

An Optometrist's Guide to Employment Law

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Disclaimer

This presentation is intended to offer information and general guidance on issues commonly encountered in medical settings but should not be construed as legal advice and should not be substituted for the advice of your own legal counsel.

Optometrists should always seek the advice of their own attorneys regarding specific issues.

Finding Employees

Step 1: Create a Job Description

- Outline duties and responsibilities
- Set qualifications
- Establish standards to assess performance
- Each employee in practice should have a job description, even associate optometrists
- Classify as full-time, part-time or temporary

Job Descriptions

- Identify the chain of command
- Requirements
 - Licensure and certification
- Responsibilities
 - Patient management and procedures
 - Office management
 - Patient records maintenance and confidentiality
 - Office promotion
 - Supervision of other employees
 - Interaction with other employees
 - Provision of vision services within guidelines of Ohio law and instructions of the doctor

Job Descriptions

Key Point

- Each job description should include the following phrase:

“and other duties assigned by the supervising optometrist”

Step 2: Advertise the Opening

Americans with Disabilities Act

- Application process must be available to all persons and applicants on an equal basis
- Offer more than one method to apply: provide email address and phone number for inquiries

Equal Opportunity Employer (EOE)

- Include statement in job posting



Step 3: Application and Interviews

Issues to Avoid During Process:

- Race, Creed, Color, Religion, National Origin
 - Equal Employment Act
- Gender, Marital Status, Family
 - Equal Pay Act
- Age
 - Age Discrimination in Employment Act
- Height and Weight
 - Civil Rights Act
- Organization Membership
 - National Labor Relations Act
- Genetic Information
 - Genetic Information Nondiscrimination Act
- Disabilities
 - Rehabilitation Act
 - Americans with Disabilities Act

Application

- Don't ask for a picture with application
- Don't ask height/weight or eye, hair, skin color on application
- Don't ask if applicant is a citizen, ask if eligible for employment.
- Do ask: education, work history, references, criminal record

Interviews

- Let the applicant do the talking
- Avoid making promises
- Questions should be about applicant's ability to perform job duties, not personal issues

- “Have we met before? What is your maiden name?”

NO



- “Our office is open until 6, is there any reason you could not work that late?”

YES



Working Interviews

- Proceed with caution
- Have applicant sign agreement
- Check with your insurer

Step 4: Job Offer


Before the job offer:

- References
 - Confirm employment history
 - Ask if eligible for re-hire
- Background Checks
 - Obtain written release/waiver from applicant
 - Consider bonding insurance for employees who handle finances
- Verify Credentials
 - Ohio License Verification System
 - <https://license.ohio.gov/lookup/default.asp>

Ohio Licensure Verification System

Past disciplinary
action taken by the
board will be
identifiable below
the individual's
name in a yellow
box.

← <https://license.ohio.gov/lookup/default.asp>



OHIO License CENTER

*** PLEASE NOTE *** The State of Ohio is moving professional licensing activities to a new licensure system. The first release includes Massage Therapists, Physical Therapists, and Registered Sanitarians. Please click [here](#) for one of these types. For all other license types, continue below.

Licensees found in this search are or have previously been licensed by the Ohio Optical Dispensers Board. The expiration date will indicate whether the license is currently active, within the limitations indicated below.

Search Instructions: We recommend that searches be performed by either License number or Name. Do NOT attempt to use a combination of Name and License Number. The use of City, State, Zip and County should not be necessary for most searches.

License Search

[back]

Select a Board

Optical Dispensers Board

Select a Profession

- DISPLAY ALL -

Business Name/DBA

-or- License Number

-or- Name (Last, First)

City, State Zip

- DISPLAY ALL -

County

- DISPLAY ALL -

Status

- DISPLAY ALL -

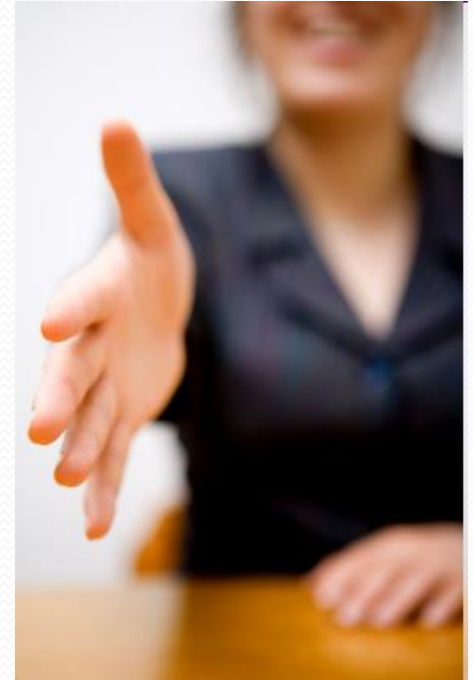
Search

Reset

Job Offer

Details:

