gender, physical and/or mental impairments or disabilities, handicap, or pregnancy. Federal anti-discrimination laws apply to all stages of the employment process, including preparing job descriptions, conducting interviews, setting salaries and dismissing employees.

Wrongful termination charges, for example, may involve letting an employee go in a manner that is considered against federal or state laws. Experts recommend that a well-written and strongly enforced anti-discrimination policy conforming to the Equal Employment Opportunity Commission's (EEOC) guidelines should be in place in all work places.

The EEOC enforces a number of anti-discrimination laws, including Title VII of the Civil Rights Act, the Equal Pay for

Equal Work Act and Age Discrimination in Employment Act. Title VII prohibits employment discrimination based on race, color, religion, sex or national origin. It covers all employers, state and local governments and education institutions that employ 15 or more individuals. In addition, the Civil Rights Act of 1991 provides for awards of monetary damages in case of intentional employment discrimination.

Your job application forms and procedures must comply with federal and state anti-discrimination laws. When layoffs are necessary, you should be sure to handle the process in a nondiscriminatory way and may need to seek legal counsel to avoid potential problems. You may also want to seek legal advice when dealing with the following areas:

■ **Sexual harassment.** Experts point out that sexual harassment claims are on the rise. Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act.

The charges encompass unwelcome sexual advances, requests for sexual favors and verbal, visual and physical conduct of a sex-

What to Expect if You Are Charged With Discrimination

An employee has filed discrimination charges against your practice with the U.S. Equal Employment Opportunity Commission (EEOC). What happens next?

First, according to the EEOC, the charge is investigated to determine whether there is reasonable cause to believe that discrimination has occurred. The EEOC will notify you within 10 days after receiving such a charge. Notification normally includes the identity of the charging party, the basis (i.e., race, religion, gender, etc.) and issue (i.e., hiring, promotion, discharge, etc.) of the allegation and the date of the alleged discrimination.

You may be asked to provide a statement responding to the allegations in the charge. You may also be asked to provide documents or information related to the subject of the EEOC's investigation. Additionally, the EEOC may ask to visit your worksite or to interview some of your employees. When an employer refuses to provide information, or does not do so in a reasonably timely manner, the EEOC may issue a subpoena. You are not required to retain an attorney to represent you during the EEOC's handling of the charge, but it may be advisable.

ual nature. The two major sexual harassment charges involve making sexual contact a condition of employment and the creation of a hostile working environment.

Many organizations develop, distribute, publicize and enforce a written policy against sexual harassment. This involves preparing clear definitions of what constitutes sexual harassment and a confidential complaint procedure to protect employees.

■ **The Family and Medical Leave Act.** This law applies to employers with 50 or more local employees and to employees who have been on the job for at least 12 months. If you meet this requirement, then as an employer you must grant up to 12 weeks of unpaid leave annually for the birth or adoption of a child; for the care of a spouse, child or parent with a serious health condition, or for the employee who is unable to work due to a serious health condition, such as an illness, injury or physical or mental condition that requires an overnight stay in a hospital. The employee may be required to submit medical certification of the claimed condition.

The EEOC may dismiss the charge if the agency believes it is invalid or frivolous. The charging party is notified of his or her right to file a lawsuit in court. A charging party may file a lawsuit within 90 days of receiving the EEOC's dismissal notice. The laws also permit a charging party to choose to go to court instead of waiting for the EEOC to complete its investigation.

If the EEOC determines that there is reasonable cause to believe that discrimination occurred, a written determination and invitation to enter into conciliation discussions are issued to the parties. If conciliation efforts are not successful, the EEOC and/or the charging party may bring suit.

Violations of discrimination laws may result in the following:

- An order to eliminate discriminatory practices.
- Hiring, wage adjustments, promotion or reinstatement, depending upon the nature of the action taken against the individual.
- Monetary remedies, as determined by the underlying statutes. All federal discrimination laws provide for payment of lost wages and interest. Some of the statutes allow claimants to sue for compensatory or punitive damages as well.

■ **The Employee Retirement Income Security Act.** Known as ERISA, this federal law applies primarily to private retirement plans, but almost all employee benefit plans are subject to some provisions of the act, according to the Employee Benefit Research Institute. The legislation affects welfare plans, such as health insurance, group life insurance, sick pay and long-term disability income and retirement plans, such as pension and profit-sharing plans. ERISA sets minimum standards for most voluntarily established pension and health plans in private industry to provide protection for individuals in these plans.

