

# Human Resources: Evaluating, Managing, and Dismissing Office Staff

Mark Wright , Peter Shaw-McMinn , Charles Bailey , Carole Burns , David Mills, and John Classé

*“Evaluate what you want—because what gets measured, gets produced.”*

James A. Belasco

This chapter describes the evaluating, managing, and dismissing of office staff, and the legal requirements that must be met to manage and dismiss staff members.

## EVALUATION OF OFFICE STAFF

An established method of evaluating employees is to use measurable key performance indicators (KPIs) for every staff member. With a smaller staff, each member may have multiple duties and thus may also have several indicators. How well each staff member manages these indicators is the essence of the staff evaluation. The effective use of KPIs in staff evaluations requires the following:

- Establishing annual KPIs for every staff member
- Giving every staff member the tools necessary to effectively manage individual KPIs
- Posting of individual KPIs for all staff to see
- Meeting with staff members at least weekly to ensure that KPIs are managed properly
- Daily, weekly, and quarterly monitoring of individual KPIs
- Reviewing KPIs yearly to ensure they are still relevant

There are two basic ways in which to use key practice indicators for a performance review. The first method is to periodically review the effectiveness and efficiency of management of individual KPIs by staff members. How effective is each staff member in meeting or exceeding the goals that have been set? Have office systems been streamlined to obtain maximum efficiency in meeting or exceeding these goals? The answer to these two questions provides an objective approach to performance review.

The second method is to create a scoring chart for each staff member. A point value is assigned for each of the key practice indicators chosen for individual employees. The point values are based on the KPIs the staff member is trying to achieve; often it is convenient to use a 100-point scoring system. This is a subjective means of evaluating performance, but subjectivity can be reduced by using measurable goals that are identifiable for each indicator (Figure 19-1).

Feedback is essential to successful use of this system, and regular meetings with staff members to review performance are necessary. Integrating the performance review to a bonus

makes the system even more powerful. For example, if an employee’s score is 90 points, then that employee would receive 90% of the available bonus.

## LAWS REGULATING STAFF MANAGEMENT

There are numerous federal and state laws that regulate the compensation of employees; medical leave for employees; employee workplace; and discharge of employees. Optometrists in private practice must adhere to these laws or face the prospect of legal action, often initiated by the federal government through the Equal Employment Opportunity Commission (EEOC) or US Department of Justice.

In a commercial setting, the employer conceives of a productive activity, generally with the intention of creating profits, and the employee contributes labor to the enterprise, usually in return for payment of wages. In the US, the standard employment contract is considered to be “at will,” meaning that the employer and employee are both free to terminate the employment at any time and for any cause or for no cause at all. However, exceptions to the “at will” rule can be found in various federal employment law statutes, in which termination is illegal if it is based on age, gender, disability, or numerous other reasons.

In addition, there are numerous state statutes that offer additional protection to employees, but these laws vary from jurisdiction to jurisdiction. Familiarity with state requirements is also an obligation for employers.

## COMPENSATION OF EMPLOYEES

The Fair Labor Standards Act (FLSA) is the federal labor law that establishes minimum wage, overtime pay, recordkeeping, and child labor standards, affecting more than 140 million full- and part-time workers in the private sector and in federal, state, and local governments.

The Wage and Hour Division of the US Department of Labor administers and enforces FLSA with respect to private employment; state and local government employment; and federal employees of the Library of Congress, US Postal Service, Postal Rate Commission, and the Tennessee Valley Authority.

<b>Description of Indicators</b>	
<b>Accountability</b>	
How well does the staff member control the member's position and post statistics?	
<b>Punctuality and Attendance</b>	
One point is subtracted for every time the staff member is late to work, and two points are subtracted for unexcused absences.	
<b>Job Knowledge</b>	
This is based on the staff member's proficiency testing scores.	
<b>Work Quality</b>	
One point is subtracted every time a patient complains about the staff member or the member's work must be redone by another staff member.	
<b>Policies and Procedures</b>	
A point is subtracted for every policies and procedures violation.	
<b>Teamwork</b>	
One point is subtracted for every time a staff member must be convinced to work with another staff member.	
<b>Versatility</b>	
A point is subtracted for every time a staff member must be convinced to cover another post in the office.	
<b>Professionalism</b>	
One point is subtracted for every time a staff member must be addressed for a professionalism violation.	
<b>Position Agreement</b>	
If all the position agreements for this staff member are completely written and up to date, full points are awarded. Anything less, reduce the points proportionately.	
Sample Score Chart	
• Accountability	35
• Punctuality and attendance	10
• Job Knowledge	20
• Work Quality	05
• Policies and Procedures	05
• Teamwork	05
• Versatility	05
• Professionalism	05
• Position Agreement	10

