

# THE VOICE



FEDERAL

## Must-Reads for Every Practice

### Obama Announces Proposal for Paid-Leave

On January 15, 2015, President Barack Obama called on Congress to pass the Healthy Families Act. The Act would allow working Americans to earn up to seven days per year of sick time.

As listed in the Society of Human Resource Management Online article “President Announces Paid-Leave Proposals,” the Healthy Families Act would also:

- Cover employers with 15 or more employees.
- Provide accrual of one hour of sick time for every 30 hours worked up to 56 hours.
- Provide employees with the ability to use leave after 60 days of employment.
- Carry over leave from year to year.
- Allow the use of sick leave for an employee’s illness, as well as a sick family member or to deal with domestic violence (e.g., medical treatment or going to court).
- Require reinstatement of unused sick leave if the employee is rehired within a year.

The White House illustrated that research has shown offering paid sick days and paid family leave can benefit employers by reducing turnover and increasing productivity. In addition, it is thought of the White House policies such as these can help our economy by fostering a more productive workforce.

According to the White House fact sheet,

unpaid leave is unaffordable for too many Americans, and evidence shows that mothers, who do typically take some time off in order to give birth, will more likely return to their jobs and remain in the workforce when they have access to take paid maternity leave. The United States is the only developed country in the world who does not offer paid maternity leave.

According to the article “President Announces Paid Leave Proposals” on the SHRM website, “the law would be particularly difficult to administer as it expressly states that it would not pre-empt state or local laws”. As a result, Obama has said he will call on states and cities to pass similar laws.

SOURCES:

Smith, A. “President Announces Paid Leave Proposals.” *Society for Human Resources Management*. January 15, 2015, <http://www.shrm.org/legalissues/federalresources/pages/paid-leave-proposals.aspx#sthash.IqELS1wZ.dpuf>

Office of the Press Secretary. “Fact Sheet: White House Unveils New Steps to Strengthen Working Families Across America.” *The White House*. January 14, 2015, <http://www.whitehouse.gov/the-press-office/2015/01/14/fact-sheet-white-house-unveils-new-steps-strengthen-working-families-acr>

### Is There a Bully in Your Practice?

It seems that we hear about bullying more and more these days. Unfortunately, it doesn’t just go away after high school. Bullying exists in the workplace as well. Although it occurs four times as often as

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Welcome to your Winter 2015 Voice newsletter.

The Voice provides a quarterly update on external regulations at the state and federal level that affect your practice along with timely advice on ways to respond. It is provided as a benefit to Medical Mutual members.

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## MUST-READs (cont.)

some forms of illegal harassment, there is currently no anti-bullying workplace legislation in the U.S.

So what's the difference between harassment and bullying? First of all, harassment is against the law and bullying isn't! The EEOC defines harassment as "unwelcome conduct that is based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability, or genetic information. When we think of harassment, we think of "quid pro quo" and hostile work environments. Bullying, on the other hand, as defined by the Workplace Bullying Institute (WBI) is "repeated, health-harming mistreatment of one or more persons (the targets) by one or more perpetrators". Furthermore, the WBI states that workplace bullying is abusive conduct that is:

- Threatening, humiliating, or intimidating, or
- Work interference — sabotage — which prevents work from getting done, or
- Verbal abuse

Intimidating bullying takes place in the health care setting every day. However, since many victims do not report their abuse it is unclear how many true cases of bullying occur in the workplace.

According to Travel Nurse Source's article "Nurses Fight Against Bullying," negative effects of bullying include:

- Increased workplace turnover
- Demoralization
- Lowered job satisfaction
- Decreased self-esteem
- Feelings of isolation at work
- Threats to patient safety

In addition to the list above, there is also potential employer liability that could exist. Even though there are no laws currently against bullying in the workplace, those bad apples can wreck havoc in your practices and potential lawsuits from both an employee and possibly a patient perspective (if your employees are not performing their best).

However, there are several things that can be done to help reduce workplace bullying. The *Society for Human Resource Management* article "Workplace Bullying: A Silent Epidemic" outlines several ways you can help. Below are a few highlighted tips from that list:

- Make the business case for:
  - Replacing staff
  - Lost productivity
  - Possible costs associated with investigations, potential legal action, and loss of the company's reputation
- Create an anti-bullying policy or update your harassment policy
- Hold awareness training for all employees
- Establish a contact for reporting claims and promptly address complaints

Hopefully, one day the law will catch up with the reality that bullying does occur in the workplace. Until then, we should

exhibit compassion, continue to develop fair policies, and promptly follow-up with those who express concern.

If you would like to know more about the Campaign to Stop Workplace Bullying, check out:

<http://www.healthyworkplacebill.org/>

### SOURCES:

McLaughlin, K. "Workplace Bullying: A Silent Epidemic." *Society for Human Resource Management*. September 24, 2014, <http://www.shrm.org/publications/hrmagazine/editorialcontent/2014/1014/pages/1014-viewpoint-workplace-bullying.aspx#>  
 "Nurses Fight Against Bullying." *Travel Nurse Source*. November 6, 2014, <http://www.travelnursesource.com/notes/nurses-fight-against-bullying#>  
 "Workplace Bullying and Harassment: What's the difference?" *Clear Point*, January 25, 2013, <http://clearpointco.com/working-ideas-blog/2013/01/25/workplace-bullying-and-harassment-whats-the-difference/>

## Georgia, North Carolina, and Virginia State Law Comparison

### To Compete or Non-Compete, That is the Question.

These days we all work with many generations in the workplace. However, today it's the Millennials who are fresh out of school and hitting the streets. The average length of tenure for a Millennial at one employer is 3-4 years. What does that mean for your practice? Regardless of what position, you are hiring for there is a good possibility your next hire will not be staying long if they are right out of school.