According to the U.S. Department of Labor, ERISA requires benefit plans to provide participants with information about plan features and funding; provides fiduciary responsibilities for those who manage and control plan assets; requires plans to establish a grievance and appeals process for participants to get benefits from their plans, and gives participants the right to sue for benefits and breaches of fiduciary duty.

ERISA also sets specific standards for eligibility, coverage participation, vesting, benefit accrual and funding of retirement plans. Most of these represent minimum requirements; employers may adopt plans with more liberal benefits if they choose.

There have been a number of amendments to ERISA. One important amendment, the Consolidated Omnibus Budget Rec-

Benefits Account for 30 Percent of Compensation

Employer costs for employee compensation averaged \$25.87 per hour worked in March 2005, according to the U.S. Department of Labor's Bureau of Labor Statistics. Wages and salaries, which averaged \$18.22, accounted for 70.4 percent of these costs, while benefits, which averaged \$7.65, accounted for the remaining 29.6 percent.

Costs for legally required benefits, including Social Security, Medicare, unemployment insurance, and workers' compensation, averaged \$2.10 per hour (8.1 percent of total compensation). Employer costs for life, health, and disability insurance benefits averaged \$2.06 (8.0 percent); paid leave benefits (vacations, holidays, sick leave, and other leave) averaged \$1.72 (6.6 percent); retirement and savings benefits averaged \$1.11 (4.3 percent) per hour worked; supplemental pay averaged .62 (2.4 percent), and other benefits averaged .04 (0.2 percent).

conciliation Act (COBRA), provides some workers and their families with the right to continue their health coverage for a limited time after certain events, such as the loss of a job. Another amendment to ERISA is the Health Insurance Portability and Accountability Act (HIPAA), which provides protections for working Americans and their families who have preexisting medical conditions or might otherwise suffer discrimination in health coverage based on factors that relate to an individual's health. (The next chapter features more on HIPAA's provisions that are specific to medical offices.)

■ **Americans with Disabilities Act.** If you have 15 or more employees, you are covered by the Americans with Disabilities Act (ADA). The law indicates that you must provide reasonable accommodation by making existing facilities used by employees readily accessible to and usable by persons with disabilities; restructuring jobs, modifying work schedules or reassigning vacant positions, and acquiring or modifying equipment or devices, adjusting or modifying examinations, training materials or policies, and providing readers or interpreters.

Under the ADA, another issue to consider is "equal opportunity." Namely, employers must hire individuals regardless of any disability as long as they have the required skills, education and experience to do the job.

A 2003 U.S. Supreme Court decision (*Clackamas Gastroenterology Associates P.C. v. Wells*) addressed an important issue regarding the application of ADA. The high court found that four physician-shareholders who considered themselves employees for tax purposes did not have to count themselves as employees to qualify as a covered entity under the ADA. The court ruled that "employee" status depends on the application of common-law agency principles and a six-part test based on those principles, including whether the individual reports to someone higher in the organization and whether the individual shares in the profits, losses and liabilities of the organization.

For assistance in implementing ADA in your medical office, contact your regional Disability and Business Technical Assistance (DBTA) Center. Call 800-949-4232 to find the center nearest you.

You also have to be mindful of the requirements of the Occupational Safety and Health Administration (OSHA), which reg-

ulates workplace health and safety. A host of workplace safety issues are covered, including hazardous wastes and the correct way to sit in front of a computer.

You can find out about potential hazards at your work place and improve occupational safety and health of your employees by signing up for a free on-site consultation. The service is delivered by state governments. According to OSHA, the consultants will not issue citations or propose penalties for violations of OSHA standards. For more information, visit www.osha.gov.

Protecting Your Practice

Experts say it is a good idea to follow various risk-management techniques to help reduce the chance you'll be hit with an employment practice liability claim or lawsuit. For example, be sure to use detailed job descriptions and written employment applications, and undertake an employee orientation program. Your office should also give new employees proper training and conduct annual, documented job performance evaluations.

In recent years, there has been an increase in the incidence of

OSHA Rules for Bloodborne Pathogens

The Occupational Safety and Health Administration's most frequently requested and referenced standard affecting medical and dental offices is the Bloodborne Pathogens Standard. Some basic requirements of the standard include the following:

- A written exposure-control plan, to be updated annually.
- Use of universal precautions.
- Consideration, implementation and use of more safely engineered needles and sharps.
- Use of work practice controls and appropriate personal protective equipment (gloves, face and eye protection, gowns).
- Hepatitis B vaccine provided to exposed employees at no cost.
- Medical follow-up in the event of an "exposure incident."
- Use of labels or color-coding for items such as sharps disposal boxes and containers for regulated waste, contaminated laundry and certain specimens.
- Employee training.
- Proper containment of all regulated waste.

claims alleging wrongful employment practices. You may want to purchase employment practices liability insurance coverage, which provides protection for workplace torts, such as claims of sexual harassment, discrimination and wrongful termination. Defending an employment liability claim can be expensive, even if the claim is groundless or fraudulent.

