

Managing Staff Departures

Chapter FastFACTS

- 1. Employees who retire will be advocates for you in the community if their exit is handled well.**
- 2. The progressive discipline process is a step-by-step method for dealing with a problem employee.**
- 3. How you terminate an employee shows your staff that you are consistent and fair.**
- 4. Involving staff early if you have financial woes allows time for their cost-saving ideas to make a difference.**
- 5. Communicating with staff members who survive layoffs allays concerns that they may be next to go.**

It's understandable that you would dread ending a relationship when one of your employees decides to move on, or even when you have to let the employee go. After all, you've invested ample resources in each member of your staff, and your practice's operations are likely to be adversely affected by the departure, at least for the short term. However, such a departure doesn't have to be an entirely negative experience. "Some level of attrition is unavoidable. In fact, a certain degree of attrition is desirable in order to compensate for poor hiring decisions and in order to remain innovative and forward-thinking," Dr. Ware says.

Retirement

Retiring employees are likely to continue to be members of the community in which you practice. If they have had a positive experience working with you over the years and if their exit



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is handled with respect and care, they will be advocates for you. It's also good for the morale of remaining employees to see that you treat people well who have made a career at your practice and are moving on.

Retiring employees are likely to enjoy having their knowledge and experience recognized by training new employees, creating "cheat sheets" documenting the valuable lessons they've learned at your practice, or sharing their experiences at a staff meeting. Find out whether they would like to be involved in the future on a temporary basis, perhaps during a busy season or when you're in a bind. Because their response to this question may vary over time, you may choose to ask them if you can stay in touch.

Quitting

When a valued employee quits, it can be jarring. On the other hand, if you were hoping to terminate the employee, the departure can be a gift. If you're tempted to entice the departing employee to stay with a retention bonus, a more flexible schedule, or a telecommuting option, be sure that this response passes the basic HR test: Is your offer consistent with previous practices and are you ready to set a precedent? When possible, maintain relations with employees who leave for other jobs. They may dislike the new job and want to return or could send patients your way.

Termination

If you've let employees know that they are "at will," they can be asked to leave when their employment is no longer the will of the physician in charge. Even if it has been a trying relationship, it's important to use compassion when letting the employee know your decision. "Terminated employees treated with respect will be less vindictive or litigious," Ms. Cline says. Also, documenting your good-faith efforts to work through performance issues can help in a lawsuit.

Whether or not you use the progressive discipline process (see opposite), your decision to terminate an employee should meet the criteria for a sound HR decision:

Is my response consistent? Are you treating this situation the same way you have similar violations in the past with the same

The Progressive Discipline Process

The progressive discipline process is a fair and professional method for dealing with an employee who is not performing well or is otherwise a problem. Here are the steps of the process:

Verbal warning: For a first violation of a rule governing work behavior or for performance that is not meeting expectations, meet with the employee. This meeting alerts the employee to the existence of a problem and allows him or her to respond. Because this is only a verbal warning, no mention goes into the employee file.

Written warning: Take this step after giving a verbal warning for a particular issue that remains uncorrected. It can include an action plan and timeline for resolving the situation. This formal written warning is signed by both parties and placed in the employee's file.

Suspension without pay: Suspension is a last resort before discharging the employee. At the end of the suspension the employer and employee should create an agreed-upon plan for corrective action and sign a form documenting the suspension and the action plan; these should be placed in the employee's file.

Discharge: Some behaviors warrant going immediately to termination, such as abusive treatment of a patient or co-worker; unauthorized release of confidential information; threatening, assaulting, or fighting; theft; sexual harassment; or destruction or misuse of medical practice property. Otherwise, letting an employee go usually occurs only after taking all the other discipline process steps assuring you have documentation to back you up.

or other employees? “A key danger in a small office is treating your employees differently based on how much you like them,” Mr. Micucci says. “For example, if a good employee, the hardest worker, comes in late, we may not want to discipline her. But late has to be late for everyone.”

Is it well communicated? Have you been open-minded, making sure to hear the employee's side of the story? If you are at the end of the progressive discipline process, has the employee

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been told that discharge is the next step in the disciplinary process? Does the employee clearly understand your expectations and the penalties for failure? Have the efforts to remediate been documented?

Does it match your practice's culture and direction? Usually a termination ends up winnowing out people who don't fit into the office culture and do not abide by practice policy.

Is it ethical and legal? Discipline and termination must never be retaliation or violate any of the legal reasons that an employee cannot be terminated (see "When You Can't Terminate," opposite). Would a "reasonable person" agree there is documented cause for discharge?

Does it set a precedent? The termination can set a precedent affirming your practice's commitment to its policies.

