



# Pierre Fauchard Panel Discussion

## Legal Trends and Updates

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# Unprofessional Conduct

# Unprofessional Conduct

- Rule 150-8-.01 Unprofessional Conduct Defined
  - Statutes and Rules You Need to Know
    - The Georgia Practice Act (O.C.G.A. T. 43, Ch. 11)
    - The Georgia Controlled Substances Act (O.C.G.A. T. 16, Ch. 13, Art. 2)
    - The Georgia Dangerous Drug Act (O.C.G.A. T. 16, Ch. 23, Art. 3)
    - The Federal Controlled Substances Act (21 U.S.C.A, Ch. 13)
    - Rules and Regulations of the Georgia Board of Dentistry
  - Committing any act of
    - Sexual intimacy
    - Abuse
    - Misconduct or exploitation
      - Exploit professional relationship with a patient
  - Terminating a dentist/patient relationship by a dentist
    - The notice shall be mailed at least fourteen (14) days prior to the date of termination of the dentist/patient relationship
      - 30 days recommended
      - With emergency treatment available for thirty (30) days
      - Exact date of termination
  - Waiving co-payments
  - Falsifying, altering or destroying records
    - Board investigation
    - lawsuit



# Improper Billing Practices – It's Your Responsibility

# Improper Billing Practices – It's Your Responsibility

- Improper Billing Practices
  - Double billing
  - Editing patient appointment dates to match billing
  - Inaccurate or missing information on clinical notes
  - Bills for procedures that are not done
  - Up-coding for work not done
  - Improper billing for lab services
  - Records do not (and never will) support billing
- It is YOUR responsibility for all billing
  - Do not blame your office staff for improper billing
  - The excuse of – This is not my responsibility
    - Will NOT save you in front of the Dental Board



# Most Common Ways Employers Violate the Law



(Handout #1)

# Most Common Ways Employers Violate the Law

- Using prohibited questions during job interviews
- Not allowing employees to discuss their pay with co-workers [NLRB]
- Failing to pay overtime
- Independent Contractors vs. Employee [IRS]
- Disciplining an employee for complaining about their employer on social media
- Failing to prevent a hostile workplace [Harassment]
- Failure to have a disciplinary policy for violations & comments regarding Title VII
  - Sexual orientation
  - Gender Identity
  - Religion
  - Race
  - Color
  - National origin





# Employee Offer Letters

# Employee Offer Letters

- Employee offer letters should never be considered an employment contract
- Avoid language that creates an employment contract
- Proper details of an offer letter
  - Start date
  - Any contingencies
    - Passing a drug test
    - Passing a background check
  - Job title
  - Salary
  - Benefits
  - Performance review
    - How often
  - Employment is “at-will”
- Special conditions
  - Non-compete
  - Non-solicitation



# Overview Regarding Pregnancy Accommodations

# Overview Regarding Pregnancy Accommodations

- Pregnancy accommodations
  - HR professionals frequently have questions about how to handle accommodation requests
- Federal laws that come into play regarding an employee who is pregnant
  - Pregnancy Discrimination Act
    - 15 or more employees
  - Family and Medical Leave Act (FMLA)
  - Americans with Disabilities Act (ADA)
    - 15 or more employees
- EEOC guidance regarding the Pregnancy Discrimination Act
  - Provide modified tasks
  - Alternative assignments
  - Fringe benefits such as disability leave
  - Employers cannot discriminate against an employee who is pregnant

# Overview Regarding Pregnancy Accommodations (cont.)

- Under the ADA, employee must have or be regarded as having a physical or mental impairment that substantially limits one or more major life activities
  - A pregnancy alone is not necessarily considered a disability
    - Unless an employee has a pregnancy-related impairment
- Employee is not eligible for accommodations under federal, state or local law
  - Employer determines the extent of such accommodation
- It is not necessary for employees to use the word “accommodation” when making a request.
  - They can simply say that they need help or time off due to their pregnancy or pregnancy-related condition
  - Employer should engage in an interactive process to determine which laws and policies apply

