

# Medical Practices: Labor And Employment Law Overview

by Joan M. Vecchioli, Esq.

**A** successful medical practice depends in part upon the ability of its management to maintain a staff that provides services in a trouble-free environment. Physicians make model deep pocket defendants in litigation involving employee rights and benefits. To avoid problems in the workplace, physicians and managers of medical practices should ensure that they are aware of, and are acting in compliance with, all applicable labor and employment laws and regulations. This article furnishes an overview of the most frequently encountered employment liability issues.

## Techniques For Avoiding Liability

Physicians and managers of medical practices can avoid significant personal and entity liability by: (1) using corporations to provide limited liability for acts of employees and for employee causes of action against employers, where individual owners are not directly involved; (2) employing a competent manager, providing him or her with the necessary employment law materials and continuing education, consulting with experts, and relying upon the manager to make all major employment-related decisions and to recommend all actions to be taken by the corporation; (3) periodically submitting office procedures for review by certified public accountants to root out any instances of embezzlement and employee dishonesty and to ensure use of proper billing and collection methods; (4) encouraging periodic updating of employee manuals and good interaction between the manager and employment law specialists; and (5) encouraging the manager to resolve problems before they occur.

## General Employment Practices

Because of the plethora of rules and regulations governing employment,



good employer practice generally entails keeping a current employee manual and submitting the manual and all personnel forms to counsel for periodic review. Some of the areas and issues that should be addressed are discussed below.

## Hiring

Physicians and managers of medical practices should be aware of the numerous employment law issues related to hiring. For example, the use of application forms, reference and background checks, interviews, and tests when screening and selecting new employees can create areas of potential concern.

## Employee Performance Evaluations

Physicians and managers of medical practices should implement fair and honest employee evaluation systems to motivate exceptional employees and document performance problems and employee misconduct.

## Discipline And Discharge

Discharge and discipline decisions should be based solely on sound and fair reasons. To minimize exposure to liability for such decisions,

physicians and managers of medical practices should maintain complete documentation, consistently follow established policies and procedures, support termination decisions with adequate grounds, and provide due process to all employees.

## Wages, Hours, And Compensation

Federal and some state laws establish minimum wage levels for employees and require overtime pay at the rate of one and one half times the regular rate of pay for hours worked in excess of 40 per work week. Certain employees, however, are exempt from these requirements. Federal law also prohibits discrimination in wages for equal work on the basis of sex.

## Terms, Conditions, And Privileges Of Employment

Employee manuals should include policies governing maternity, family and medical leave that provide for benefits, job restoration, and leave time equal to that of employees who take similar leaves of absence for other types of temporary disabilities.

## Safety And Health

Federal law requires that employers identify and eliminate health and safety hazards in the workplace. Employers must provide a work environment free from recognized hazards that cause or are likely to cause death or serious physical harm.

## Unemployment Compensation

Physicians and managers of medical practices should also be aware of their obligations with respect to unemployment compensation. All states provide for the payment of unemployment compensation benefits to individuals who become unemployed through no fault of their own.

## Workers' Compensation

State workers' compensation statutes  
*continued on page 21...*

# AMA resources help physicians take charge of their data

**Public and private health insurers are increasingly** using physician data to drive their decision-making processes on new payment methodologies, network design, patient education, and health services availability and delivery. In addition, they are using performance data to rate the quality and efficiency of physicians. Three resources from the AMA are designed to help physicians access these data and strategically use them to improve practice efficiency and delivery of care, as well as ensure that payers and other reporting bodies are not misusing the information.

“Take Charge of Your Data” is a guidebook designed to help physicians understand and verify the accuracy of complex physician data reports used to profile physicians. The guidebook was created to be used in tandem with the AMA’s “Standardized Physician Data

Report,” which provides a uniform format for displaying physician data. Used together, these resources provide physicians with a roadmap to understanding how to use the payer-provided data to verify the accuracy of their profiles and assist them in providing exemplary care to their patients. Additionally, through the creation of the “Guidelines for Reporting Physician Data,” the AMA is working to improve the quality and utility of physician data reports.

Visit [www.ama-assn.org/go/physiciandata](http://www.ama-assn.org/go/physiciandata) to access these resources and find additional information on how to use these exciting tools.

*Published with permission from the American Medical Association Practice Management Center*

*(continued from page 11)*

provide disability and medical benefits to employees injured from accidents arising out of, and in the course of, their employment. Failure to provide required workers’ compensation insurance can expose an employer to liability for work-related incidents.

### Employee Benefits

Failure to properly document and administer employee benefit plans pursuant to all applicable federal laws can result in catastrophic tax consequences and expose an employer to monetary fines, penalties, and damages.

### Equal Employment Opportunities

Federal equal employment opportunity laws prohibit discrimination and harassment in employment based on sex, race, color, national origin, religion, age,

and disability. These laws apply to every aspect of the employment relationship. To limit liability for potential claims, a written policy prohibiting discrimination and harassment should be distributed to all managers, supervisors, and employees.

### Record Retention And Posting Of Notices

Federal laws require that employers retain various employment records for specified periods of time. Many of these statutes require employers to post notices in conspicuous locations advising employees of their rights. Failure to comply with these requirements can have significant consequences.

The matters outlined in this article represent only a sampling of the many labor and employment issues that may arise in a medical practice

setting. Physicians and managers of medical practices should consult with an attorney specializing in labor and employment law to ensure compliance with all applicable local, state and federal laws and regulations. ■



**Joan M. Vecchioli, Esq.**  
*Since 1986, Joan M. Vecchioli has been practicing law with the firm of Johnson, Pope, Bokor, Ruppel & Burns, LLP in Clearwater, Florida. She is Board Certified in Labor and Employment Law by the Florida Bar and regularly represents health care professionals and practices in connection with labor and employment issues. Joan is AV rated by Martindale-Hubbell and is listed in Best Lawyers in America.*

*Meet Joan at the 24th Annual PAHCOM Conference in Clearwater Beach this October!*