



GET YOUR
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WORKSHOP



Advanced HR: Difficult Cases

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Objectives

- Discuss employment strategies for identifying, documenting and re-training potentially difficult staff
- Describe the steps your practice can take to minimize its exposure to lawsuits when dealing with difficult employees
- Develop practice policies for staff Internet and cell phone usage
- Understand how to develop a fair and legal policy for pregnancy and parental leave for your practice


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Case Study

- Joe was hired as a clinical research coordinator and employed for about 4 years
 - He has a BS degree and completed a clinical research course at the University of Cincinnati
- He follows the department Standard Operating Procedures as directed
- He is rated as an average coordinator


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Case Study

- He completes his work slowly, but adequately
- Needs encouragement and assistance in recruiting his studies
- The pharmaceutical companies (sponsor) compliment his work and patients seem to like him


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Case Study

- Joe started to become distracted and not able to concentrate on his work
- Spoke openly about behavior problems his children where having at school


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Case Study

- The staff complained that he was not following the SOP's and was working outside the defined boundaries of the department
- The sponsor complained that source documents were not adequate and verbalized concern about the quality of his work


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Case Study

- He appeared stressed at work, yelling at his wife on the phone and creating an uncomfortable work environment


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Case Study

- The computer IT department reported that he had non-work related documents downloaded and social and personal web sites stored on the work computer
- Started demonstrating frequent frustration and anger at work
- Demonstrated inappropriate behavior, taking his own blood pressure and showing staff and supervisor the extremely elevated BP readings


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Case Study

His face become bright red when he spoke and neck veins appeared distended.


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Case Study

What would you do?

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Case Study

- Joe's poor work performance was documented in complete detail
- Spoke to Joe providing a detailed written and verbal evaluation regarding his work performance, unprofessional behavior and inappropriate usage of office computers and internet

What type of reaction would you expect from Joe?


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Case Study

- Joe verbalized concern about his poor work performance, requested a chance to improve
- Assigned to work with a supervisor under close supervision
- Joe agreed to weekly performance reviews including very tight supervision

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Case Study

- Work performance did not improve
- Staff verbalized that he carried a firearm in his truck and that they were scared of him

What would you do?


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Termination of Employment

Ohio is an **At Will State**

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At Will Employment

- Doctrine of [American law](#) that defines an employment relationship in which either party can immediately terminate the relationship at any time with or without any advance warning
- No subsequent liability, provided there is no express contract for a definite term governing the employment relationship

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At Will Employment

- 1877- Master-servant relations
- Since 1959, several common law (case law or precedent) and statutory (federal) exceptions to at-will employment have been created
- In 1987, the Montana legislature passed the Wrongful Discharge from Employment Act

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Federal Statutory Exceptions

- Equal Pay Act 1963
- Civil Rights Act 1964
- Age Discrimination in Employment Act 1967 (**age ≥ 40**)
- Rehabilitation Act 1973
- American with Disability Act 1990
- The National Labor Relations Act (joining Union)

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Termination of Employment

Unemployment Benefits

Allow or challenge?

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Challenging Unemployment

Negligence

Is a failure to exercise the care that a reasonably prudent person would exercise in like circumstances.

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Challenging Unemployment

“Misconduct” Tort Law

Conduct demonstrating willful disregard of employer’s interest or negligence that demonstrates **culpability** and **wrongful intent**


Simple carelessness is not enough

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Back to the case study

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Termination Plan

Prepare an employee termination agreement: **Contract**
(need an attorney)

- Allow unemployment
- Severance package
- Career counseling

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Termination Plan

- Private meeting with employee
- 2nd person in the room during the meeting as a witness
- Ask employee how he is doing
- "I know that you have tried and it has been a very difficult time for you"
- "You have so much to offer, this is just not a good fit"
- "You will be more successful in another position"

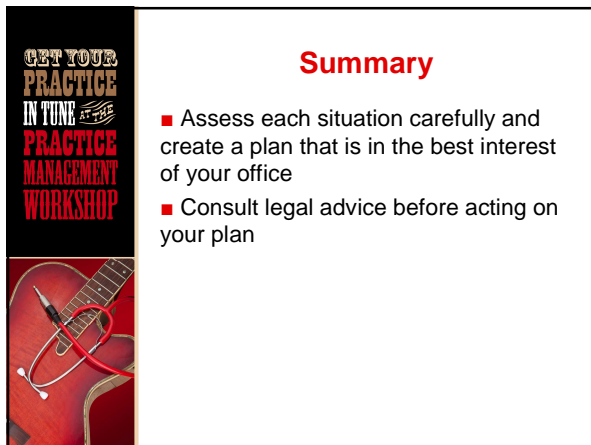
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Termination Plan

- Present the employee termination agreement (contract)
- Explain the terms and content of the agreement
- "The counseling will help you to find a position that makes you happy" something that you will enjoy and be successful"
- If the employee does not sign the agreement during the meeting, clearly state the signing deadline (days or week)










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Advanced HR: Difficult Cases


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Staff Cell Phone & Internet Policies






Benefits to Having a Policy in Place

- Increased distractions & potential exposures to corporate liability for employee acts
- Temptation to make personal calls & check internet is hard to resist
- Growing culture of text messaging is an insidious distraction
- When running a business do not have time to micromanage



How to Put a Policy in Place

- Be reasonable – have a well-crafted cell phone usage policy
- Treat staff as professionals – articulate what is acceptable, expect them to act in a professional manner, and ENFORCE
- Review state laws regarding cell phone and internet usage
- Review provisions governing camera phones
- All employees must review and sign – new employees should sign the first day
- Allow for time to review



Essential Components of a Cell Phone / Internet Policy

- General purpose
- Use of cell phone
- Personal use of co-owned cell phone
- Inability of staff to use camera phone

HIPPA!!!