**FIGURE 19-1** Key practice indicators score chart.

The Labor Department's Office of Personnel Management is responsible for enforcement with regard to all other federal employees.

Special rules apply to state and local government employment involving fire protection and law enforcement activities, volunteer services, and compensatory time off in lieu of cash overtime pay.

As of July 24, 2009, covered nonexempt workers are entitled to a minimum wage of not less than \$7.25 an hour. In 1993, states were given the power to set their minimum wages above the federal level. At the start of 2009, only five states had not done so.

The FLSA also establishes overtime pay, recordkeeping, and child labor standards in the US workplace. Workers are

entitled to overtime pay of not less than 1 ½ times the regular rate of pay for each hour worked over 40 hours per week. Provisions regulating the employment of minors are designed to protect the educational opportunities of minors and prohibit their employment under conditions or in jobs that are detrimental to their health or well-being. These provisions include restrictions on hours of work for minors under age 16.

There are a number of employment practices that the law does not regulate. FLSA does not require vacations, holidays, severance, or sick pay; meal or rest periods; pay raises or fringe benefits; or a discharge notice, reason for discharge, or immediate payment of final wages to terminated employees.

Wages required by FLSA are due on the regular payday for the pay period covered. Deductions made from wages for items, such as cash or merchandise shortages, employer-required uniforms, and tools of the trade, are not legal to the extent that they reduce the wages of employees below the minimum rate required by FLSA or reduce the amount of overtime pay due under FLSA.

Also, FLSA does not limit the number of hours in a day or days in a week an employee can be required or scheduled to work, if the employee is at least 16 years old. These matters are for agreement between the employer and the employees, or their authorized representatives. However, overtime pay is required if the work week exceeds 40 hours. Under certain conditions, employers can pay a training wage of at least 85% of the minimum wage for up to 90 days to employees younger than 20 years of age. In addition to these issues, there are other conditions and exemptions in FLSA that should be considered.

The FLSA requires employers to keep records on wages, hours, and other items, as specified in Department of Labor recordkeeping regulations. Most of the information is of the kind generally maintained by employers in ordinary business practice and in compliance with other laws and regulations. The records do not have to be kept in any particular form, and time clocks are not required.

## MEDICAL LEAVE FOR EMPLOYEES

The Family and Medical Leave Act (FMLA) was passed by the US Congress in 1993 to allow eligible employees up to 12 weeks of unpaid medical leave every year. Eligible employees are those who have worked for the employer for at least 12 months (1,250 hours). Allowable reasons for leave include serious health problems encountered by the employee; the care of the employee's spouse, children, or parents; or the adoption or birth of a child. Employees who take leave under the FMLA cannot lose their jobs, seniority, health insurance, or accrued benefits during their absence.

The FMLA applies only to employers who have at least 50 employees, which would eliminate all but the largest optometry practices from its provisions. However, medical (maternity) leave is a required benefit of employer-provided health insurance in most states, regardless of the number of employees.

Maternity leave is regulated through the following federal laws that apply to health insurance:

- Employee Retirement Income Security Act (ERISA)
- Health Insurance Portability and Accountability Act (HIPAA)
- Consolidated Omnibus Budget Reconciliation Act (COBRA)
- Pregnancy Discrimination Act These laws are reviewed in Chapter 25.