# Overview Regarding Pregnancy Accommodations (cont.)

- State Laws
  - 31 states and District of Columbia [DC]
  - 4 cities
  - Have passed laws requiring reasonable accommodations
- Accommodation requests
  - Every employer should have an internal procedure for accommodation requests
    - Including request documents for a formal process



# New Federal Laws – PWFA and PUMP Act



(Handout #2)

# New Federal Laws – PWFA and PUMP Act

- President Biden signed into law the Pregnant Workers Fairness Act (PWFA) and the Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act)
  - Expand federal protections for both pregnant and nursing workers
- Pregnant Workers Fairness Act
  - Mandates a legal obligation for employers to provide reasonable accommodations for pregnant workers
  - Went into effect June 2023
  - Employers with 15 or more employees will be required to provide reasonable accommodations for qualified employees with
    - Temporary physical or mental limitations due to
      - Pregnancy
      - Childbirth
      - Related conditions
  - Unless doing so would create an undue hardship



# New Federal Laws – PWFA and PUMP Act (cont.)

- The PUMP Act amends the Fair Labor Standards Act (FLSA)
  - Employers must provide a place, other than a bathroom, that is shielded from view and free from intrusion
  - Extends the protections to all employees, nonexempt and exempt
  - Requires that employers provide a reasonable break time for an employee to express breast milk for one (1) year after the child's birth
  - The PWFA incorporates the ADA concept of the interactive process
- Proposed amendment to PWFA
  - Notice August 7, 2023
  - Published August 11, 2023
  - 275 pages



# Employee Manual Guidelines for 2024



(Handout #3)

# Employee Manual Guidelines for 2024

- Annual Changes
  - Company Culture
  - Headcount
  - Benefits
- Employee Manuals are no longer an option
  - Federal/State Labor Laws
  - EEOC
  - National Labor Relations Board [NLRB]
  - Age Discrimination in Employment Act of 1967
  - Title VII of the Civil Rights Act of 1964
  - Equal Pay Act of 1963
  - Workers Adjustment and Retraining Notification Act
  - Sections 181 and 183 of the Civil Rights Act of 1866
  - Americans with Disabilities Act
  - Family Medical Leave Act
  - Employee Retirement Income Security Act
  - Older Workers Benefit Protection Act (OWBPA)
  - Age Discrimination in Employment Act of 1967, as amended (the ADEA)

# Employee Manual Guidelines for 2024 (Cont.)

- Failure to have a detailed Employee Manual - BEWARE
  - Costly mistake & compliance nightmare
- Must Have Provisions:
  - “At will” Statement and Disclaimer
  - Equal Employment Opportunity statement
  - Policy Against Unlawful Harassment
  - Wage & Hour Specifics Policy
  - Leaves of Absence
  - Drug Testing (if applicable) [states where marijuana legal]
  - Social Media Policy
  - Non-solicitation (if applicable)
  - Employee Acknowledgment, including signature of Employee Manual



# Employee Resignation and Termination

# Employee Resignation and Termination

- Progressive discipline
  - Go over the steps of your progressive discipline process
- Resignation
  - When an employee resigns
    - What benefits are owed to the employee
      - Specify in your employee manual
- Termination
  - Immediate
  - Standard 2-weeks
  - Providing severance pay
  - Severance Agreement
  - Employee release



# Important Workplace Policies

# Important Workplace Policies

- Policies are important for defining expectations
  - Appropriate conduct in a place of work
- Workplace policy
  - Any rule or guideline that defines appropriate conduct or best practices
  - Ensures compliance
  - Promote consistency and fairness



# Important Workplace Policies (cont.)

- Attendance
  - Attendance policy addresses various issues
    - Tardiness
    - Early leave
    - Absence without advanced notice
  - Terms and describe or point to disciplinary actions
- Code of conduct
  - Relates to employee behavior
  - Appropriate and inappropriate manners of dress
  - Confidentiality about company activities or projects
  - Interpersonal relationships and behaviors
  - Intoxication on the job
  - The use of communications devices or social media during work hours



