

A FOCUSED REVIEW

TERMINATION TRAUMA: SEVEN WAYS TO MINIMIZE RISK WHEN DISCHARGING AN EMPLOYEE

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In all likelihood, you will be faced with the prospect of discharging an employee within the next year. In fact, the odds are good that you are contemplating an employee termination right now. Unfortunately, the termination process is painful, and the aftermath can be worse. The costs of an employment termination are significant. The physician or medical group has the immediate expense of hiring a temporary employee while going through the arduous task of interviewing and hiring a replacement. Then there are the additional direct costs, such as contracting with an employment agency, or assigning your office manager to place advertisements, conduct interviews and background checks, and

complete the paperwork associated with hiring a new employee. There are also many indirect, but not insignificant, costs associated with terminating an employee. Office routine is disrupted, office morale is adversely affected, and productivity is decreased.

Unfortunately termination often triggers litigation. Ineffective or unlawful employment policies and procedures can lead to costly lawsuits for wrongful termination, employment discrimination, harassment, invasion of privacy, and defamation. This article focuses on ways to minimize the direct and indirect costs of termination, and identifies practical policies and procedures you and your staff can implement to help insu-

late your practice against suits and claims brought by the terminated employee and third parties. It discusses the seven most important steps you can take to minimize your risks when terminating an employee.

Note: This article is intended as an overview of lawful termination strategies, and is not a substitute for legal advice from experienced employment counsel. Applicable laws vary from state to state and appropriate procedures may depend on specific factual situations. This article is not, and should not be construed as, legal advice.

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At the time you call the employee into your office to terminate his employment, it is too late to protect yourself and your practice against many of the problems that may lead to litigation. The time to insulate your practice is well before the termination decision is made. In fact, protecting your practice starts with your hiring procedures, your employment-related documents and your employee training practices. However, regardless of whether those employment procedures are optimal, you can still minimize the damage. By improving your office procedures in the following seven ways, you will reduce the time-consuming trauma associated with an employee termination:

IMPLEMENT EFFECTIVE HIRING POLICIES

Poor hiring practices will increase

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the likelihood you will have a bad “parting of the ways.” The best way to avoid the trauma associated with terminating an employee is to avoid situations where termination is necessary. This starts with effective hiring procedures designed to weed out applicants who are not qualified for the position, who do not have a strong work ethic, and those who are not good personality fits for your office environment. In order to maximize your chances of hiring an applicant who will not require termination:

- Develop an application and interview process that is designed to find qualified candidates for the particular job opening. If you retain the services of an agency, make sure the one you choose effectively screens candidates before they are sent to you for consideration.
- Avoid the temptation to rely solely on your initial impressions or on the information volunteered by the applicant. Take the time to conduct a thorough background check, or hire an outside company to conduct a background check for you. If you fail to check on an applicant’s background or fail to verify his employ-

ment history thoroughly, the “perfect candidate” who appears qualified during the application and interview processes may actually turn out to be your worst nightmare after he is hired.

- Whether the hiring process is conducted entirely by you and your own staff, or whether you outsource all or part of the process, make sure that those involved are aware of and comply with all applicable discrimination laws.

This topic is more fully discussed in an article titled [Avoid Costly Litigation: Ten Steps to Implementing Lawful Hiring Practices \(1\)](#).

DRAFT YOUR EMPLOYMENT DOCUMENTS WITH CARE

When you decide to terminate an employee, every employment document you use has the potential to either protect you against a costly lawsuit, or cause serious problems for you, your staff, and your attorney. It is well worth the time and expense to have experienced employment counsel review and revise your existing policies, procedures and documents, and

to add those you don't have.

When you hire a physician, you will probably enter into a formal contract of employment, setting out in writing the terms of employment, including the circumstances where the employment relationships may be terminated (2). However, for other employees, you should retain more flexibility to terminate an employee. Therefore, when drafting your policies and procedures, probably the three most important words to use are "Employment-at-Will." That term means that the employment may be terminated by the employee or employer at any time, for any reason or for no reason at all. The advantage of establishing an at-will employment relationship is that if a discharged employee files suit, the employer does not have to prove the employee was fired "for cause," or be forced to justify the reasons for the termination. By using the at-will term consistently in your employment documents, a terminated employee will have a more difficult time prevailing on a suit for breach of contract or wrongful termination.