According to the Insurance Information Institute (III), employment practices liability coverage is available either as an endorsement to a business owner's policy or as stand-alone coverage. III says such a policy provides protection against many kinds of employee lawsuits, including the following claims:

- Sexual harassment.
- Discrimination.
- Wrongful termination.
- Breach of employment contract.
- Negligent evaluation.
- Failure to employ or promote.
- Wrongful discipline.
- Deprivation of career opportunity.
- Wrongful infliction of emotional distress.
- Mismanagement of employee benefit plans.

Limits of coverage for employment practices liability policies range from \$50,000 to \$1 million. Premiums are based on the limits of coverage selected, number of employees and deductible level selected.

The policies will reimburse your company against the costs of defending a lawsuit in court and for judgments and settlements, says III. The policy covers legal costs, whether your company wins or loses the suit. However, policies typically do not pay for punitive damages or civil or criminal fines.

Even if you have such coverage, it is better to avoid lawsuits in the first place. If you have to terminate an employee, be sure to do it properly. Document all your reasons for the termination, prepare what you want to say before the meeting, consult with your attorney and give adequate reasons for the discharge.

If your practice is facing financial difficulties and you are looking for ways to trim expenses, practice experts advise that layoffs should be the last option after you have exhausted all cost-saving alternatives. These include hiring freezes, employee fur-

loughs, smaller cost-of-living adjustments and retirement incentive programs.

If staff cuts are the only option available, be sure you use the services of an attorney who is a specialist in this area. You shouldn't say or do something that may come back to haunt you. Avoid making statements like, "If it were up to me, you would not be laid off, but I did not have the final say in the decision." Such a comment may imply that the decision makers had an ulterior or discriminatory motive for terminating the employee. Keep in mind that litigation can wipe out the savings from downsizing and create extra work for the remaining employees.

Staff members who are being asked to leave for economic reasons will want you to provide a job reference for them. The best policy is to determine what employment information you can safely provide to limit the possibility of being sued.

Some states require employers to provide letters concerning past employment services to former employees on request. These states include California, Texas, Massachusetts and New Jersey.

Workers' Compensation Coverage

Most states require that employers provide workers' compensation coverage to employees who are injured on the job or who become ill directly because of their occupation. For an injury or disease to be covered, it must be work-related. The worker must prove that the injury came about in the course of employment.

The system is a no-fault one, which generally removes the rights of employees to sue employers and, at the same time, obligates employers to compensate injured employees even when negligence is not involved. The aim of the workers' compensation system is to help employees recover from work-related accidents and illnesses and return to work.

Workers' compensation insurance helps pay for the cost of medical care, lost wages and rehabilitation services. In addition, if a work-related injury causes death, workers' compensation provides a death benefit for the employee's family.

In many states it is possible to purchase this coverage from private insurers. Some states, such as Ohio and West Virginia, are considered "closed" states, which means that workers' compensation insurance in these states is underwritten by a state-spon-

sored fund. To find out your state's workers' compensation requirements, contact the state insurance commissioner's office. (You can find your state insurance commissioner by logging on to www.naic.org/state_contacts/sid_websites.htm.) Your insurance broker will also be able to provide details on this.

In general, the pricing for workers' compensation insurance is based on your employee payroll, the number and job classification of the employees, classification of your business and past loss experience. Workers' compensation coverage is paid solely by the employer.

Experts say there are a number of steps employers can take to help lower workers' compensation premiums. These include putting a safety program in place to avoid workplace hazards, providing incentives for employees to return to work as soon as they are able to do so and encouraging early settlement of claims.

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The Insurance Information Institute points out that since the terrorist attacks of Sept. 11, 2001, workers' compensation insurers have been taking a closer look at their exposures to catastrophes, both natural and man-made. According to a report by Risk Management Solutions, if the earthquake that shook San Francisco in 1906 were to happen today, it could cause as many as 78,000 injuries, 5,000 deaths and over \$7 billion in workers' compensation losses.

In addition, workers' compensation claims for terrorism could cost an insurer anywhere from \$300,000 to \$1 million per employee, depending on the state. As a result, if you have a practice that is located where a large number of employees exist in a single building, for example, such as in a major metropolitan area like New York, insurers will consider the practice high risk and may limit your coverage options. As a result, some employers are raising their deductibles and are self-insuring part of the risk.