



STEERING CLEAR OF HR POTHOLES ON THE ROAD TO PRACTICE SUCCESS

Ashlie Barefoot Malone, MBA, JD, COE

Think fast: What is your biggest management challenge?

If you answered “Human Resources,” you are not alone. Human Resources most often refers to the management of employees and can be very rewarding. Most practice administrators could proudly share stories about the day an employee received their COA certification or the special moment a valued team member walked an elderly patient to their car. Better yet, one of those perfect “Heaven on Earth” moments when 100% of co-pays were collected, no negative online patient reviews were posted, and every single employee clocked into work on time.

Doctors say the most important duty of an administrator is the management of staff. Administrators say the biggest reason they want to quit their job

as administrators . . . is the management of staff. Creating a legally compliant human culture that drives our practices to success while avoiding the potholes along the way can help.

POTHOLE #1: POLICIES AND PROCEDURES

Anyone reading this article most likely knows how to drive a car. We drive to work, we drive to the grocery store, and we drive on vacation. Even when we are driving our cars on unfamiliar roads, we still know that there are certain rules of the road that must be followed. But what if the road did not have any lane markers? What if there were no shoulders, street signs, or any other indicators of what the rules of that particular road were? Think of your practice in the same way. Just because *you* know how employees should perform does not mean the “rules

of the road” for your particular practice are understood by all.

The most effective way to communicate employee expectations is by having an updated policies and procedures manual and reinforcing consistently and regularly. Write it, update it . . . then REINFORCE it. Arguably half of employment law issues result from inconsistent and biased policies. By reinforcing these policies equally with all employees you will reduce exposure while creating a culture of fairness, consistency, and transparency.¹

POTHOLE #2: FLSA

The Fair Labor Standards Act (FLSA) is a federal law that establishes minimum wage, overtime pay eligibility, recordkeeping, and youth employment standards affecting employees in the private sector and in federal, state, and local governments.² Most of us have

experienced at least some level of confusion about wage requirements under FLSA.

Yes, for example, it is absolutely easier to put all of your technicians on salary and then ask them to work as many hours as it takes to finish clinics and ensure your doctors have a great day. Section 13(a)(1) of the Act, however, forbids this practice unless each employee meets certain requirements under the law. For a practice to remain FLSA compliant, employees must be appropriately classified as either exempt or non-exempt and then compensated accordingly. Failure to do so creates a roadblock to compliance and a potential labor violation for the practice.

The Act is very clear that job titles alone do not determine exempt status and that the employee's specific job duties must also meet all the requirements of the regulation. Although several factors go into properly evaluating whether or not an employee qualifies for exempt employment status, a general rule of thumb is to first ask three questions:

1. Does the employee make at least \$455 per week?
2. Does the employee directly manage other employees?
3. Does the employee have the authority to create and implement managerial policies and decisions or to deviate from established policies without approval?

If the answer to all three of these questions is "Yes" then this employee may qualify for exemption under the Act and further consideration may be given. If your answer to any of these questions is "No" then you need to

reconsider the employee's exemption status as they may not qualify under the Act.³

POTHOLE #3: HIPAA

The Health Insurance Portability and Accountability Act (HIPAA) was passed in 1996 to protect health insurance portability and to protect patient health information (PHI). Although there are exceptions, each private sector ophthalmic practice is covered under the legislation.

HIPAA is comprised of a Security Rule, which includes technical, physical, and administrative data safeguards, and a Privacy Rule, which governs how patient health information may be discussed or distributed. Other rules under HIPAA include the Breach Notification Rule and the HIPAA Enforcement Rule. The Act also offers guidance for IT compliance as well as staff training requirements. The Omnibus Rule under HIPAA finalized modifications to the privacy, security, breach notification, and enforcement rules and allows for financial penalties for noncompliance. It serves as the deterrent to prevent the violation of HIPAA laws and is one of the primary mechanisms for ensuring compliance.

The gist of HIPAA is that we are obligated to keep our patients' health information private and safe. The lesson from HIPAA is to keep private what is private and to implement sound policies and procedures that allow this to happen within our practices. If our policies and procedures manual offers the rules of the road for our practice, think of HIPAA as the rules of the road for navigating and protecting patient privacy.⁴

A POUND OF CURE

Potholes are expected on fast-paced, busy highways. We avoid them when possible, and we fill them when they get too big. If we can find ways to eliminate them altogether, however, we keep our cars on the road, our patients happy, and our employees and patients protected. *AE*

NOTES

¹ A sound manual becomes the roadmap for employee performance. It is important that the manual not be perceived by employees as an employment contract. If your practice is located in an at-will work state, be clear that your practice abides by the state's at-will work status and that it (and the employee) retains the right to sever that employment relationship at any time and for any reason.

²<https://www.dol.gov/whd/flsa/>

³Fact Sheet #17C: Exemption for Administrative Employees Under the Fair Labor Standards Act (FLSA) at https://www.dol.gov/whd/overtime/fs17c_administrative.pdf

⁴<https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html>



Ashlie Barefoot Malone, MBA, JD, COE (843- 797-3676; abarefoot@carolinacataract.com), is the practice administrator at Carolina Cataract & Laser Center, Charleston, S.C.



Creating a legally compliant human culture that drives our practices to success while avoiding the potholes along the way can help.