Although establishing an employment-at-will relationship with your employees will help ward off breach of contract actions brought by disgruntled ex-employees, it will not protect you against claims of discrimination, harassment or retaliation. Neither will it protect against an ex-employee who claims that his termination was "against public policy" because he was fired for filing a complaint with OSHA or the EEOC or other government agency.

Even though the employment-at-will relationship will not make you "bullet proof," it is highly advisable to adopt the language in your employment documents, including your job application form, offer letter, and employee handbook. You should also make sure to review the following documents to make sure they contain other language helpful to avoid termination trauma:

- Offer Letter – It is very helpful to have an offer letter, signed by the prospective employee, acknowledging all important terms of employment. If the employee is eventually terminated and files suit against you, claiming breach of contract or entitlement to additional compensation, a well drafted offer letter will be powerful proof of the applicable

employment terms. In addition to confirming the employment-at-will relationship, the offer letter should verify all specific employment terms, such as job title, starting salary, health insurance and other benefits. You should also include agreements regarding financial arrangements, including future raises, bonuses, profit sharing, and other requirements for additional compensation. The offer letter should also refer to any other terms and conditions of employment that you intend to enforce, such as arbitration, confidentiality, or non-compete agreements. It is important to have the prospective employee sign the offer letter, as proof that he is aware of and agrees to abide by all employment terms.

- Employee handbook – Poorly drafted Handbooks often figure prominently in lawsuits brought by ex-employees against their employers, and they can be powerful evidence against an employer. A periodic review and revision of your handbook by your employment counsel is a wise investment. Make sure you require your employees to sign an Acknowledgment that they not only received a copy of the Handbook, but also that they understood its terms and agree to abide by them.
- Employment Agreements – Even if you don't have an employment contract with your employees, you should work with your employment counsel to determine whether you should adopt policies and draft agreements to deal with specific issues. For example, if you intend to require your employees to use arbitration to deal with employment-related claims, you should have the terms of the arbitration agreements spelled out in a separate written agreement, signed by the employee. Because of recent federal court rulings, these agreements must be carefully drafted (3). Similarly, if you expect confidentiality from an employee, or if a non-compete agreement is important to you, the time to get the employee to agree to them is NOT just before you intend to terminate his employment. Rather, the agreements should be adopted, drafted and then signed by the employee when he has an incen-

tive to agree to the terms: at the time he is hired, and before he is allowed to begin work.

In general, you should review all of your employment documents and make sure you have not "over-promised." For example, although you can strive to be fair with your staff, don't use language that may be construed as a promise or guarantee of fairness. Although you can strive to create a good work environment, don't use language promising perfect working conditions or optional benefits that you may later need to discontinue. Similarly, language guaranteeing or implying job security can come back to haunt you in the form of a breach of contract claim.

EFFECTIVE EMPLOYEE TRAINING IS CRITICAL

Implementing a good, comprehensive training program is important for two reasons. First, your employees will be better equipped to handle office administration tasks efficiently and to deal with patient issues effectively. Second, failure to adequately train employees can give a terminated employee the ammunition he needs to file suit against you and will strengthen his case against you. Even worse, failure to train employees regarding discrimination laws can actually preclude you from presenting an affirmative defense to liability – greatly decreasing your negotiating strength and increasing the chance of a large verdict against you. In general, you should work with employment counsel to develop employment training in the following areas:

- Discrimination/harassment training – The training should reinforce your policies prohibiting discrimination based on age, race, national origin, sex, disability, and religion. It should also include information regarding the procedures you have adopted to report any workplace conduct an employee believes is harassing or discriminatory. This training is not optional: the U.S. Supreme Court has ruled that for most employers, conducting this training is mandatory (4). Since terminated employees very often bring suits against their former employers based on claims of discrimination, harassment, and retaliation, it is critical that the physician employer be able to produce evidence that all employees have re-

ceived appropriate training on preventing and reporting discrimination and harassment.