## EMPLOYEE WORKPLACE SAFETY

Employers have an obligation to maintain a safe workplace. Employees who are injured on the job or who contract a work-related illness and suffer temporary or permanent impairment may file for state workers' compensation benefits (discussed in Chapter 23). Federal regulation of the workplace is the responsibility of the Occupational Safety and Health Act (1970). It has limited applicability to optometry practices. The Occupational Safety and Health Administration (OSHA) has published regulations that must be observed by employees who come in contact with blood-borne pathogens such as hepatitis B and human immunodeficiency virus (HIV). These regulations apply to optometry practices. Requirements include methods that reduce exposure to pathogens when drawing blood (such as wearing gloves when performing fingersticks for diabetes), the appropriate disposal of needles and sharps biohazard containers, the proper management of spills and waste, and the protocols to follow if an employee is exposed to a pathogen.

The regulation also requires that warnings be given to employees who face a risk of exposure and that confidential records be maintained by employers for employees who suffer an exposure (these records must be kept for the period of employment plus 30 years). Although the recordkeeping requirements apply to OSHA-regulated private sector employers with more than 10 employees, "low hazard" employers (such as optometrists) are not required to comply with the copious OSHA reporting requirements for injuries (unless there is death).

The American Optometric Association (AOA) has published a manual that may be useful to employers in complying with this federal law.

## SEXUAL HARASSMENT

Sexual harassment in the workplace is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964. The EEOC has defined sexual harassment as "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature ... when ... submission to or rejection of such conduct is used as the basis for employment decisions... or such conduct has the purpose or effect of ... creating an intimidating, hostile or offensive working environment." This definition is based on US Supreme Court decisions recognizing two basic types of sexual harassment as follows:

"Quid pro quo" harassment occurs when decisions regarding employment are promised, threatened, or given, based on whether one or more employees will submit to sexually-oriented conduct.

“Hostile environment” sexual harassment occurs when sexually-oriented conduct creates an offensive and unpleasant working environment.

If an employer is aware of a hostile environment and has not taken appropriate action to correct the problem, then the employer may be held liable for the harassment. However, an employer cannot be held responsible if the employer is not made aware of the situation.

Harassment can involve men or women; the harasser does not have to be of the opposite sex. The harasser can be the victim’s supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a nonemployee. The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.

The federal law only applies to employers with 15 or more employees. However, most states have also passed laws that apply to improper sexual conduct. For example, in Alabama, sexual harassment claims may be brought under the legal theory of “invasion of privacy”; an employer with one or more employees falls under this law.

## DISCHARGE OF STAFF

Because of federal and state laws, employees cannot be discharged on the basis of the following:

- Age
- Gender
- Ethnicity or national origin
- Religion
- Disability, unless Americans with Disabilities Act (ADA) provisions have been complied with or an accommodation refused
- Reprisal (for some act of the employee such as reporting illegal activity by the employer)

Discharge of employees may result in the awarding of unemployment compensation. Unemployment insurance provides workers whose jobs have been terminated through no fault of their own monetary payments for a given period of time or until they find a new job. Therefore an employer would be wise to consider implementing a “probationary period” during which the employee will be evaluated—but terminated from employment if appropriate—before becoming eligible for unemployment compensation.

An employee is disqualified from unemployment compensation if the employee leaves work “voluntarily and without good cause.” For this reason, if it appears that an employee is headed toward termination, the employer may wish to explain the potentiality of termination to the employee and give the employee an opportunity to resign before any final employment decision is made. If the employee does so, the employee may thereby be disqualified from unemployment compensation.

Office policies should be in writing and compiled in a handbook. These policies should include “voluntary discharge.” For example, a policy stating “Two unexcused absences in any work week shall be deemed a voluntary resignation” can be used to discharge an employee who chronically fails to report

for work. Such a dismissal does not allow the discharged employee to qualify for unemployment compensation. To dismiss an employee for “misconduct,” the employer will be required to show that there was a rule or policy that the employee deliberately violated or willfully disregarded. This is much more easily achieved if there is a handbook given to employees.

To receive unemployment compensation benefits, an employee must prove that there was “good cause” to quit. To refute this, an employer should adopt an internal grievance procedure or “open door policy” by which disputed actions and working conditions can be brought to the employer’s attention and if appropriate, corrected. An employee usually will be denied unemployment compensation if available procedures are not used to seek resolution of complaints.