It may be prudent to ask a staff member to attend the termination meeting with you in order to have a witness for whatever may occur. Be calm and factual. Keep the meeting brief. First, detail the reasons for the termination and remind the employee of the documentary support that shows you have made a serious effort to help the employee correct the behavior. "Technically ... employers can simply say that it is no longer their will to have the employee at the practice, but in the real world it's bad advice, because if you end up in front of a jury, they will think the employer is playing games," Mr. Chapman advises. "Be upfront, honest, and clear about your reasons for terminating an employee." Then discuss how much time he or she will have before leaving and specify benefits he or she will receive—e.g., unemployment, health insurance through COBRA, accrued vacation time, or a final paycheck. This is not the time to give advice or additional performance feedback. It is not a negotiation. Your decision should be final.

In some states, you must keep a letter signed by the employee stating that the employee has been discharged. If you operate in one of these states, Mr. Chapman says, "Do not fudge to be nice. If the termination is for poor performance, don't make up an excuse to make the employee feel better. What you put in the letter can and will be used against you." He also suggests being thorough: "Cover all issues that led to the employment decision. If you have three reasons to fire someone and list only one, you

When You Can't Terminate

- When termination violates public policy (i.e., the employee is exercising rights that are protected by law, like filing a Worker's Compensation claim or serving on a jury).
- When the termination is in response to the employee's whistle-blowing activities.
- When you have given an expressed or implied guarantee of continued employment. Employment lawyer Mr. Gabor says, "When [employment] agreements are in place, they govern the employer-employee relationship. It is important that the agreement address length of employment and the circumstances under which an employee can be terminated. An employee with an employment agreement can be terminated for cause, e.g., failure to perform duties, an unethical or immoral act, etc."
- When employer conduct violates "good faith and fair dealing," e.g., firing someone in November to avoid paying a bonus in December.
- When the sole reason is a medical condition or an alcohol or drug problem. "If an employee is sleeping at his desk and you suspect drug use, don't diagnose, just look at the objective behavior and discipline or dismiss the employee for sleeping at the desk," says employment lawyer Mr. Jacuzzi. Because alleged drug use could be related to a medical condition or disability, it's important to conduct an objective discussion of the actual performance you've observed and to hear the employee's side of the story to avoid wrongful discrimination suits. If drug testing is part of your disciplinary process, privacy laws come into play. Make sure that you are aware of your particular state law regarding drug testing and that you have a compliant drug testing policy in place before you conduct any drug testing.
- When the employee has recently alleged harassment or discrimination against someone in your practice. You will need to wait until that claim has been investigated and resolved before you can fire this employee.
- When the person is being fired solely because he or she is a member of a protected group—e.g., people of a particular race, gender, age, pregnancy, sexual orientation, etc.
- When your conduct is torturous, i.e., you are acting with malicious intent to inflict emotional distress or defame character.

can't argue all three in court because that will create a contradiction that can muddy your case," he explains.

Layoffs

Before making any layoffs, you've probably considered alternatives, including allowing current staff to opt for a part-time schedule or a job share, reducing salaries, allowing early retirements, or calling for unpaid holidays. Staff are often very help-



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ful in coming up with such alternatives, especially if they mean holding onto a fellow employee. Involve them early so that their cost-saving ideas have time to make the desired difference.

A large practice may be able to offer laid-off employees extended health benefits, outplacement services (e.g., training to help them land their next job), or severance pay. If you can't afford those options, consider giving as much notice as possible, offering use of office resources (e.g., letting the employee use your copier for resumes) and COBRA. Don't burn any bridges—someday you may be able to rehire this person. The key to avoiding potential legal issues when it comes to layoffs is to ask yourself, “Is it consistent?” Ms. Cline advises. Be careful not to connect layoffs with demographic characteristics; you should avoid even the appearance of unequal treatment, e.g., laying off only older people.

Exit Interviews

Regardless of why an employee is leaving, consider what you can learn from him or her before the final day. Is there important historical or job-related knowledge stored only in the employee's memory? Is there information the person can share about your practice that you can use to better improve your procedures?

Medical practices of any size can conduct a voluntary exit

interview. Give employees the option of responding to your questions in person or in writing, upon leaving or after a few weeks have passed. Some organizations encourage feedback by offering a gift card as a reward for completion. Mr. Fournier says exit interviews have helped CORE physicians gain evidence of particular problems. “We can have some hints that something is going on, but from data on exit interviews we often get proof,” he says. “We share concerns with leadership, and we follow up.”

Communicating with “Survivors”

As important as it is to handle yourself well with the departing employee, it is perhaps more important to do so with those employees who will remain to represent your practice—the “survivors.” Survivors may have questions about the departure; lacking accurate information, they may fill in with speculation. “For survivors, the biggest question on their minds is, ‘Am I next?’” Ms. Turner says. “So your communication needs to address that right away or you risk damaging morale.” The sooner you can share your plans to fill the vacant position, the sooner you will reassure employees who are concerned about their own futures.

Gaining HR Perspective

HR issues don’t have to be setbacks for your practice or your nerves. By using the foregoing tips—adjusting your mindset about HR, being aware of the resources available to help you, hiring right to avoid personnel problems down the road, establishing and enforcing your expectations, knowing what keeps employees happy, and parting ways amicably—you and your practice will be positioned to handle even the most sensitive HR situations in your practice.

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