Firing Without Fear of Consequences

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About the Presenter

**Jennie McLaughlin, J.D.**

Jennie is an Arizona attorney with over six years’ experience in civil litigation and employment law. She received her law degree from Temple University Beasley School of Law in 2009. As an HR Advisor at CEDR HR Solutions, she has extensive experience assisting dentists and their office managers in every stage of human resources, and enjoys her role in helping CEDR members avoid the conflicts that lead to litigation. She often speaks alongside CEDR CEO Paul Edwards at dental seminars, conferences and CE events across the country.

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Today We’ll Discuss

- Your greatest management tool: employee handbooks
- Common office policies you can’t afford to get wrong
- Progressive Corrective Coaching
- FIRR Technique & Documentation
- How not to write notes
- What to consider before you fire
- Firing without fear
An employee handbook is a compilation of the practice’s policies, procedures, and expectations for its employees.

It serves two critical purposes:

- Helps you run your office
- Litigation avoidance
Platform to Make Your Life Easier

- Policies that communicate your expectations
- Consistency avoids upsets
- Day-to-day operations
- Reference for most common questions
- Support records of issues through corrective coaching
- Job descriptions (!)
- Complies with state and federal law
Required Forms

- I-9
- W2
- Job descriptions
- Job applications
- Hiring letters *(where req.)*
- Confidentiality agreements
- Employee concern
- Dental treatment request
- Disability leave request
- Injury report
- HBV vaccination accept/decline
- LOA request
- Fitness for Duty certification
- Military Family Leave
- Performance evaluation
- Reference check waiver
- Self-evaluation
- Travel release
- Voluntary resignation
- ACA model notice
- ADA reasonable accommodation request
- ADA request for information
- Consensual relationship agreement

and more!

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Litigation Avoidance

- Safe harbors & burden shifting
- Supports consistency
- Prevents surprises
- No policy is EVIDENCE to be used against you
Common Office Policies Many Employers Get Wrong
Policies You Can’t Afford to Get Wrong

1. At-Will Statements
2. The 5 Harassments
3. Bonus Eligibility
4. Wage & Hour
5. Seminar & Travel Pay

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At-Will Statements

- Placement should be at the beginning and throughout the handbook where appropriate.
- Getting acquainted/introductory period should contain at-will language.
- Should be included in acknowledgement page at the end of the handbook.
- Include "No contract is formed by this employee handbook."
- Avoid "These are our agreements" and "You agree to..."
- Avoid "No other relationship can exist without the signature of the owner"
The 5 Harassments

- Sexual
- Physical
- Verbal
- Violence
- Harassment by patients

*Don’t Forget! Non-retaliation
Bonus Eligibility

- Outcome-based bonuses are considered wages.
  - Must add bonuses to overtime calculations (in the rear)

- Need a policy addressing employee’s eligibility
  (separate from bonus system)
  - Ex: Not under any written corrective action, not on LOA, must be employed on first day after bonus period has ended, etc.
Wage & Hour

1. Exempt vs. Non-exempt
2. At-Will Employment & contracts
3. Holidays
4. TIMEKEEPING
5. PTO or Vacation time
6. Termination – timing of paycheck
7. Taxes
8. State laws requiring specific notices
9. Posters
10. Loans
11. Discounts to employees for services
12. Continuing Education
13. Garnishments
14. Overtime
15. Minimum Wage
16. Bonuses
Seminar & Travel Pay

In order for travel time to and time spent at a seminar to not be compensable, **ALL of the following must be true:**

1. **Work must be outside of normal work hours**
   Note: this does not say normal work “days”

2. **Attendance is voluntary**
   Note: The word “voluntary” will not stand up if an employee can show or is led to believe that training is critical to their job

3. **The Employee performs NO productive work during this period**

4. **Event is not directly related to the job or does not benefit the practice**
15 Deadly Policies