## UNEMPLOYMENT INSURANCE

Unemployment insurance is based on both federal and state statutes. The program was established by the Social Security Act in 1935, and much of the federal program is implemented through the 1935 Federal Unemployment Tax Act. Each state administers its own separate unemployment insurance program.

The proceeds from unemployment taxes (6.2% of the first \$7,000 in wages) are deposited in a federal Unemployment Trust Fund (the wage base can be higher for state contributions). Each state has a separate account in the fund to which deposits are made (see Chapter 39 for a discussion of how unemployment taxes are collected and reported).

State employer contributions are normally based on the amount of wages paid to employees, the amount that has been contributed to the unemployment fund, and the amount that any discharged employees have received from the fund. Thus any unemployment compensation awarded to discharged employees is charged to the employer’s account, thereby increasing the employer’s tax rate and resulting in higher unemployment tax payments.

When an individual files a claim for unemployment compensation, two determinations are made. The first is the amount of benefits the claimant may receive (which is based on wages). The second is the claimant’s eligibility for benefits, which is based on the reason for the separation from employment. If the employee quit voluntarily for a reason not connected with the work (without “good cause”), the employee is not eligible for benefits. Similarly, if the employee is discharged for a dishonest or criminal act connected to work, or for drug use, benefits cannot be claimed. Other misconduct may result in loss of benefits, but the loss may be 50% rather than 100%, depending on the circumstances.

The employer may present evidence at a benefits hearing to prove that the employee quit without good cause or was discharged because of a dishonest act or willful failure to perform the duties of the employment. Thus documentation of employee conduct and discharge is essential and must be scrupulously maintained.

## DISCIPLINARY ACTION AGAINST EMPLOYEES

The Office of Inspector General's suggested practice compliance program contains a progressive disciplinary list. This list can be applied to an optometry practice for the discipline of employees:

- Oral warnings
- Written reprimands
- Probation
- Demotion
- Temporary suspension
- Termination
- Restitution of damages
- Referral for criminal prosecution

Stealing and illegal drug usage may be two actions that would be cause for immediate termination. For lesser offenses, the progressive disciplinary list can be a helpful tool. If this list is included in any written materials distributed to an employee, have the written materials reviewed by an attorney or by a professional human relations management company to ensure legal compliance.

## RETALIATORY DISCHARGE

Federal and state laws prohibit an employer from discharging an employee in response to the employee's attempt to obtain benefits to which the employee is entitled such as by filing an age or gender-based discrimination claim, worker's compensation claim, or ADA claim. If a retaliatory discharge occurs, the discharged employee is entitled to institute a civil action for damages, including back pay, future wages, mental anguish or emotional distress, and attorney's fees. In unusual circumstances, punitive damages may be awarded.

## DISMISSING EMPLOYEES

Terminating an employee is always a traumatic experience. Professionally managing this experience and executing it in accordance with the law are both extremely important.

If a practitioner is making a reasonable effort to train and control staff members, the employee who is not able to become an efficient and enthusiastic member of the team will know there are problems and will probably resign. Full documentation of employment should be maintained in an employee's file, including the resume, letter of application sent before employment, the interview notes, results of training programs, progress with training, evaluations, reprimands, warnings, and attendance records.

When it is necessary to dismiss an employee, these items should be reviewed with the individual in a nonconfrontational manner. The good things that the employee has done should be pointed out; so that he or she can see that the evaluation is a balanced one and can understand the achievements and the problems that have been encountered during the course of employment.

Most practices have a probation or trial period for new employees, which is usually 60 to 90 days. Performance should be carefully monitored during this period. If training is not progressing at an agreed-on schedule, this would be the best time to terminate the employment. Many optometrists are hopeless optimists and assume that despite a difficult start things will get better but often they do not.

Some practices request at least 2 weeks notice from an employee when the employee wants to leave employment. It is fair for the employer to offer the same notice. If an employee cannot reasonably contribute to the practice after being informed of termination, the 2 weeks can be used as paid time for the employee to find other employment. This is optional and is not required under the FLSA.