- Job-related training – Failure to provide adequate training can supply a discharged employee with a basis for a discrimination or wrongful termination suit. For example, if you terminate an older employee based on his failure to adequately perform his job duties, he may claim you discriminated against him on the basis of his age because you failed to give him adequate computer training to compensate for his lack of computer skills as compared to younger workers. A contract employee may make a claim that you breached the terms of the employment contract by failing to provide the skills and training necessary to successfully perform his job duties. You can reduce your risk of suit by a terminated employee by making certain that your employees receive periodic training related to their job duties, and that training opportunities are provided on a non-discriminatory basis.
- Violence prevention and safety training – Disgruntled ex-employees often retaliate against their former employers by making complaints with OSHA, claiming the employer failed to comply with OSHA regulations. Make sure you include employee training on workplace violence prevention (5) and other safety concerns applicable to your practice.
- Training on conducting internal investigations and termination meetings – If you delegate the duties of conducting workplace investigations or terminations to another physician or your office manager, make certain they receive adequate training on what is permissible and what is unlawful. Failure to do so will subject you and your practice to suits by the terminated employee based on invasion of privacy, discrimination, defamation or even outrageous conduct.
- Training on applicable employment laws – Your office manager or the physician in charge of employment-related issues should receive training regarding applicable laws, such as leave laws. You or your designated representative should be aware of at least the basic elements of several workplace laws such as the Fam-

ily and Medical Leave Act (FMLA) or similar state statute (6), USERRA (7), the ADEA (8), the PDA (9), and the ADA (10). Knowledge of these laws is necessary so that employment counsel can be consulted before a costly mistake is made. For example, if an employee is terminated for failure to meet attendance requirements, you or your clinic may incur liability if the employee's absence was protected by an applicable employee leave law. If you terminate an employee because he has checked into an alcohol rehabilitation facility, you may face liability under provisions of the ADA (11).

EVALUATE YOUR DISCIPLINE POLICIES AND OPTIONS

Don't fire the employee on the spur of the moment after an altercation. When you are angry you may say or do something regrettable (and legally actionable). Instead, you should give yourself time to cool down, discuss the decision with your colleagues and consider your options. Before you make the final decision to terminate an employee, take some time to review all relevant policies and procedures, so that you won't create more problems by failing to follow your own policies:

- Review the policy regarding warnings. Does your employee handbook have a progressive discipline policy, requiring you to give a certain number of verbal and written warnings before a termination? Have you actually complied with those policies?
- If you are terminating the employee for failing to comply with your clinic policies, review those policies. For example, if you are terminating the employee for chronic tardiness, make sure you know exactly what your employees have been told about arriving late. Has there been a lax attitude about enforcing the policy? If so, consider whether the employee is being treated more harshly than other employees. Although you generally can't be sued for failing to be fair, you can be sued for unlawful discrimination if the employee is in a protected class.
- Is your decision to terminate the employee due to excessive absences, or for failure to return from a leave?

If so, consider discussing your termination decision with an employment law specialist to make sure you are not violating the ADA, the FMLA, USERRA, the PDA, or state workers' compensation laws.

- Review the employee's written job description. Is the employee being terminated for failing to perform particular job duties? If so, does his job description include those duties? (Or worse yet – have you discovered you have no written job description? Consider how you will prove the employee was not performing in accordance with his job duties if you have no firm evidence of those parameters.)
- Do your policies require you to conduct reviews on a quarterly or annual basis? If so, have you followed through? Have you set performance goals and given practical suggestions on fulfilling those goals? Have you documented the employee's failure to meet those goals?
- Consider alternatives to termination. Obviously if the employee is being terminated because of theft, use of illegal drugs, or harassment, you are better off terminating the employee without delay. In fact, you may risk additional liability by retaining him. However, there are many situations that warrant evaluating whether there are alternatives to termination: Can the problems be alleviated with additional training? Is the employee worth keeping? Is the individual a long-term, good employee with short-term, uncharacteristic problems? Can you attempt to solve the problem with internal or outside counseling? Will a written "final warning" be sufficient to change the offending behavior? For example, are the absences due to day care problems that can be solved with some help?
- Aside from your policies and procedures, think about basic fairness: Has the employee been warned or will his termination come as a complete surprise? Has he been counseled and offered help in overcoming his performance problem? In general, just failing to be fair doesn't rise to a legal cause of action, but it is naïve to assume that ultimately a jury will not take basic fairness into

consideration. It's a good idea to just take some time to reflect on whether or not you are comfortable with your decision. Sometimes you will respond with a resounding "YES!!!" Sometimes the situation warrants a second look.