What if you are hiring a physician? Do you want to put a great deal of time and money into developing an up and coming doctor only to have them leave your practice in 2 or 3 years? According to "Diagnosing Problems with Non-Competition Agreements" the online article on the Western Pennsylvania Healthcare News website "some estimate that 40 percent of newly practicing physicians leave their initial practice group within two years of joining and that turnover will further increase in 2011 – 2012 due to a belief that physician retirees will swell".

At one time, a doctor may have worked at one practice his or her entire career. However, now a days it is more common to work at several over the course of one's career. These practices are usually all in the same geographic location as well. What's the one thing we want to protect as an employer from employees leaving to work at a competitor or even opening their own shop? Our customer base. The last thing a medical practice wants is for a physician to leave and take patients with them.

Medical practices often protect themselves by using non-compete agreements or restrictive covenants. The American Medical Association (AMA) defines a restrictive covenant as "contractual provision between a physician and his or her employer which prevents the physician from practicing in a specified geographic area for a given period of time if the physician's employment terminates". What does this mean for your practice? If written wisely, a non-compete can protect your practice's patient base as well as the investment in the employee when a physician chooses to leave. In addition, if contested, your non-compete will likely be upheld by law.

## So how do the laws compare in GA, NC and VA?

	NORTH CAROLINA	GEORGIA	VIRGINIA
<b>Permitted</b>	Yes. N.C. Gen. Stat. sec. 75-4; 21 N.C. Admin. Code sec. 29.0502(e)(5) (limitations on locksmiths)	Yes. Ga. Const., Art. III, Sec. VI, Par. V(c), as amended.	Yes
<b>Protectable Interests</b>	Trade Secrets; Confidential Business Information; Goodwill	Proprietary Confidential Information and Relationships; Goodwill; Economic Advantage; Time and Monetary Investment in Employee's Skill and Training	Trade Secrets; Confidential Information; Knowledge of Methods of Operation; Protection from Detrimental Competition; Customer Contacts
<b>Standards</b>	In writing; part of an employment contract; reasonably necessary to protect legitimate business interest; reasonable in time and space; not against public policy.	Not overbroad in time, space, and scope; interest of individuals in gaining and pursuing a livelihood; commercial concerns in protecting legitimate business interests; public policy.	No broader than necessary to protect the employer's legitimate business interest; reasonable in time, space, and scope; not unduly harsh in curtailing employee's ability to earn a living; reasonable in terms of public policy.
<b>Exemptions</b>	-	-	-
<b>Continued Employment Sufficient Consideration</b>	No	Yes	Yes
<b>Reformation / Blue Pencil / Red Pencil</b>	Blue Pencil	Reformation	Red Pencil
<b>Enforceable Against Discharged Employees</b>	Yes, likely.	Yes, but it's a factor to be considered.	Yes

### Definitions:

1. Reformation is a legal concept, where a court can "rewrite" or "equitably reform" the contractual provision to be consistent with the parties' original intent.
2. The blue pencil doctrine is a legal concept, where a court finds that a portion of contract is void or unenforceable, but the other part of the contract is enforceable.
3. The red pencil doctrine is a legal concept, where a court finds all of a contract void or unenforceable if one part is found to be void.

What can your practice do to ensure your non-compete agreements are more likely to be enforceable in a court of law? According to Phoenix Business Journal's article "How to draft an enforceable non-compete agreement", in general:

- Clearly define your practices protectable interests (should be no broader than necessary).
- Ensure the restriction is reasonable (both geographic area and duration).
- Include a severability clause (even though not all states allow).
- Understand what is and what is not enforceable.

If you currently use non-compete agreements or include a non-compete clause in your separation agreements and would like HR|Experts to review them, please contact Breni Malpass at [breni.malpass@callhrexper.com](mailto:breni.malpass@callhrexper.com) or 1-888-473-9778.

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Koop Esq, Katherine and Albert Lee, Esq., "Diagnosing Problems with Non-Competition Agreements," *Western Pennsylvania Healthcare News*, December 13, 2012, <http://www.wphealthcarenews.com/diagnosing-problems-with-non-competition-agreements/>  
 "50 State Non-Compete Survey," *Beck Reed Riden*, September 16, 2012, <http://www.beckreedriden.com/50-state-noncompete-survey/>  
 Torrez, P. Andrew, "Of Red and Blue Pencils: Three Ways In Which States Can Respond to Defective Noncompete Clauses," *Zuckerman Spader, LLC*, May 1, 2014, <http://www.suitsbysuits.com/three-ways-states-rewrite-noncompetes>  
 Balch, Shayna, "How to draft an enforceable non-compete agreement," *Phoenix Business Journal*, September 2, 2014, <http://www.bizjournals.com/phoenix/blog/business/2014/09/how-to-draft-an-enforceable-non-compete-agreement.html?page=all>  
 Cowles, Carey, "Both Employers and Employees Need to Consider the Non-Compete Contract Trap," *Healio*, O&P News June 2013, <http://www.healio.com/orthotics-prosthetics/human-resources/news/print/o-and-p-business-news/%7Bb4eeaf8e-9605-4e2b-be58-e3edaa8a06c4%7D/both-employers-and-employees-need-to-consider-the-non-compete-contract-trap>