

Labor/Employment Audits for Hospices

The employment relationship is one of the most highly regulated relationships in the United States. Numerous state and federal employment laws significantly restrict the manner in which health care employers can operate. For those hospices who are unaware of new or existing legal obligations, these laws create a potential for serious liability. There has been significant discussion regarding the impact of the Criminal Background Check Law on employment practices of hospices and other health care providers. However, employment practices in general should be regularly reviewed, as laws change and risks to employers are considerable. As a threshold issue, hospices are urged to ascertain whether their insurance includes employment practices liability coverage.

It is advisable that hospices regularly conduct a labor and employment law audit of their policies and practices. An audit is a particularly useful method for re-examining existing policies, identifying essential new policies or training managers with limited human resources experience. At a minimum, a thorough audit of the following areas is highly recommended:

- **Occupational Safety and Health.** Has a decision been made as to whether a warrantless search of the facility will be allowed? Are employees routinely exposed to hazardous substances? Is the facility appropriately complying with the blood borne pathogens standard?
- **Employee Benefits.** Are employees provided with a summary description of any retirement plan in which the employee participates? Is there a discriminatory impact in the provision of employee benefits against members of a protected class?
- **COBRA.** If your facility is subject to COBRA, do you notify the group health plan administrator of a qualifying event within thirty days of the occurrence? After a qualifying event, is the employee or qualified beneficiary receiving all required information under the law?
- **Wage and Hour Issues.** Are employees being paid for all hours worked? When are on-call hours compensable to the employee as wages? Does the facility properly employ salaried exempt employees?
- **Worker's Compensation.** Are all work-related injuries or illnesses reported on form WC-12? Does the facility have a policy to minimize the exposure to unreasonable refusal to rehire claims?
- **Family and Medical Leave Act.** Are you subject to state and/or federal family and medical leave laws and if so, does the facility require certification by a

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health care practitioner prior to granting FMLA? Does the facility timely notify the employee of the approval or denial of FMLA?

- **Immigration and Naturalization.** Does the facility complete the I-9 form for each employee?
- **Wrongful Discharge.** Are written personnel policies, handbooks or manuals drafted so as to avoid creating an express or implied contract for employment? Are there any implied contracts or past practices that might limit the ability to terminate an employee? Are there policies in place to minimize exposure to allegations of termination in retaliation for whistleblowing?
- **Employee Handbooks.** Are all necessary provisions included in the handbook? Are managers and supervisors trained to understand the handbook's provisions and their responsibilities under the handbook?
- **Human Resources Administration.** Are medical inquiries of applicants made only after a conditional offer of employment? Does the facility have a formal program of employee communication?
- **Allegations of Retaliation.** Does the facility discipline or discharge all similarly situated employees who have engaged in similar conduct? Are personnel who have contact with a discharged employee properly trained?
- **Unlawful Employment Discrimination.** Does the facility have an unlawful harassment policy? Are there policies in place to minimize exposure to claims of discrimination based upon arrest or conviction record? Does the facility attempt to accommodate the religious practices of employees?
- **Employer Posting Requirements.** Are all required federal and state postings properly displayed?
- **Union Issues.** Does the facility maintain a no solicitation/ no distribution policy? Are supervisors trained in union avoidance?

An audit program should be designed to allow intensive communication with counsel over the legal implications of policies and procedures as well as methods to decrease potential liability. The audit acts, in some ways, as a one-on-one seminar. While a human resources professional can obtain certain insights from a typical seminar attended by dozens of people, the individualized process is substantially more instructive. At the completion of the audit, any policies or issues that require further review or amendment are identified.

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