

THE VOICE

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 WINTER
 2015



Must-Reads for Every Practice

Politics at Work: A Lesson in Respect and Good Business

The 2016 Presidential Election is less than a year away and the political debates and candidates' views on highly controversial issues are in the news daily. If you haven't already heard the chatter at work, you will. And in a medical practice chatter may come from employees, doctors, patients, medical sales representatives, lab personnel, etc.,

all who bring different backgrounds, ideologies, agendas and beliefs. Some people are very civically inclined, others are neutral, and others recoil at politics entirely. Left unchecked, political rhetoric and the discussion of sensitive topics like immigration, same-sex marriage, and healthcare reform can spin out of control into harassment claims, lower productivity or patient complaints. The smart practice manager will anticipate the likely issues that may arise for employees, vendors and patients and address them now.

Let's review some reasonable steps you can take to keep the political discourse at an appropriate level.

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Welcome to The Voice Newsletter for Winter 2015

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.

The Voice is written by Breni Malpass, HR Advisor. You can reach Breni at breni.malpass@callhrexperst.com or 1-800-HREXPRT.



Contact HR|Experts:
 Direct: 919-431-6096
 Main: 888-473-9778
 Fax: 919-431-6094
 breni.malpass@callhrexperst.com
 Phone calls and messages will be responded to 8am-5pm Monday-Friday.


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The Voice is not designed or intended to render legal advice to its members.

MUST-READs (cont.)

First, it's understandable that health care employees would want to talk politics in the workplace, particularly in light of recent reform and other issues affecting the industry. However, we don't want such discourse to interrupt business and productivity. So what can be done? Technically the first amendment protecting free speech doesn't generally extend into private workplaces, so you could ban all political speech at work. However, we don't recommend a literal ban on any political discourse. People don't like to feel silenced, plus enforcing such a rule would be practically impossible. As well you may face an unfair labor practice charge from the National Labor Relations Board.

Set Expectations. First of all, you need to tell people what you expect. Bring it up at your next staff meeting. Call me if you need help putting together talking points. Most employers don't have a formal policy on political discussions. Remind employees that while they are entitled to their personal views on candidates and issues, their coworkers are as well.

If employees choose to discuss political issues at work, they need to do it in a respectful way. Tell employees that a political conversation can get heated and quickly turn into something that would be considered harassment. Also tell employees if you do have any restrictions on political speech, such as prohibiting political discussions in work areas during work hours.

Dress Code. Some employers may want to consider implementing a dress code that bans political campaign tee shirts, buttons or other paraphernalia. Another issue to consider is whether political signs can be hung at desks. I advise restricting such signs if patients can see them. If you like, rules can be looser for areas of the office that are not in their view. Obviously you don't want to create an environment that is uncomfortable or offensive for patients.

Communications. Medical practices also need to consider whether employees will be allowed to forward politically-related emails to other staffers. This most likely will fall under policies governing employee use of workplace computers for nonbusiness purposes and be restricted in some way.

Train Supervisors. It's critical that management set the tone. Make sure they understand what you expect of them:

- Do not to actively campaign for political candidates at work.
- Do not take sides with a particular employee point of view.
- Do not try to influence employees to support a specific candidate(s) or issue(s).
- Ensure employees understand the company's anti-harrassment policy.
- Encourage in person interaction. Email communication can be misconstrued and taken out of context.

Discipline Carefully. In addition, refrain taking any specific action against employees because of their political views, unless it violates company policy. An employee's political views should have no bearing on their work assignments or advancement opportunities.

While you want to be tolerant of employees rights and political viewpoints, as an effective leader you need to



also help them understand the importance of maintaining respect in today's diverse workplace as well as the potential consequences for not doing so.

If you have any additional questions about political discussions in the workplace or would like assistance in reviewing/revising your harassment policy, please contact HR|Experts at breni.malpass@callhrexpert.com or 1-800-473-9778 (919-431-6096).

FMLA & The Employer's Responsibility to Designate

What should you do when an employee would qualify for protected leave under the Family and Medical Leave Act (FMLA) but doesn't want to take it as FMLA? To employees, it seems that they should be able to use available vacation or sick leave if they have it to cover the time off that they need without having to use their FMLA. **However, the FMLA regulations specifically state that it is the employer's responsibility to designate FMLA when they have sufficient information to determine that it is covered.** [Note: See section (d) on <http://j.mp/fm-po> and <http://j.mp/fm-de>.]

There are times when the employer does not know an employee was absent for an FMLA-covered reason until after the fact (the employee may take vacation for the absence and not tell the employer or the supervisor may not relay to HR that the employee was out sick). In these cases, retroactive designation may be made as long as there is no harm to the employee. For more information on this, and an example of harm to the employee, see (d) and (e) on the second link referenced above.

There also may be a time when the employer has sufficient information to determine that leave should be designated as FMLA (such as pregnancy) but the employee refuses to provide medical certification. In this situation, the employer has two options. The employer can deny the leave and subject the employee to your attendance policy. On the other hand, the employer can still designate as FMLA without the paperwork. Most employers would rather get the FMLA clock running so that the employee exhausts leave and can return to work. While it is advisable to require a medical certification, it is not necessary in order to designate leave as FMLA.

From a practical standpoint for employers, designating a qualifying absence as FMLA eliminates administrative headaches and potential discrimination, and ensures that employees receive the appropriate protections under an FMLA-covered absence. It also potentially limits employee time away from the job by combining paid time off with FMLA.

As a Medical Mutual policy holder, you have access to The FMLA - ADA Leave Advisor tool through CCH HealthcareHRAnswersNow site which is located in the HR Experts section of Medical Mutual's website. The tool will walk you through the maze of federal leave law through the use of interactive questions and will generate a detailed analysis report for your records. While many states also have family and medical leave laws, you won't find general leave laws in NC, VA or GA. These states do have certain time-off provisions for certain conditions. If you have questions regarding FMLA or accessing the tool, please contact HR|Experts at breni.malpass@callhrexpert.com or 1-800-473-9778 (919-431-6096).

When Are You Required To Accommodate An Employee's Disability?

HR Experts receives a lot of inquiries from practices concerning when they are required to provide a reasonable accommodation to an employee.

Question: What is "undue hardship" when considering a reasonable accommodation under the Americans with Disabilities Act (ADA)?



Answer: Accommodation is not required under the ADA if it would impose an "undue hardship" on the employer's business. This means a significant difficulty or expense. Under the ADA, the determination of whether an accommodation would impose an undue hardship is a balancing approach that is done on a case-by-case basis. The ADA provides that certain factors be considered in making such a balancing decision:

- the nature and cost of the accommodation;
- the size, type and financial resources of the specific facility where the accommodation would be made;
- the size, type and financial resources of the covered employer; and
- the covered employer's type of operation, including the composition, structure and functions of its workforce and the geographic separateness and administrative or fiscal relationship between the specific facility and the covered employer.

In situations where there are two effective accommodations, the ADA allows the employer to choose the accommodation that is less expensive or easier for the employer to implement so long as the selected accommodation provides meaningful employment opportunity. However, express choice of the applicant or employee should be given primary consideration by the employer.

If you have questions regarding ADA please contact HR|Experts at breni.malpass@callhrexpert.com or 1-800-473-9778 (919-431-6096).