# What is Artificial Intelligence

# What is Artificial Intelligence

- “AI” is in the workplace
  - Employers are implementing Artificial Intelligence in their daily businesses
  - AI may bring unintended legal consequences
- Types of Artificial Intelligence Used in Businesses
  - Recruitment and Screening
  - Onboarding
  - Day-to-Day Support
  - Document preparation
  - Policies and procedures
  - Producing logos

# What is Artificial Intelligence (cont.)

- Legal Issues of AI
  - AI may conflict with federal and state anti-discrimination laws
    - Screen out members of a protected group
- Title VII of the Civil Rights Act and the Age Discrimination in Employment Act
  - Title VII of the Civil Rights Act (Title VII) prohibits employers from discriminating against applicants and employees based on:
    - Race
    - Color
    - Religion
    - Sex
    - National Origin



# **Evolving AI Compliance Considerations for Employers**



(Handout #4)

# Evolving AI Compliance Considerations for Employers

- Federal and state law are starting to define applicants and employee's rights
  - These rights include:
    - The right to access personal information
    - Request deletion of personal information
    - Correct personal information
    - Opt out of sharing personal information
  - Employers should identify the types of information collected and the reason for collection
    - How is AI used?

# Evolving AI Compliance Considerations for Employers (cont.)

- Illinois and Maryland already regulate automated video interviewing
- Maryland State Law
  - Employers cannot use facial recognition during pre-employment interviews without consent from the applicant
- The EEOC's involvement with AI continues to grow
  - On January 13 2023, the EEOC released a draft strategic enforcement plan for 2023 through 2027
    - Highlights the use of AI tools in:
      - Recruitment
      - Screening
      - Hiring
      - Promotion
      - And other employment decisions



(Handout #5)

# Evolving AI Compliance Considerations for Employers (cont.)

- AI and employment laws
  - California's Workplace Technology Accountability Act
    - Require employers using automated decision systems to prepare and publish summaries of their algorithms and data protection impact assessments describing the:
      - Methodology
      - Findings
      - Results
      - Conclusions of each assessment



# Evolving AI Compliance Considerations for Employers (cont.)

- Track the proposed laws in New Jersey, New York and Washington, D.C.
  - Washington, D.C.'s Stop Discrimination by Algorithms Act
    - Prohibit adverse algorithmic eligibility determinations based on:
      - Race
      - Sex
      - Religion
      - Disability



# AI Use and Misuse in the Workplace

# AI Use and Misuse in the Workplace

- Are there legal risks in having AI?
  - The answer is yes.
- What are the legal risks of using AI?
  - Copyright infringement
    - Text is substantially similar to existing copyrighted works
  - Defamation
    - The model is generating defamatory content
    - Content generated by AI must be fact-checked before it is published or distributed
  - Data protection
    - Verify that the AI does not contain personal information
  - There may be laws or regulations specific to your industry
    - Financial services or health care
    - You will need to comply with these laws when using AI

# AI Use and Misuse in the Workplace

- These considerations include:
  - Are your employees using AI for their work?
    - If so, set guidelines and implement a written policy
  - If you have already introduced guidelines, do you provide training?
  - Have you considered banning the use of AI for certain roles or types of work product?
  - Have you established a process for employees to report their concerns or misuse of AI?



# **Employee Harassment Policies and Procedures**

# Employee Harassment Policies and Procedures

- Huge problem
- Establish a procedure for filing an internal complaint
  - Even if it is not unlawful
- Have multiple points of contact
  - Supervisors or HR
- Detail what constitutes Prohibited Conduct
  - Prohibited conduct giving rise to the complaint
  - Company-sponsored business and social events
  - Romantic relationship with a co-worker
    - Calls/texts
  - Harassing behavior from customers, vendors, and suppliers.
  - Harassment via social media, e-mail and text messages are all within the scope of prohibited conduct