There are causes for immediate dismissal, and these causes should be included in the employee handbook for each practice. Examples are provided in Box 19-1.

When an employee is dismissed, the employee can be eligible for unemployment compensation. Each state has specific eligibility requirements that must be met by a dismissed employee to receive unemployment compensation. If an employee does receive this compensation, the former employer will be required to pay an additional amount of money into the state compensation fund; the amount is based on the number of former employees drawing this compensation. Employers may oppose the award of unemployment compensation by showing that the former employee is not qualified to receive it (Box 19-2).

Employees must understand exactly what is expected of them. The use of written job descriptions or position agreements can help in this respect. It is important to never make a statement either in writing or verbally that could affect an employee's "at will" status. In questionable circumstances, it is advisable to review the case with an attorney or professional human resources advisor before taking any action. In dismissal of any employee, however, documentation is important.

Once the decision has been made to terminate an employee, the dismissal meeting is not the time to debate the decision or justify the dismissal. The message should be straightforward

### BOX 19-1

#### Example of Causes for Dismissal

The following can be cause for immediate dismissal. Any employee dismissed for cause will not be entitled to a minimum notice nor termination/vacation pay. This list is not to be construed as inclusive.

- Inefficiency or inability to perform assigned duties
- Excessive absenteeism or tardiness
- Poor personal hygiene
- Dishonesty
- Breach of confidentiality or professional ethics
- Refusal to perform assigned duties
- Theft
- Embezzlement or mishandling of funds

**BOX 19-2****Disqualification of Employee for Unemployment Compensation**

Unemployment insurance provides workers, whose jobs have been terminated through no fault of their own, monetary payments for a given period of time or until they find a new job. However, an employee is disqualified from unemployment compensation if the employee leaves work “voluntarily and without good cause.”

Office policies should be in writing and compiled in a handbook. These policies should include “voluntary discharge.” For example, a policy stating “two unexcused absences in any work week shall be deemed a voluntary resignation” can be used to discharge an employee who chronically fails to report for work. Such a dismissal does not allow the discharged employee to qualify for unemployment compensation.

To dismiss an employee for “misconduct” the employer will be required to show that there was a rule or policy that the employee deliberately violated or willfully disregarded. This is much more easily achieved if there is a handbook given to employees.

To receive unemployment compensation benefits, an employee must prove that there was “good cause” to quit. To refute this claim an employer should adopt an internal grievance procedure or “open door policy” by which disputed actions and working conditions can be brought to the employer’s attention and if appropriate, corrected. An employee usually will be denied unemployment compensation if available procedures are not used to seek resolution of complaints.

and delivered in a firm but compassionate tone. It should be communicated clearly that the decision has been made and will not be changed.

It is best if the message to be delivered to the terminated employee is thought out in advance (Box 19-3), as well as the message to be conveyed to the remaining staff and patients. An employer should never be derogatory toward a leaving employee and should conduct himself or herself in a professional manner.

After an employee has been given notice of firing, the employee should relinquish all office materials (e.g., office

manual and keys). Passwords for the office security system or for any office software programs should be changed immediately. If an employee has signed a confidentiality agreement or a noncompete clause on hiring, then a copy should be given to the employee at the time of release.

As a general rule, it is advisable to provide the employee with pay for the remainder of the current pay period, regardless of the date of the employee’s last day of work. This enables the employee to transition to a new job or to begin receiving unemployment benefits.

It is wise to consult an attorney before dismissing an employee if the employee has done any of the following:

- Stated that the practice is violating antidiscrimination laws
- Alleged that the practice is noncompliant with safety requirements or provides unsafe working conditions
- Recently taken jury duty leave
- Filed for bankruptcy
- Requested an accommodation under disability or family leave laws

The decision to end an employee’s employment does not have to be justified to the employee. If there are legal questions raised by the dismissal, they should be referred to an attorney or to a professional human resources advisor for the practice. If a lawsuit is filed, the attorney should be notified to provide guidance through the legal process. The practice’s insurance carrier should also be notified, although coverage for civil rights violations, age or gender discrimination, sexual harassment, or improper dismissal of a disabled worker are not covered under standard professional liability policies (see Chapter 23).