- If you decide termination is necessary, consider offering outplacement services. They can be very costly, so they probably should not be offered without some consideration of issues such as value of the employee's services, length of employment, and the chances the outplacement service will be successful. If the terminated employee takes advantage of the outplacement services, he will increase his chances of more immediate re-employment, decreasing the chances he will file suit against you. Getting the discharged employee back to work quickly is in your best interest: Lawsuits for discrimination or wrongful termination brought by a terminated employee will include a claim for future lost wages, so even if the ex-employee files suit against you, you may be able to set off wages earned in his new employment against any damages awarded against you in a wrongful termination or discrimination suit. Conversely, if you offer outplacement services, and the ex-employee refuses to take advantage of the offer, you may have a "failure to mitigate damages" defense to the employee's lawsuit.
- If the employee is a good employee and is being terminated because of a business downturn or change in staffing needs and not because of performance deficiencies, you may consider giving the employee a two or three week notice during which time he will be allowed to work while he finds another job. This is beneficial in two ways. First, it helps the employee find another position while he is still employed. Second, it helps you smoothly transition the employee's job duties to your other employees. However, use this option only after evaluating the employee and the situation very carefully. If the employee has a poor attitude, his continued presence may have the effect of poisoning the office atmosphere, and morale may suffer. Or you may discover too late that the

discharged employee's actions have compromised your practice, or that he has taken confidential or proprietary documents or has sabotaged your computer files.

REVIEW YOUR DOCUMENTATION

Before the termination meeting, it is important to review the employee's personnel file. In the event the terminated employee later makes a complaint with the EEOC or with OSHA, or retains employment counsel to file suit, the first thing you will be forced to produce is the employee's personnel file. Before you make the final decision to go through with the termination, review the documentation in the employee's personnel file and analyze the following:

- Have you followed your own policies and procedures? For example, if your employee handbook describes a progressive discipline system involving oral and written warnings, does the employee's file contain memos documenting the required oral warning(s)? Does it contain a copy of the written warnings that have been given? Are they dated and signed by the person who administered the disciplinary action?
- If the employee is being terminated for poor job performance, does his personnel file contain examples illustrating the errors? For example, if you are terminating your transcriptionist for making numerous transcription errors, did you save some examples of the errors to illustrate the problem? All too often, the physician simply requests that errors be corrected and the documents with errors are destroyed. It is easier to justify your termination decision, both to the employee and to a judge, jury, or EEOC investigator if you can produce evidence of the poor performance.
- Is the employee being terminated as a result of a harassment or discrimination complaint by a coworker? Is the employee being terminated because of theft or other act of dishonesty? If so, make certain you have thorough documentation of the internal investigation that was conducted, and the evidence you have to support your conclusion that the allegations have merit. Documentation may include a summary of interviews you conducted, any police report generated, and copies of any documents demonstrating the dishonesty, harassment, or discrimination. Your documentation should always include evidence that you gave the accused employee a full and fair opportunity to respond to the allegations. Evidence of a well executed investigation will be invaluable if the employee files suit for wrongful termination. Some courts have actually dismissed wrongful termination suits even when the results of the employer's investigation led to the wrong conclusion, because the employer was able to demonstrate that the investigation was thorough and fair (12).
- Is the employee being terminated for excessive absences or tardiness? If so, it is a good idea to record the dates of absences and the times the employees reported to work late. Keep in mind that you may be called upon in a suit or EEOC claim to demonstrate that the terminated employee was not singled out or treated more harshly than other employees with similar attendance issues. If the reason for the termination is poor attendance or chronic lateness, but you have not documented the dates of the infractions, you will have a difficult time defending a wrongful termination suit. If you don't have the same information for other employees, you will have a difficult time proving you did not treat the terminated employee more harshly than other employees, making it difficult to defend against a discrimination suit.
- Review the employee's personnel and other office files for evidence of retaliation. For example, has the employee recently made a harassment complaint against the staff physician who now insists that the employee be terminated because of poor job performance? Or has the poorly-performing employee recently filed a complaint with OSHA, alleging safety violations in your clinic? Even if there are valid grounds for the termination, your documentation justifying the termination must be very strong. In this case, employment counsel definitely should be consulted before the employee is terminated.

