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A former adjunct professor at Stevenson University, Steve currently hosts The DENTAL CALL, monthly interviews with experts in the business of dentistry available on Podbean, Stitcher and at wcslaw.com. Steve can be reached at skaufman@wcslaw.com.

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BALTIMORE'S THOUGHT LEADER OF THE MONTH

Dentists Need to Know the Drill, too

Even the D.D.S. community must tread carefully when it comes to legal and employment challenges.

The most successful business people don't just solve problems—they anticipate them and cut them off before they happen. The following are three hazards that may not seem obvious until they happen, and some suggestions for avoiding them.

Hiring dentists as independent contractors.

Practices often hire dentists as independent contractors believing that to be a safe and easy way to reduce liability risk and avoid paying unemployment, workers' compensation and payroll taxes. This is true, as long as the classification is proper. Beware, however.

Contrary to popular belief, just labelling workers as independent contractors and paying them with a 1099 instead of a W-2 does not make them so. Instead, worker status is determined by complicated legal tests that, in general, focus on the behavior and financial control a company has over a worker. If taxing authorities or the labor department look at your practice (and there has been a concerted government effort to clamp down on misclassification), the costs can be high. Among other things, employers can be liable for three years back taxes on the "contractor's" wages, back payment of unemployment and workers' comp premiums, fines, audits and penalties for violating Obamacare. If the IRS thinks you misclassified intentionally, there are large fines and up to a year in jail as a tax evader.

Make sure you understand the rules before you decide to save money this way. In my experience, most "independent contractor" dentists are misclassified.

Sexual Harassment - protect your employees and practice.

Anyone following the news knows that a sexual harassment claim can ruin a company or a career. Dental practices and dentists are not immune—they just don't make the headlines. Fortunately, a little advance planning can help avoid problems and mitigate them if they pop up.

There are two kinds of sexual harassment. The first is "quid pro quo," in which a supervisor demands, implicitly or explicitly, sexual favors in exchange for something. Perhaps a job benefit, like a raise or promotion, or to avoid discipline, a demotion, or firing. The second type of harassment is "hostile environment," which is a sexually unwelcome hostile or offensive work environment that a reasonable person finds so severe and pervasive that it adversely affects job performance or benefits.

The hostile environment could be caused by words, like off-color jokes, well-intentioned comments about dress or appearance, sexual slurs, or by actions ranging from an unwanted arm around the shoulder to groping or assault.

A harasser can be almost anyone in the workplace: a supervisor, co-worker, vendor, or even a patient. A practice is responsible for all. Whether behavior rises to the level of actionable harassment depends upon specific facts and circumstances. A proactive employer will cut off inappropriate behavior before it becomes illegal. Every practice should have a handbook with policies clearly stating that harassment will not be tolerated and establishing a complaint process that encourages workers to identify problems early.

Once a problem is identified, employers can avoid liability by conducting a good-faith investigation and curing any problem. Cures can be anything appropriate, like scheduling a harasser for shifts the victim doesn't work, firing the harasser, or discharging a trouble-making patient.

Avoid being squeezed in a rapidly changing market.

Recent statistics hint at increasing difficulties for small independent practices. These include decreasing payments from insurers, large corporate players gaining an increasing competitive edge, more dental-school graduates, and by some accounts, slowing spending on dental care. This is similar to the dilemma small medical practices began experiencing years ago.

Many physicians gave in and sold out to hospitals or accepted making less money. Others took a path that more dentists should consider: Join individual practices together into, large "practices without walls." These are practices that maintain separate offices and autonomy, but come together under a common legal and administration umbrella that provides greater negotiating strength and economies of size. This solution won't be easy, but worthwhile endeavors seldom are.

For the right practices, this may be the successful middle path between corporate takeover and large pay cuts, or worse.