A checklist often helps address termination details, and the management of each item in the checklist should be planned in advance. A sample checklist would include the following:

- Writing the employee’s last paycheck
- Return of the employee’s personal items
- Transportation home for the employee
- References for the employee
- Collection of any practice assets
- Informing the remaining staff of the employee’s departure

**BOX 19-3****Sample Language for Termination  
of Employees****FOR A TERMINATION THAT IS NOT FOR CAUSE:**

“Mr. Smith, we’ve decided to terminate your employment, effective today. Our practice no longer requires your services. We will pay you for the next 2 weeks and will not oppose any application that you make for unemployment benefits. You may take a few moments before leaving to pack your personal items without disturbing others who are now working. If you are disruptive in any way, we will not pay you for the next 2 weeks, and we will oppose your unemployment application. After you’ve left, we will inform the staff of our decision without providing any details.”

**FOR A TERMINATION FOR CAUSE:**

“Mr. Smith, we’ve decided to terminate your employment immediately because you have taken money without authorization from our practice. We will return you to your workspace now to allow you to retrieve your personal items before we escort you out of the building. Here’s a check for your salary through today. We will not be making any further salary payments to you. We will pay your benefits through the end of the month, at which time you will be eligible for benefits under COBRA (The Consolidated Omnibus Budget Reconciliation Act). If you decide to apply for unemployment benefits, we will oppose your application.”

To maintain an efficiently operating practice it may be necessary to discharge employees. Protection of the practice is the primary consideration of the termination process. Having a plan for management of the situation and using the advice of professionals, such as an attorney or a professional human resources advisor, can help make this difficult task much more manageable.

## EXIT INTERVIEWS

Every practice experiences some turnover of personnel. An exit interview allows the employer to learn how to improve the workplace for other employees. Typical questions that are asked include the following:

- Did the job meet your expectations?
- Why are you leaving?
- What did you like and dislike about our office?
- What specific suggestions for improvement could you make?

These questions should be used as a starting point for more in-depth discussions. The feedback received can prove to be extremely valuable.

## ACKNOWLEDGMENTS

The authors of this chapter in the first edition of *Business Aspects of Optometry* were Donald H. Lakin, Ronald S. Rounds, Peter Shaw-McMinn, and Craig Hisaka.

The authors of this chapter in the second edition of *Business Aspects of Optometry* were Peter Shaw-McMinn, Daisy Rampolla, Maria Robles, and Craig Hisaka.

## BIBLIOGRAPHY

American Optometric Association: *Practice enhancement program II, MN 5, optimize your professional opportunities through effective office staff policies and procedures*, St. Louis, 1984.

American Optometric Association: *Practice enhancement program II, professional enhancement module, managing your practice plan, precourse workbook*, St. Louis, 1986.

American Optometric Association: *Practice enhancement program II, professional enhancement module, your marketing plan module two, precourse workbook*, St. Louis, 1986.

American Optometric Association: *Practice enhancement program, MN 1, optimize your professional opportunities through personal and professional goal setting*, St. Louis, 1986.

Baldwin BL, Christensen B, Melton T: *Rx for success*, Midwest City, OK, 1982, Vision Publications.

Blanchard K, Johnson S: *The one minute manager*, New York, 1993, Berkeley Publishing Group.

Blanchard K, Lorber R: *Putting the one minute manager to work*, New York, 1991, Berkeley Publishing Group.

Hayes J: Keep staff members "in the loop." *Optometric Management* 29(5): 24–28, 1994.

Maslow AH: *Motivation and personality*, New York, 1987, Harper & Row.

McGregor D: *The human side of enterprise*, New York, 1985, McGraw-Hill.

Peters TJ, Waterman RH Jr: *In search of excellence*, New York, 1988, Harper & Row.

Tecker IJ, Tecker GH: Big boom theory. *Association Management* 43(1): 46–47, 1991.

### Websites

<http://www.aafp.org/fpm/20061100/37howt.html>  
www.optometric.com. Online version of *Optometric Management* magazine, which provides advice about personnel management.

www.revoptom.com. Online version of *Review of Optometry* magazine, which provides advice about personnel management.