- Define position
- Wages
- Benefits
- Office Location
- Work Hours (subject to change)
- Start Date
- Other Information About the Practice



Managing Employees

New Hire Checklist

- ✓ Complete state and federal employment forms
- ✓ Complete employment application
 - ✓ Identification number
 - ✓ Resume information
 - ✓ Emergency contact
- ✓ Create employee file
- ✓ Obtain copies of license/certification
- ✓ Set training schedule
- ✓ Set 90-day performance review
- ✓ Review office policies
- ✓ Provide employee manual

Employee Classification: Wages

Non-exempt

- Covered by the Fair Labor Standards Act
- Generally considered “hourly” employees
- Clerical and technical
- Entitled to overtime compensation
- Entitled to minimum wage protections
- Majority of team

Exempt

- Not Covered by the Fair Labor Standards Act
- Generally considered “salaried” employees
- Executives, administrators or professionals
- Spend 60% of time on duties requiring “independent judgment
- Associate optometrist, office manager

Employee Classification: Benefits

- Full-time
 - Typically 35-40 hours/week
 - Do not refer to as “permanent” employees
- Part-time
 - Less than 35-40 hours/week
- Temporary
 - Hired for a specific purpose or job that will expire
- Office has flexibility to define

Benefits

- Health insurance
 - Employer has flexibility to establish benefit
 - Treat employees within classifications equally
- Vision benefits
 - Treat employees and payers equally
- Disability and life insurance
- Retirement plans

Benefits

- Liability insurance
- Professional dues
- Licensure/certification fees
- Continuing education
- Travel expenses
- Tuition reimbursement
- Uniforms
- Vacation time

Key Point: Total Compensation List

BENEFIT	Dollar Amount
Salary	\$\$
Paid Vacation Days	\$
Paid Holidays	\$
Sick Leave	\$
Health Insurance	\$\$
Vision Care Individual	\$
Vision Care Family	\$
Life Insurance	\$
Continuing Education	\$
Professional Dues	\$
Total Compensation	\$\$\$\$\$\$

Attendance Policies



- Written office schedule
- Excessive absences or tardiness will be reflected in performance reviews and could result in discipline
- Unexcused/unannounced absence policy - voluntary resignation
- Lunch and break policies
- Flex-time policies - coordinating childcare

Leave Policies

- Treat employees within classifications equally
- Vacation
- Sick time
- Holidays
- Bereavement leave
- Jury duty
- Voting
- Inclement weather
- Military leave of absence

Family and Medical Leave Act

- Applies to employers of 50 or more
- Requires that employers provide up to 12 weeks of unpaid leave per year for:
 - Family emergencies
 - Serious illness of employee
 - Serious illness of immediate family member
 - Birth, adoption or foster placement of a child
- Does not apply to most offices

Maternity Leave

- Discrimination on the basis of pregnancy is considered sex discrimination under Ohio law
- Employers must provide a “sufficient” amount of maternity leave
- Establish a policy and stick to it

Office Policies

- Equal Employment Opportunity Statement

It is the policy of this office to provide equal employment opportunity based on merit, competence and service, without regard to race, color, religion, age, sex, national origin, ancestry, citizenship, veteran status or disabilities

- Drug-free Workplace/Substance Abuse

- Employee Conduct

- Expectations on working with other staff members
- Interaction with patients and other offices
- Workplace violence

- Personal Appearance

Office Policies

- No smoking policy
- Confidentiality - HIPAA
- Financial policy - credit cards, expenses
- Gifts – referrals
- Office security
 - How to handle threats from public, patients and staff
 - Emergency procedures
- Telephone and electronic communications
 - Right to monitor and review