- Review the performance evaluations. Were the evaluations conducted timely and in accordance with assurances made in your employee handbook? If evaluations were conducted, do they support your decision to terminate the employee? When a discharged employee files a wrongful termination suit, often the employee's past employment evaluations become the strongest evidence against the employer. In fact, "Grade inflation" is a serious problem for employers' counsel when attempting to defend a wrongful termination lawsuit. When the employer is on the stand describing the employee's substandard job performance that justified the decision to terminate the employee, it is devastating to the employer (and his counsel) when he is cross-examined using his own employment evaluations describing the employee in glowing terms, or at least giving no indication that his job performance was substandard in any way.

Honest employee evaluations are difficult. Sometimes the employee has substandard skills, but has a winning personality. Often, an employee who knows it is time for his yearly or quarterly evaluation suddenly becomes the ideal employee: Three weeks before his evaluation, he suddenly arrives on time every morning, helps other employees, is pleasant to patients, brings the staff home-baked brownies, and makes no errors on required paperwork. When he makes an astounding turn-around in attitude and performance, the tendency is for the staff member in charge of the evaluation to forget the poor attitude and performance of the previous 49 weeks, and to concentrate on the amazing transformation in the last 3 weeks. This obviously skews the results, and makes it far more difficult to terminate the employee the week after he receives a glowing review and then reverts back to his bad habits. In short: the evaluation should accurately reflect the performance over the entire evaluation period – not just the period immediately preceding the evaluation.

CONDUCT THE TERMINATION MEETING WITH CARE

You probably thought this was the first step in an effective termination. In

fact, by the time you reach this step, you should have reviewed and evaluated all of your employment policies, procedures, and actions. In appropriate cases, you should also have consulted employment counsel. Even though some or all of your employment policies, procedures, documentation, and actions are less than optimal, some employees must be fired – immediately. Sometimes the risks of retaining a substandard employee are so significant that regardless of whether or not you have adhered to optimal employment practices, it is imperative that you terminate the employee without delay. The following are some guidelines for conducting an effective termination meeting:

- Just before the meeting, make sure the employee no longer has computer access. This will prevent the employee from downloading documents or sabotaging your systems after he is terminated but before he walks out the door.
- Is the employee volatile or emotionally unpredictable? If you have any concerns that the employee may become violent, prepare in advance. Do you need additional security at the time the employee is terminated? Remember to position yourself at a place in the room where you can exit easily and quickly.
- Stick to a script. Decide in advance what will be said as to the reasons for the termination. Writing an outline or actual script of what will be said is helpful. Don't say too much. Don't argue or quibble with the employee. It's too late for the employee to argue his way out of the situation, so don't let him try. Sticking to a script will help you keep control of the meeting and minimize the verbal sparring that could occur, and will reduce the chance you will say something that will fuel a lawsuit.
- Effective termination meetings require advance preparation. If you have concerns about a potential problem with the employee, you should consider getting some input from employment counsel. Before the meeting, organize examples of the employee's substandard work, or lists of dates the employee was absent or late. Compile copies of examples of poor performance, copies of patient complaints, or other evidence

of the employee's conduct that justifies termination.

- Never conduct the meeting alone. One person should take notes and the other should conduct the termination. You should never end up with a "he said/she said" or other comparable situation, with no witness to refute untrue allegations.
- The person in charge of documenting the meeting should transcribe the notes immediately after the meeting and they should be reviewed for accuracy and completeness in case you need to rely on them at a later date.
- During the meeting, be honest. Any sympathetic statement you make to soften the blow may help in the short run, but will come back to haunt you later. Avoid insulting comments or inflammatory language. Concentrate on describing job performance – not personality issues.
- Keep the meeting as confidential as possible. Help the employee maintain his dignity.
- After the termination meeting, the employee must be given an opportunity to return to his desk to pick up his personal items. However, don't leave him alone with your patient files or other proprietary documents, or allow him time to discuss his version of events with other employees. Although the employee's dignity is important, if the situation warrants, consider escorting him out of the office.
- Resist the temptation to discuss the termination with your office staff or to justify your decision to terminate the employee. Keep the details confidential, and caution your staff to refrain from discussing the termination. Also resist the temptation to offer assurances to your remaining staff members regarding their own job security.

