



Garfunkel Wild

NAVIGATING HUMAN RESOURCES IN THE HEALTH CARE SETTING

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INTRODUCTION

Hiring and Retaining Staff

- **Hiring**

- Hiring
- Offer letters/Job Descriptions

- **Retention**

- Cultivate an organizational culture

- **Training**

- Importance of training
- Legal Consequences

Employee Handbook/Manual

- Brings About Fair And Equitable Treatment, Which Enhances Employee Morale
- Informs Employees Of What Is Expected Of Them And The Consequences For Not Meeting The Expectations
- Legally required policies can be housed in one easily accessible document/portal for employees.
- Defense Litigation Tool
- Required legal notices – *e.g.*, electronic monitoring notice requirements
- This is true regardless of the size of your business.

Written Performance Evaluations

- Performance Evaluations Can Be A Shield Or A Sword
- Performance Evaluations Provide:
 - General Expectations
 - Feedback
 - Goals/Reviews Prior Goals
 - Behavioral Standards
 - Employee Acknowledgement Of Receipt, Not Agreement To Content
- Focus On Objective Criteria Tied To The Job Description To Measure Performance.
- Motivates Improvement And Productivity
- Be Truthful And Stick To The Facts; Avoid Inflammatory Words
- When Using A Rating Scale, Support The Ratings With Explanations; Do Not Simply Rubber Stamp
- Perform Evaluations At Regular Intervals
- Provide Employee Opportunity to Comment
- A Performance Evaluation Supports Disciplinary Measures, Including Termination

Investigation of Employee Complaints/Employee Discipline

Confidentiality

- Do Not Ensure Confidentiality Of Conversations When Asked To Speak “Off The Record.”
- Certain Issues (e.g., Discrimination, Safety, Harassment) Will Require Disclosure To Certain Persons.
- Supervisors Should Keep Complaints, Ensuing Investigation, And Related Materials Confidential, But Only To The Extent Practicable.
- Involved Employees Should Be Advised Not To Discuss Or Disclose Information To Co-workers And To Maintain Confidentiality.

Discipline Generally

Importance of Dealing with Adverse Behavior in Healthcare Context.

- Many Causes of Adverse Behavior
- Permitting Adverse And Disruptive Employee Behaviors Can Adversely Impact The Quality Of The Services Provided To Patients And Clients; Statistics Support This Conclusion.

Documentation is crucial:

- Investigatory Tool
- Establishes A Record Of Employment Actions And Support For Those Actions
- Records Workplace Incidents
- Informs Employees Of What Is Expected Of Them And The Consequences For Not Meeting The Expectations
- Brings About Fair And Equitable Treatment, Which Enhances Employee Morale
- Defense Litigation Tool

Disciplinary Process/Implementing Progressive Discipline

- Investigate the issue as needed. Thoroughly investigate all issues that require investigation prior to implementing any step(s) of progressive discipline. This may include interviewing other employees or witnesses who may know about an issue/incident.
- Document in writing. When documenting each step of progressive discipline, include key information about the issue, dates on which issues/incidents occurred, and any corrective action that must be taken by the employee. The manager should also include any action that the employee should take (e.g., identifying training that the employee may need).
- Be consistent and fair. When deciding on the level of discipline that is appropriate to the issue(s), be consistent and fair (e.g., implement the same step(s) of progressive discipline for the same violation). Contact and work with Human Resources when determining the level of discipline, if any, which may be required.
- Implement the discipline promptly. Once an issue has been discovered or an incident has occurred, promptly implement any necessary progressive discipline.
- Monitor for improvement. Once progressive discipline has been implemented, continuously monitor an employee's performance and/or behavior for improvement.
- Maintain records. Any documentation relating to progressive discipline that has been implemented should be kept in a locked file.

Implementing Progressive Discipline

- Prior to Discipline - coaching and feedback
- Prior to implementing Discipline – review with HR
- Verbal Counseling – meet with employee and document
- Written Warning – meet with employee and provide warning
- Performance Improvement Plan (PIP) – meet with employee and provide PIP
- Alternative Step: Suspension – with or without pay
- Termination of Employment – meet with employee and provide termination notice

Special Considerations When Disciplining Physicians

- Corrective Action – Bylaws
- Contractual provisions, *e.g.*, for cause termination
- Potential Reporting Obligations – Federal and State

Reasonable Accommodations

- With all medical and leave issues, get HR involved from inception.
- Keep employee medical information confidential and separate and do not share with other staff absent work related justification.
- Do not minimize or personally opine on an employee's leave request.

Reasonable Accommodations (cont.)

- Only qualified individuals with covered disabilities are entitled to a reasonable accommodation under the ADA, absent undue hardship.
- Not every medical condition qualifies as a disability. Generally, a disability is a physical or a mental impairment that affects and substantially limits a major life activity. Federal and State Law definitions vary.
- Being “regarded as” having an impairment that substantially limits one or more major life activities places the employee in a protected class.

Reasonable Accommodations (cont.)

- Discrimination includes a failure to make "reasonable accommodations" for disabled employees that would enable them to perform the essential functions of their job.
- What constitutes a reasonable accommodation depends on a variety of factors, e.g. the cost, financial ability of the employer, and whether the accommodation will allow the employee to perform the essential job functions.

Reasonable Accommodations (cont.)

- An employer is not obligated to provide accommodations that would impose an “undue hardship” on the operation of the business.
- Undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as an employer's size, financial resources, and the nature and structure of its operation.

Responding Promptly to an Accommodation Request

Once A Request For Reasonable Accommodation Is Received, The Employer Must Respond Expeditiously.

Unnecessary Delays May Violate The ADA/State laws.

THE INTERACTIVE PROCESS

Once an employer is made aware of a qualified individual's physical or mental limitations, the employer must communicate with the applicant or employee to determine if there is a reasonable accommodation the employer can provide, absent undue hardship, to overcome those limitations.

In searching for a reasonable accommodation, employers are encouraged to “initiate an informal, **interactive process**” with the employee to determine the appropriate reasonable accommodation.

The goals are for the employer and qualified individual with a disability to:

1. Identify the precise limitations caused by the disability.
2. Explore potential reasonable accommodations that could overcome those limitations.

Hierarchy of Reasonable Accommodations Options

Employers should first consider those accommodations that would enable an employee to remain in their current position.

Employer's may consider accommodations such as:

- Modifying the job to remove marginal job functions.
- Allowing the employee to work from home, if reasonable and possible.
- Granting leave to give the individual time to recover.
- Reassignment.

If several reasonable accommodations are identified, the employer may choose one, if the chosen accommodation is effective.

Definition of Effective Accommodation

An accommodation is effective if it would remove a workplace barrier and allow the individual with a disability an equal opportunity to do any of the following:

- Apply for a position.
- Perform the essential functions of a position.
- Gain equal access to a benefit or privilege of employment.

Employer has right to choose the accommodation.

Documenting efforts at reasonable accommodation.