# Employee Harassment Policies and Procedures (cont.)

- 5 most common allegations that are filed in conjunction with EEOC sexual harassment charges
  - FY 2018 – FY 2021
    - Retaliation: 55.8% of all charges filed
    - Disability: 36.1%
    - Race: 32.7%
    - Sex: 31.7%
    - Age: 21.0%
    - National Origin: 9.5%
    - Color: 5.3%
    - Religion: 3.6%
    - Equal Pay Act: 1.5%
    - Genetic Information: 0.7%

# Employee Harassment Policies and Procedures (cont.)

**Figure 6. Five Most Common Issues, Sexual Harassment Charges, FY 2018 – FY 2021**

Issue	
Discharge	48.3%
Harassment (non-sexual)	33.2%
Terms/Conditions	32.5%
Constructive Discharge	20.9%
Discipline	10.3%

SOURCE: U.S. EEOC, Integrated Mission System, Charge Data, FY 2018 - FY 2021.

**Figure 8. Top 10 States with the Most Sexual Harassment Charges per 10,000 Population Ages 16 Years and Older, FY 2018 – FY 2021**

Number of Charges per 10,000 Population			
Alabama	1.00	Arkansas	0.75
Mississippi	0.93	Missouri	0.74
Georgia	0.83	Nevada	0.72
Kansas	0.80	District of Columbia	0.72
Tennessee	0.76	Louisiana	0.72

SOURCES: U.S. EEOC, Integrated Mission System, Charge Data, FY 2018 – FY 2021. 2015-2019 American Community Survey (ACS) 5-Year Estimates, 16 Years and Older, Civilian Labor Force.

Source: Sexual Harassment in Our Nation’s Workplaces. Office of Enterprise Data and Analytics (OEDA) Data Highlight No. 2. U.S. Equal Employment Opportunity Commission (EEOC), Washington, DC, April 2022.





# Preventing Sexual Harassment in the Workplace

# Preventing Sexual Harassment in the Workplace

- Between fiscal year 2018 and 2021 – EEOC Statistics
  - Harassment charges, including those involving sexual harassment
    - Made up about 35 percent of all complaints received by the EEOC
    - Nearly 80 percent of all sexual-harassment charges were filed by women
- Employers should conduct sexual harassment training:
  - During the on-boarding process
  - At least once a year
  - Define harassment, discrimination and retaliation in your employee manual
  - Regularly reinforce your anti-harassment policies
  - Include strategies to prevent harassment and other abusive conduct
  - Outline the effects of harassment on employees
  - Include practical examples and factual scenarios
  - Tailor the training to the type of work environment
  - Include reporting procedures



# **DOL Issues New Independent Contractor Final Rule**

# DOL Issues New Independent Contractor Final Rule

- On January 10, 2024, the U.S. Department of Labor (DOL) published a Final Rule in the Federal Register
  - Rescinds and replaces the DOL's previous independent contractor test
  - The Final Rule addresses how to determine whether a worker is properly classified as an independent contractor or an employee under the Fair Labor Standards Act (FLSA).
- Independent contractors are individuals who are self-employed
- Under the FLSA, employers are required to pay employees overtime (1.5) for every hour worked in excess of 40 hours a week

# DOL Issues New Independent Contractor Final Rule

- The 2024 Final Rule, which will be codified as 29 C.F.R. Part 795, essentially resembles the 2022 proposed rule
  - The lists six (6) factors to determine whether a worker is an independent contractor under the FLSA:
    1. Opportunity for profit or loss depending on managerial skill
    2. Investments by the worker and the potential employer
    3. Degree of permanence of the work relationship
    4. Nature and degree of control
    5. Extent to which the work performed is integral to the employer's business
    6. The worker's skill and initiative
- The Final Rule is scheduled to take effect on March 11, 2024
  - There is expected to be legal challenges to the Final Rule



# Thank you!

For more information, please sign up for our newsletters. Text **OBERMAN** to **22828** or contact Stuart Oberman at [stuart@obermanlaw.com](mailto:stuart@obermanlaw.com).

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