





CELL PHONES IN THE WORKPLACE—

HELPFUL TOOL OR PESKY PRACTICE?

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Cell phones, which evolved from basic communication devices in the early 2000s to the mini-computers they are today, bring with them a range of new considerations regarding their presence in the workplace. The ubiquity of cell phones has forced practice administrators to take a second look at existing employee cell phone use policies. Where earlier practice policies regarding cell phones may have focused on the appropriate use of employee time in the office, the ease of texting and the accessibility of cell phones now raise a multitude of legal and customer service issues that must be addressed.

This article looks at these legal and customer service issues and provides guidance for addressing the use of cell phones in your clinic.

HIPAA

The Health Insurance Portability and Accountability Act of 1996 established a set of national standards for the protection of certain health information. The HIPAA Privacy Rule protects all protected health information (PHI), defined as the “individually identifiable health information held or



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transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral.” According to the Department of Health and Human Services, PHI includes demographic data relating to

- an individual’s past, present, or future physical or mental health or condition;
- the provision of health care to the individual; or
- the past, present, or future payment for the provision of healthcare to the individual—and
- data that identifies the individual, or for which there is a reasonable basis to believe it can be used to identify the individual.

Although efficient, the texting of patient information between and among clinic staff and providers inevitably increases the practice’s exposure to potential HIPAA violations and invites personal liability for employees engaged in the non-protected sharing of patient health information.

FAIR LABOR STANDARDS ACT (FLSA)

The Fair Labor Standards Act of 1938 requires employers to pay non-exempt employees at least the federal minimum wage for all hours worked, and overtime pay for any hours worked in excess of 40 hours per workweek. This becomes an issue because some employees are using their cell phones for work-related communications after hours or on weekends.

It is important that employers allowing the use of cell phones for work-related communications remain aware of the requirements under this Act and are mindful of the sum total of hours worked by non-exempt employees. Although texting an hourly worker at night or on the weekends could seem innocent enough, if those after-hours or weekend texts to non-exempt employees create the performance of work-related duties outside of the office, the FLSA may require them to be paid accordingly.

Consider an interesting related case: *Cochran v. Schwan’s Home Services, Inc.* (2014), when a California Court held that employers must pay employees for the use of their personal property for work-related matters. California Labor Code Sec. 2802 states that “an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties . . .,” which includes the required use of personal cell phones for work-related matters. This ruling poses a unique challenge since cell phones have become the primary communication device for most employees.

Employers should be mindful, however, about *how* the employee may be using the cell phone. If a text involves basic communication about a shift, or a work-related question that can be easily addressed, the cell phone usage is probably okay. If the cell phone is used to text lab results to a doctor, or to

request a non-exempt employee to handle a work-related matter, however, the communication is better handled during work hours via email or face-to-face communication.

CUSTOMER SERVICE

Most practices agree that providing excellent customer service is a priority in the workplace. Some practices may not realize, however, that patients’ perceptions can greatly alter their belief that they received great care.

Ask yourself this simple question: If you were at a restaurant and saw a waitress standing in the hallway sending a text message, what would you think? Most of us would naturally assume she was hiding from her boss and texting her boyfriend. Now ask yourself why your patients would think anything different when they see your employee at the front desk or tech station doing the same.

Although unintentional, employee cell phone use during work hours may cause patients to think that their medical care is secondary to the latest Facebook posting or Twitter feed—and ironically so if they are engaged in official business communication. Making sure all patients feel that they are receiving the undivided attention of their care team can be one of the most effective customer service tools we have.

BEST PRACTICE MODELS

Although some practices have addressed some of the above-referenced concerns by issuing work-owned cell phones to key employees, perhaps the simplest method for addressing the issue is to simply prohibit the use of cell phones during clinic hours. It may seem drastic and harsh, but it is okay for a practice to set a policy that protects itself, and its employees, from potential legal liability.

Instructing employees to use only the company email system or land line for work-related communication, and implementing a zero tolerance policy around the proper use of patient PHI may be worth it. Most EMR systems allow some type of secure communication as well, through the use of an inter-office memo or alert that may provide additional tools for efficient communication.

Regardless of the choice of policy, all employees should be educated on the proper use of protected health information, and mindful about how patients may perceive their interactions with their care team. **AE**



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