Terminating an Employee: Don’t Risk a Lawsuit

When you inform the employee of the termination, have another member of the staff present, if possible. But avoid giving the impression that you are ganging up on him or her by, for example, having just one person speak. Be direct yet courteous. Clearly and firmly explain the reasons for the dismissal. Present the employee with a written agreement for a severance package and include a COBRA coverage, if applicable. The employee should be informed of their rights if she signs the agreement.

Determine how long it will take to finish or hand off the terminated employee’s current patient load. Then arrange for a quick and graceful exit. If circumstances permit, allowing the employee to work with a member of the staff present, if possible. But avoid giving the impression that you are ganging up on him or her by, for example, having just one person speak. Be direct yet courteous. Clearly and firmly explain the reasons for the dismissal. Present the employee with a written agreement for a severance package and include a COBRA coverage, if applicable. The employee should be informed of their rights if she signs the agreement.

Finally, document the discussion and the termination process with the employee. Be sure to keep all details surrounding the dismissal confidential.
FOCUS ON: Preparing for the Hiring Process

Negligent hiring litigation is a growing problem. According to a recent CNA article, employers lose 79% of all negligent hiring checks. USA Today reported that the average plaintiff award in employment law cases exceeds $1.6 million.

Damage suits are often awarded because of employer negligence and failure to perform a reasonable search into the employee's background prior to hiring. Courts have ruled that an employer has a general duty to check criminal records for employees who will interface with the public or who could have a foreseeable opportunity to commit a violent crime against someone in the course of their employment.

So, what actions should you take into consideration when hiring new employees so you can avoid being sued for employer negligence due to inadequate hiring practices?

PRELIMINARY CHECKLIST

Before you even begin the hiring process, there are steps you can take that can complement your employee background and drug screening program, and can help safeguard your practice:

1. Seek legal employment counsel to determine all county, state and federal laws within your operating states.
2. Place prominent signs around your office that state you don’t employ anyone who has been convicted of a violent crime.
3. Place a notice on your Web site stating the same, in multiple languages.
4. When you are ready to advertise a job opening, consider multiple languages.
5. With the help of your lawyer, write a background screening policy.
6. Create background screening authorization forms for applicants and try to obtain their authorization in advance.
7. Determine if Web-based services can assist you in convenient, simple compliance of your substance abuse program.

Adopting these precautionary measures is the first step in establishing your organization’s health and safety culture, and can help avoid long-term financial and operational problems. Selecting skilled, dependable employees is your next move. This can be accomplished during the interview process, if you know what to look for.

WHAT A NON-VERBAL RESPONSE CAN SAY...

A successful interview requires that the interviewer be perceptive to non-verbal signals. While interview questions must focus on performance of the essential job functions, taking note of the manner and gesture in which an applicant responds to a question can be just as revealing as the verbal answer.

The following questions are intended to elicit responses that may help you evaluate an applicant’s suitability for your facility:

- Describe how you would gain the trust of a patient?
- Recount a stressful work experience and how you recently coped with it?
- Educational and/or experience requirements
- General behavioral expectations

Sample Employee Confidentiality Agreement

As a staff member of [insert your facility name], I recognize that candid and objective discussions of patient conditions are necessary for effective care and management. I further acknowledge the right of each patient not to have personally identifiable medical and/or other information disclosed to any third party without the express informed consent of the individual patient. I agree to respect and maintain the confidentiality of all discussions, deliberations, information and records whether in written, electronic and/or other formats, generated in connection with the care of patients.

I understand that by signing this agreement I am binding myself by contract to maintain such confidentiality. I agree that I will not make any voluntary disclosure of such confidential information except to persons authorized to receive it. This obligation of strictest confidence shall survive the termination of my employment.

Signed ______________________ Dated ________
Position or Title ____________________________

Preliminary Period

Recently, some organizations have stopped providing a probationary period for new employees out of concern that termination may be warranted before the period has expired, or that time constraints may prevent management from carrying out the required action plan or other due process requirements.

If you do grant a probationary period, specify the date of performance assessment, and maintain detailed documentation on performance and competency testing during the period. Also, give new employees the opportunity to obtain necessary training and remediate any deficiencies that may arise. In your written policy on probationary periods, reserve the right to terminate employees for serious misconduct or performance issues prior to the end of the probationary period without further remediation.

The actions described here can help your practice minimize the likelihood of making a poor hiring decision. By implementing a thorough and deliberate hiring process, you can ensure that new employees have all necessary qualifications, fit smoothly into the team and are committed to the common goal of providing safe, quality care.

Prepared by the Health Insurance Portability and Accountability Act of 1996, healthcare organizations must make all reasonable efforts to disclose the minimal amount of protected health information necessary to accomplish the intended purpose of the disclosure. You can reduce the risk of violating statutory privacy protections by requiring new hires to sign a confidentiality agreement that commits them to protect sensitive information and prohibits the release of unauthorized patient care data.

The executed agreement should be maintained in the employee’s personnel file. See insert for a sample agreement.

9. Determine if Web-based services can assist you in convenient, simple compliance of your substance abuse program.

KEEP IN TOUCH WITH HPSON

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