1. Salaries are confidential
2. Employees may not post negative comments on social media about work or their coworkers
3. No gossiping allowed
4. Unauthorized overtime will not be paid
5. All practice matters are confidential
6. Employees must follow Team Commandments
7. Company property must be returned for final paycheck to be issued
8. Two weeks’ notice is required
9. All EEO complaints must be within 5 days, in writing
10. Pregnant employees may work so long as it does not affect your health or the health of your baby
11. Money will be deducted from final paychecks if…
12. Bonuses are not compensation
13. Pay deductions of $xx will be applied for tardiness
14. I agree…
15. You must disclose all communicable diseases to management
What You **Can Do**
to Protect Yourself & Your Practice
Have These Policies in Place

- **Safe Harbor Policies – 10 opportunities**
  
  *“Safe harbors” are policies that explain an issue and require an employee who feels they are experiencing that issue to report it to you.*

- **Non-Retaliation**

- **Privacy in the Workplace**

- **No Sharing Passcodes/Passwords**

- **ADRP Agreements**

- **Confidentiality Agreement & HIPAA**

- **Licensed employees must maintain license and report when expired**
The goal of PCC is to get your employees to choose to self-correct their own behavior.

Two purposes of PCC:
1. Communication tool
2. Creates a written record
PCC in Action
FIRR Technique

**Fact** – behaviors that you can see or hear.

**Impact** – result of the fact(s).

**Reason** – why the behavior and impact are unacceptable.

**Request** – what specific and measurable action you want employee to take.
Use FIRR to support your documentation

Always include \textit{Who, What, When, Where, How, and Why}

4 key factors:
- Be specific
- Use facts, not opinions or characterizations
- Document verbal and written
- Follow up

Consistency is KEY!
1. Unsigned, undated or illegible notes
   - Automatically fails

2. Creating notes after the fact
   - Any documentation you create needs to be timely. Creating it days or weeks later can render the document unusable or bring it into question. The longer you take, the less genuine it will appear.
   - Backdating is ill advised because it is almost always found out. Once that occurs, all of your documentation will be called into question.
3. **Vague terms in notes or corrective actions**

Managers tend to want to generalize in their notes because being specific is uncomfortable or seen as “attacking.”

- **BAD:** Discussed with Becky that she needed to be on time in the mornings.

- **GOOD:** Informed Becky this morning, when she arrived late for work, that this was her 2nd tardiness in less than 4 weeks. Explained our policy regarding being on time and reminded her she is still in her getting-acquainted period. She indicated she was sorry and confirmed she could be here on time every day when I asked her.

- **BAD:** Becky seems to be having trouble with the phone scripts.

- **GOOD:** As of today, Becky is unable to pass the phone script test after 4 weeks of training. She’s been given opportunities to pass by our outside consultant team.
4. Reaching conclusions which you can’t support

- **BAD**: Becky returned to work after having been drinking and she was drunk.

- **GOOD**: Becky returned to work and seemed to be impaired. Observed her stumble and smelled alcohol on her breath. When I asked her if she was ok, her speech seemed slurred. I asked if she had been drinking and she denied it. When I asked her to explain the smell of alcohol, she said she had 1 sip of her friend’s margarita at lunch. I told her to clock out and go home, and then see me tomorrow morning before she clocks in to return to work.
What to Consider Before You Fire

- Protected Classes:
  - Age
  - Sex
  - Race
  - Color
  - Religion
  - Disability Status
  - Maternity Status
  - Marital Status
  - Genetic Disorders
  - National Origin

- Do you have documentation that supports your legitimate reason(s) for termination?

- Has the employee complained about a public policy issue in the past?
When we say “firing without fear,” what do we mean by this?

- That you’ve made the best decision…
- That you’ve given the person and situation your best effort…
- That you are able to break the pattern that led to the firing…
- That you’ve put yourself and practice in the best possible position to defend your choice…
- That you are knowledgeable in the area(s) of HR laws and regulations that might affect the termination…
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