

Walking a Fine Line in the World of Healthcare: How to Keep Medical Practices Out of Trouble

Texas MGMA Fall Conference
September 8, 2017



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Agenda

- Overtime and FLSA
- Ban the Box
- Avoid questionable interview items
- Contractors vs Employees
- Professional Contract Physicians
- Severance/General Release
- Re-framing the narrative
- Retaliation
- Documentation

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Overtime and FLSA

May 23, 2016: Feds proposed changes to overtime laws.

Increased threshold to: \$913/week, or \$47,476 annually (from \$455/week).

Increases the number of people who qualify for overtime. **Law says salaried employees making less than \$47,476 a year must be paid overtime.** (hourly employees are entitled regardless of wages).

This new protection applies to almost anyone in this bracket (under \$47K), including salaried managers or professionals.

Nov. 22, 2016: Federal judge issued a preliminary injunction, temporarily blocking the new overtime regulations from taking effect

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Ban the Box

JOB APPLICATION

Have you ever been convicted of a criminal offense?

Ban the BOX

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Avoid Discriminatory Interview Questions

1. Are you able to perform the essential duties of this position?
NOT: Do you have any disabilities?

2. What professional groups do you belong to that are relevant to this job?
NOT: What organizations do you belong to?

3. This position requires that you be in the office until 5 pm. Are you able to do so?
NOT: Do you have kids and what childcare do you have arranged for them?

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Contractors vs. Employees

Department of Labor seems to be intent upon rooting out and stopping the “misclassification of employees” as independent contractors. The test is nothing new, but the the agency clarified its view that most workers are employees, not contractors.

- Amount of Control?
- Non-compete?
- Routine tasks with no set scope?

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Issues with Contract Providers

- (1) Positions of Power
- (2) Treated like everyone else?
- (3) Compliance Plan / Reporting
- (4) Non-competes and notice provisions

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Severance and Releases

If you are handing out
severance of any kind,
or if there is a whisper of an issue,
make sure you get a signed release!

No signature = no money

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Documentation



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DOCUMENTATION **ISSUES**

Consistency: Are you thinking about how you are disciplining others? Are you treated everyone the same, unless a true exception exists?

References to Filing Claims: Don't ever put in writing anything about "waiting to fire due to the claim/call to HR" or anything that would lead someone to think retaliation

Follow-up Emails: Set the clock. Follow-up with employee to make sure things have "resolved."

Focus on Performance: Have someone review your write-up. Emotions can lead to bad summaries

Ask for Specifics: How do you feel bullied? What person is making you feel this way? How exactly do you feel harassed? Details!

Take each outcry seriously: Even if it seems stupid, follow-up and document the follow-up.

Reframe the narrative!



Retaliation

Retaliation occurs when an employer takes a materially adverse action because an applicant or employee asserts rights protected by the EEO laws.

To show legal proof of retaliation someone has to show:

- An individual engaged in prior protected activity;
- The employer took a materially adverse action; and
- Retaliation caused the employer's action.



Trending / Future Issues

- Gender issues
- Religion/Politics at work
- Paid sick leave?
- Repeal to ACA?
- Overtime?
- Documentation/I-9



Compliance Plan

Compliance Plan Sections:

- (1) Practice Standards
- (2) Retention of Records
- (3) Compliance Officer
- (4) Training/education
- (5) Effective Lines of Communication
- (6) Well Publicized Disciplinary Guidelines
- (7) Auditing and Monitoring
- (8) Reporting

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