Harassment Policy

- Zero tolerance
- Duty to report
- No retaliation against those who report
- Complaint procedure
- Provide training
- Address issues with patients, suppliers, others

Associateship Relationships

- Why do associateships fail?
 - Incompatible practice philosophies
 - Inability of the practice to support another practitioner
 - Unrealistic income expectations
 - Unwillingness to listen to suggestions
 - Lack of a written agreement

Contract is Important

- Protection for employer, associate and practice itself
- Prevent litigation
- Allows for discussion on all aspects of the business with the associate
- Lessens chance of future disagreement
- Impresses seriousness on all parties

Contract Basics

- Compensation and benefits for associate
- Patient assignment and scheduling
- Office policies and procedures
- Management and supervision issues
- Associate work schedule

Plan for when it ends:

- Termination/Length of the agreement
- Restrictive covenants
- Key Point: Ownership of patient records and responsibility for care

Drafting Tips

- Always involve an attorney
- Work on contract terms together
- Try to resolve major issues before drafting
- Use clear, unambiguous language

Employee Discipline

You're Fired

Employee Discipline

- Performance Reviews
 - Conduct periodically
 - Document good and bad performance accurately
 - Do not write discriminatory notes
 - Obtain employee's signature on review
- Keep reviews and ALL disciplinary actions in employee's personnel file

Personnel Files

- Original employment application
- Job description
- Performance reviews
- Salary history
- Credentials: license/certification
- Current W-4 and other employment forms
- Vacation and sick leave requests
- Notes pertaining to injuries
- Jury duty notices
- Written accounts of disciplinary conversations

Employee Discipline

- Key Point: Deal with issues as they occur
- Ohio is an at-will employment state
 - Employers may hire or fire employees for any reason, or no reason
 - Employers may not act in a discriminatory manner
- Progressive - Set out disciplinary steps in writing
 - Talk to employee about issue
 - Provide written warning about issue and potential consequences if no improvement
 - Discipline employee
 - Probation, suspension, termination

Employee Discipline

Protected Classes of Individuals

- Race
- Color
- Religion
- National origin
- Gender
- Age
- Family status
- Sexual orientation
- Disabilities
- Veteran status
- Genetic information

Age Discrimination

- 40 years or older
- Age Discrimination in Employment Act (ADEA)
- Discrimination claims could arise from termination, demotion or other adverse employment decision
- US Supreme Court
 - *Gross v. FBL Financial Services, Inc.* (June 2009)
 - Mixed-motive discrimination claims not authorized under ADEA (claims of partial permissible reasons and partial unlawful reasons for discipline)
 - Employees must now prove age was THE cause of adverse employment decision

Workplace Law Suits in Ohio

- Ohio suits accounted for 3.3% of national filings
- In 2014, there were 2,893 suits filed
 - 40% Retaliation
 - 36% Racial Discrimination
 - 32% Disability
 - 28% Gender
 - 5% National Origin

Source: US Equal Employment Opportunity Commission

Fraud Prevention

- Background checks and bonding insurance
- Tips:
 - Have cancelled checks mailed to your home – inform staff
 - Require vacations
 - Checks: personally sign, require documentation, no blank, don't write to acronyms
 - Periodic CPA review

Termination Checklist

- ✓ Consult with attorney
- ✓ Obtain resignation letter if possible
- ✓ Review security measures – locks
- ✓ Cancel voicemail and email accounts
- ✓ Cancel banking authorizations
- ✓ Prepare for possible inspections
 - ✓ OSHA/HIPAA
 - ✓ Board of Optometry
 - ✓ Medicaid/Medicare
- ✓ Key Point: Don't let unemployment rates influence your employment decisions

Employee Manual

Key Point: Create/review your manual now

- Simple and straightforward
- Have attorney review
- Include EOE statement
- Include employment at will statement
- Include all policies and benefits
- Obtain acknowledgement from employees of receipt and understanding
- Inform employees of revisions
- Review annually
- Follow and enforce

Key Points

1. Each job description should include the following phrase: “and other duties assigned by the supervising optometrist”
2. Create a Total Compensation Sheet
3. Outline ownership of patient records and responsibility for care in associate agreements
4. Deal with employment issues as they arise
5. Don't let unemployment rates influence your employment decisions
6. Create or review your employee manual now

Questions?

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