THE WRAP UP: FOLLOW-THROUGH IS IMPORTANT

The termination meeting is not the last step in the termination process. In fact, failure to prepare the documents in advance could lead to legal headaches. Consider the following:

- Whether or not you intend to negotiate a severance package with the employee, it's a good idea to hand the employee a check for all accrued wages, vacation, and other compen-

sation at the time the termination meeting is held. In fact, that procedure is required by some states' statutes. In Colorado, for example, an employer who terminates an employee must pay accrued compensation, including accrued vacation, "immediately (13)."

- Does the employee owe you money from wages advanced? Or has he destroyed or lost equipment belonging to the clinic? Has he admitted to theft of clinic property? Many state statutes allow an employer to set off against accrued wages any amount owed by the employee. If your employment counsel advises you there is no prohibition, you should make the deductions from the employee's last check rather than to try and collect it from the employee after he is terminated.
- Does the employee have in his possession clinic property such as a computer, cell phone, credit card or office equipment? If he does not return all office keys to you, you will be forced to incur a substantial expense to change the locks. Be sure to inventory clinic property checked out to the employee before the termination meeting, and if your state statute allows withholding compensation until the property is returned, it is wise to insist on a prompt return of the property and office keys while you still have some leverage. If your state statute prohibits withholding accrued wages, you may want to consider offering a discretionary severance package, paid only after all clinic property is returned in good working condition.
- Make sure you or your payroll service complies with COBRA laws with respect to applicable benefit continuation plans (14).
- Are you offering a severance package? If so, you should condition the additional benefits on the employee executing a Release, agreeing to waive all claims against you. This waiver should include wrongful discharge, as well as statutory discrimination and other claims. The Release should be drafted by your employment counsel, since failure to include appropriate language, provisions, and limitations may invalidate the Release (15).

- The terminated employee will be applying for jobs, and prospective employers will be calling you requesting information regarding your former employer's job performance. This presents a difficult issue, because improper comments can give rise to a lawsuit for defamation. It is important to maintain a strict system of disseminating information. Designate yourself or your office manager as the only person authorized to give any information regarding the former employee. Limit the amount and type of information given. You should verify the employee's job title and dates of employment, but should avoid giving personal opinions or anecdotal information about your former employee. Inappropriate comments made or personal information given may give rise to an invasion of privacy, defamation, or outrageous conduct claim being brought against you by the terminated employee.

How much information should be divulged, and what type is appropriate will vary depending on your state laws. Many states have statutes that protect former employers who give out truthful, business related information to prospective employers, even if that information is negative. For example, Colorado law provides a qualified immunity defense from defamation suits to employers if they can show the communication was made in good faith and was related to employment issues (16). One additional caveat: Avoid making misleading statements or providing a misleading positive reference or letter of recommendation to a prospective employer, especially if the employee is being discharged because of harassment or an act of workplace violence. Some states have held the employer liable for negligence or misrepresentation, and at least one court has awarded substantial punitive damages against the employer (17).

SUMMARY

The numerous requirements, cautions, and caveats discussed in this article may leave the reader feeling as if the termination process is too daunting to undertake. Although application of the legal principles discussed in this article will reduce the risk of a wrongful termination or discrimination suit, there is one basic

consideration that overrides almost everything: Fairness. In this writer's experience, conscientious juries do their best to evaluate the evidence and apply the law of the case, but they never lose sight of fairness as a guiding principle. There are some employees who must be discharged, for the good of the clinic, your staff members, your patients, and your sanity. However, there are other problem employees whose fate is less clear-cut. Regardless of where the employee falls in those categories, before you start down the road to termination and throughout the entire process, think about whether your actions are fair – the jury will, too.