- Review monthly charges incurred
- Responsibility of managerial staff. Again, a policy is only effective if is enforced

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Outside your Office Assistance is Available...

- Snooping applications
- Is internet surveillance for you?




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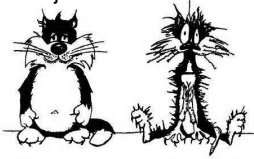
Alice Sottile, Administrator
Allergy & Asthma Associates of Southern California

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When Employees are Unhappy

- When there is a disconnect in the core, it affects morale & productivity
- When morale decreases, so does quality of service. This can result in stress and job burnout.



Before Work
After Work

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5 Common Signs to Indicate Unhappy Staff or Staff Member

1. Cynicism, negativity, distrust of others
2. Boredom
3. Insubordination
4. Absenteeism/Tardiness
5. Conflicts/Jealousy



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Case Study: Staff Pregnancy Causing Conflicts

Mary Ann is a 30-year-old MA in early stages of her first trimester, which is causing:

- 1.Frequent absenteeism/tardiness due to morning sickness or nausea
- 2.Frequent doctors appointments, causing readjustment of work loads
- 3.She (employee) has shared information with some staff but not all, causing gossip/secrets, anxiety, and frustrated staff

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**Gossip
Divides**

**Secrets
Hurt**



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Time to Step In

- Feedback

 - Managers must strive to provide candid feedback to personnel in a timely and accurate manner
 - Discuss and correct her behavior as you would with any other staff. Waiting too long to speak with Mary Ann does not help the situation.

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Time to Step In


- The employee needs to know she matters, and her work is an important contribution. Managers must be available to provide both support and resources to her and the staff.
- Mary Ann is clearly causing disruption to the staff and they are feeling taken advantage of.

What Steps Need to be Taken?


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The Rules: Know the Laws in Your State Regarding Pregnancy



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The Rules: Know the Laws in Your State Regarding Pregnancy

Not many years ago, pregnant women were subject to poor treatment from employers.

- PDA (Pregnancy Discrimination Act) was enacted in 1978
 - It prohibits discrimination on the basis of pregnancy, childbirth, and related medical conditions.
 - The PDA requires employers to ensure that women cannot be denied a job or promotion merely because she is pregnant.
 - The law obligates us to treat disabilities caused by pregnancy equal to any other disability.

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Meet with Mary Ann


1. Discuss frequent absenteeism and tardiness issues, and how it causes strain on schedules
2. Remind her a physician's note is needed if she is out for 3 or more days in a row (depending on your handbook)
3. Once she tells you about her pregnancy, be supportive. If she requests variations to her work schedule, ask for her physician to make that determination in a note, and make every attempt to work with it.






FMLA: Family & Medical Leave Act 1993

- Any company with 50 or more employees must comply; however, there are rules:
 - To be eligible, an employee must work for the same employer for at least 12 months and clock in at least 1250 hours of service (slightly more than 24 hours per week) during the 12 months leading up to the FMLA leave.
 - FMLA leave requests fall into two categories: foreseeable and unforeseeable. Pregnancy leave is foreseeable, and employees are required to provide notification "as soon as practicable." Notification can be verbal or in writing.



DFEH: Department of Fair and Employment Housing


- The DFEH protects Californians from employment, housing and public accommodation discrimination, and hate violence.
- The DFEH is the largest state civil rights agency in the country.
- The DFEH enforces the following California civil rights law:
 - Fair Employment and Housing Act




FEHA: The Fair Employment and Housing Act

- The FEHA prohibits discrimination and harassment on the basis of age, ancestry, color, religious creed, denial of family and medical leave, disability (mental and physical) including HIV and AIDS, gender, gender expression, gender identity, genetic information, marital status, medical condition, national origin, race, sex (including pregnancy, childbirth, breastfeeding, and medical conditions related to pregnancy, childbirth or breastfeeding) and sexual orientation.
- Covers all employers with 5 or more employees. Employers who provide Employee Handbooks must include information about pregnancy leave in the handbook.

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"Squeeze my hand if you want us to hold your job for you."


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CFRA: California Family Rights Act

- Contains family care and medical leave provisions
- Covers an eligible employee to take an unpaid leave to bond with an adopted or foster child or to bond with a newborn
- A CFRA eligible employee may take unpaid leave to care for a parent, spouse, or child with a serious health condition

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Conclusion

- No organization survives without proper communication and understanding the laws that govern their state
- Staff members will then feel properly informed, therefore lessening issues of conflict and speculation
- The old motto, "The door is always open," must be a valid statement and not a trite saying