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## **How Do I Hemorrhage Thee... Let Me Count The Ways**

Part I of II

As many of us close our practices for the holidays (with much of that time being paid time off for staff) this is a particularly opportune time to discuss how to ensure our expenditures on payroll are as economically rational as possible.

If you are a typical health-care practice owner, you pay out approximately one-

third or your revenue (collections) toward staff compensation. Payroll is likely your single-biggest expense. And if you are like many doctors when they first contact us, your expenditures on payroll have some element of economic irrationality. Here is what we mean by that: significant amounts of your money are being paid out with no or inadequate business results. Increasingly over the last few years, we encounter practices that are actually hemorrhaging earnings through payroll. In a well-run, maximally profitable practice, the doctor has attracted and retained high-quality employees who are worth every penny they are paid. An economically irrational approach to compensation will result in the opposite result: the office will attract and retain low-performing staff who merely drift like dead wood. As a business owner myself who works hard to be a destination employer (MBC's superstar staff regularly tell us, for example, that we have spoiled them for any other law firm), I have distinct views on how to approach compensation to achieve the optimal business result. In my professional opinion, the goal is to pay as competitive an hourly rate as you possibly can (I like to pay well above market rates to attract and keep the very best people) and pay only when the employee is being productive. As human beings, we all generally respond to economic incentives and a wise business owner needs to consider that in approaching compensation policies. There is a long list of ways in which a practice can waste enormous sums of money through payroll. In this first of a two-part series, we will address five of them, and the legal techniques we suggest to stop the bleeding.

### **Time records policy**

We see a disturbing amount of time theft happening in the offices of dentists who first come to us from across the country. When we prepare contracts and policies (a Practice Protection Package™) for them to help clean up their employment law affairs, what we generally recommend among the more important policies that we include is a Time Records Policy. The gist of the policy is to impress upon staff that they must be scrupulously careful and scrupulously honest in recording and reporting their time worked. A misrepresentation about hours worked, it is important to note, should be taken as the serious offence that it is: it is time theft. Having a clear policy on this has two important effects: (1) Practically, it deters the behaviour. (2) Legally, it improves the support that we can reasonably expect from a court in the event that we need to discipline or terminate an employee for a breach of the policy.

### **No unauthorized over-time policy**

It is not uncommon for a disgruntled, former employee to make a claim to the Ministry of Labour for overtime pay that allegedly was not paid over many months (or years!). To protect against this, one of the standard terms in our Practice Protection Package™ stipulates that employees are not permitted to work overtime without express prior authorization. Similarly, we like to cap the

maximum amount of time prior to the first patient arrival, and after the last patient departure, (typically 15 minutes) for which the practice is willing to pay an employee. Many of our doctors report that, otherwise, an employee may come in far earlier, and stay far later, than she is reasonably required just because she “needs the money” despite the total lack of value to the practice.

### **Down time policy**

We see the issue of paying for down time come up most frequently where a young dentist has taken over a practice from an older dentist. Typically, the older dentist was in a very different financial position and had been paying staff for down time for years. The young dentist usually has little to no savings, an enormous amount of debt, and cannot afford to pay staff for down time. Irrespective of whether the doctor can afford it or not, on principle, in my opinion it is intrinsically harmful to the practice to pay for down time as there is then no incentive for the employees to fill the schedule. If they are paid when the schedule is not full anyway, why would they fill it? In the end, it is harmful to employees as well as they lose one of the most important elements of human happiness: the motivation to do satisfying work.

### **Office closing policy**

A business that is optimally run should have the right to open and close the office according to business needs. We generally recommend that we contractually reserve for our doctors the right to close the office and/or send staff home whenever required (because the dentist is attending a course, because of patient cancellations, etc.). While there are certain constraints legally on our ability to do this, there is still an enormous amount that can be achieved.

### **Lay off policy**

In the Great Recession, many doctors contacted us wishing to lay off some of their bloated and least productive staff. Those who already had well-drafted contracts in place were able to do so. This right is sometimes a life-saver to a business, as it permits the employer to send an employee home (in Ontario, for example, for up to 13 weeks) without notice or pay in lieu of notice. But it is important to understand that this right does not exist without a properly drafted contract. At common law (i.e. the law that prevails when your contracts with staff are unwritten) in Canada a lay off is a wrongful dismissal. (For a fuller discussion, and to see how dangerously misleading it can be to call your provincial Ministry of Labour, please see “The Law is an Ass” on the articles page of [mbclegal.ca](http://mbclegal.ca).)

In the next edition of our e-lert, we will finish this list of ways that payroll can hemorrhage your practice earnings, and the techniques that we suggest to

stop the bleeding.

If you have any questions or want to know more, please contact your MBC team today: 905-825-2268 or [mbc@mbclegal.ca](mailto:mbc@mbclegal.ca).

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