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2. A complete discussion of issues associated with contracting with physicians as employees is beyond the scope of this article, although most of the general principles discussed are applicable.
3. In general, arbitration agreements should set out the specific arbitration procedures, should not allow unilateral change of terms by the employer, and the employee should have the right to claim all remedies available to him in a court action.
4. See *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998) and *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998). In those cases, the Supreme Court held that employers may face Title VII liability when they fail to adequately train their supervisors to enforce the employer's policy to prevent sex harassment. Although Title VII applies only to employers with 15 or more employees, the rulings in those cases have been expanded by the EEOC and by many federal and state courts. Those EEOC guidelines and court cases have broadened training requirements to apply to more types of harassment and to a wider range of employers.
5. The Occupational Safety and Health Act of 1970 (OSHA) mandates that, in addition to compliance with hazard-specific standards, all employers have a general duty to provide their employees with a workplace free from recognized hazards likely to cause death or serious physical

- harm. Employers can be cited for violating OSHA'S General Duty Clause if there is a recognized hazard of workplace violence in their establishment and they do nothing to abate it. OSHA has promulgated Guidelines for Preventing Workplace Violence for Health Care and Social Service Workers that, while only advisory in nature, provide guidance for implementing a violence prevention program in a clinic or medical office.
6. Application of the FMLA can be difficult. Although the federal act only applies to employers with over 50 employees, many states have statutes containing similar requirements that apply to employers with fewer employees.
 7. The Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C., secs. 4301-4333 prohibits employment discrimination because of an employee's past current, or future military obligations. This Act applies to all employers.
 8. The Age Discrimination in Employment Act, 42 U.S.C. secs. 120101-12111 prohibits employment discrimination based on the fact that the employee or applicant is 40 years of age or older.
 9. The Pregnancy Discrimination Act, 42 U.S.C. sec. 20003(k) is a 1979 amendment to Title VII and provides that generally an employer may not terminate an employee because she is pregnant.
 10. The Americans with Disabilities Act, 42 U.S.C. secs. 12101-12111 prohibits employment discrimination against qualified individuals with a disability. Although the Act applies to employers with at least 15 employees, many states have similar statutes with broader application. The ADA requires employers to make "reasonable accommodations" for an employee, and the legal implications must be considered before terminating a disabled employee.
 11. Under the ADA the employer's duty of reasonable accommodation applies to alcoholism, as it is considered a disability. A thorough evaluation of the specific situation should be made to determine whether a leave in a particular situation constitutes a reasonable accommodation or whether it is an undue hardship under the ADA.
 12. See *Cotran v. Rollins Hudig Hall Int'l*, 17 Cal. 4th 93 (1998).
 13. C.R.S. 8-4-109. That statute provides that if the employee is terminated at a time when the accounting unit is not operational, then the wages due to the discharged employee must be paid within six hours after the beginning of the next regular work day. Or, if an outside payroll service is used, an employer must deliver the check for accrued compensation no later than twenty-four hours after the start of the next regular workday. There are significant penalties for failure to comply.
 14. The Consolidated Omnibus Budget Reconciliation Act (COBRA) applies to employees with over 20 employees, although many states have similar laws that apply to employers with fewer employees. Employers subject to COBRA or similar statute must give terminated employees the option of keeping their health care coverage at their own expense. There are strict notification requirements. Your benefits administrator should be notified of the termination, and you should make certain all requirements are met.
 15. For example, the ADEA requires the Release to advise the employee of their right to consider the agreement for 45 days, and must include a 7-day rescission period.
 16. C.R.S.8-2-114(3) states in part that an employer who provides information about a current or former employee's job history or performance to a prospective employer is immune from civil liability and is not liable in civil damages for the disclosure. The immunity applies unless the statement made was false and the employer knew or reasonably should have known that the information was false.
 17. In Pennsylvania, for example, an employee resigned after he admitted to sexual misconduct with a student. That school gave the discharged employee a satisfactory recommendation and failed to notify a prospective school employer of the employee's history of sexual misconduct. The new employee repeated his misconduct, and the new employer sued the previous employer for misrepresentation. *Doe v. Methacton School District*, 880 F. Supp 380 (E.D. Pa 1995). Punitive damages were awarded against a former employer in *Jerner v. Allstate Ins. Co. No.93-0-9472* (Fla. Cir. Ct. 1995) (unpublished). In that case, the employer provided a positive letter of recommendation for a former employer, without divulging the fact that the employee brought a firearm to work. The employee went on to commit acts of violence at his new employer's workplace.

