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

Part II of II

As many of us closed 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.

This is the second in a two-part series on the gigantic loss of income resulting

from a failure to manage payroll rationally. Since payroll is likely your single-biggest expense, it is worth spending effort to ensure that your expenditures are rationally connected to desirable business results, including net income. As the truism goes, “It’s not what you make, it’s what you keep!” A significant proportion of doctors who approach us to implement comprehensive contracts and policies in their offices (our trademarked Practice Protection Package) are motivated by this precise issue: instilling a rational discipline into their expenditures on payroll, and stopping the hemorrhaging of their earnings. Fortunately, there is an enormous amount that we can accomplish through proper policies and contractual terms to achieve economic rationality and increase net income for the doctor. Many of the doctors with whom we work have impressive business and management skills, such that I enjoy learning from them. Those doctors run their offices optimally, in my view, and are as profitable as possible. They attract and retain very high-quality employees who are worth the generous amounts paid to them, and their workplaces are enjoyable and satisfying for all staff. Unfortunately, we also see practices that are irrationally managed, where the staff are poor performers, and don’t care about the practice, and where the net income the doctor keeps at the end of the month is a paltry proportion of what she brings in. Three key traits shared by the most successful practices that we see are the following: 1) They pay a relatively high hourly rate to attract and retain the best staff; 2) They do not pay for time that the worker is not working (subject to statutory minimums like vacation pay); and 3) Successful owners understand that there are many things besides money that motivate and inspire staff (including receiving genuine appreciation from the doctor, a happy, healthy workplace, satisfying work, professional training, etc.) As business owners, we are well advised to reflect on what business decisions we can make to have a positive impact on incentivizing our human resources. Clearly, economic incentives will have the largest impact, but there will be others. In Part I, in the last edition of this e-let series, we discussed five of the ways that a practice can waste enormous sums of money through payroll. In this, Part II, of the two-part series, we will address five more, and the legal techniques that are advisable to stop the bleeding.

Sick days and disability insurance premiums

Providing paid sick days or disability insurance coverage for staff causes more legal and financial problems than it is worth. From an employment-law perspective, one of the problems with paid sick days is that staff are often given “incentives” not to use the sick days, and are rewarded accordingly. Such a policy will expose the owner to human rights complaints on the ground that a “disabled” employee is treated adversely relative to a consistently healthy employee. Disability insurance coverage is the most ill-advised type of sick

leave for a Canadian employer to provide to employees. The unfortunate reason for that is case law that effectively puts an employer in the shoes of the insurance company in the event that the employee becomes disabled during what would have been their “reasonable notice period”. Such a result could obviously have an absolutely catastrophic financial impact on your practice. Thirdly, we know from actuarial evidence that the more disability insurance a worker has, the longer it takes them to recover and get back to work. Again, as human beings, we all generally respond to economic incentives. So, from the perspective of rational economic expenditure, as owners, we are shooting ourselves in the foot if we spend money only to end up with a positively undesirable business result (increased absenteeism).

Separate vacation pay and vacation time

A very common mistake that we see doctors make is combining vacation pay and vacation time, which causes them to pay more than required for unproductive time. For example, we often see lower-quality “contracts” or offer letters to employees that state the employee will receive “two weeks’ paid vacation”. It is typically advisable and possible under most provincial legislation, to separate vacation pay and time. Particularly in the dental field, given that it is dominated by women of child-bearing age, this is a big difference. If you have an employee on a one-year parental leave, and you have allowed her “two weeks’ paid vacation”, at the end of her year off work, she is entitled to two weeks’ paid vacation time. If, however, your contracts separate vacation pay and time properly, as is generally possible under employment standards legislation across the country, she will be entitled to two weeks’ time off, but no additional pay (because 4 percent of her wages earned-zero in her year off-is zero).

Right to make changes without constructive dismissal

A significant amount of the time, we are called upon to help purchasers of practices with their employment-law issues and these cases fall into a very distinct pattern. Typically, the buyer is in a very different financial position than the seller was. The new owner typically has extensive debt and, on a rational business analysis, has a lot of overpaid staff on his hands. We usually hear things like: “the staff are paid far more than they are worth in the market; the staff demand that I keep paying them two additional weeks’ off at Christmas and I cannot afford it; the staff are paid for down time and no one cares to fill the schedule; I would like to extend the office hours but none of the staff will agree to work those hours, etc, etc.” Among the most valuable provisions in a properly drafted set of contracts and policies, you should ensure that you obtain the right to make management changes without triggering a constructive

dismissal lawsuit. This requires careful drafting so ensure that you work with a lawyer who practises exclusively in employment law.

Attendance and punctuality

If, as in the case of many dental offices, your employees are often late or unjustifiably absent, your office productivity will be lower than it ought to be. You should have a clear policy in your Workplace Policy Manual that takes maximum advantage of the legal opportunities to manage attendance and punctuality in a reasonable fashion.

Full time and attention

We often have clients one or more of whose employees work outside jobs, in addition to our clients' offices. Such doctors sometimes complain about staff falling asleep at the front desk. There is a fixed amount of productive work a particular human being can perform in a given week. If, as employers, we are paying an employee for full-time hours, it is reasonable to expect them not to work elsewhere without our prior permission. That should be contractually stipulated with your full-time staff.

Conclusion

Given the enormous cost of payroll in your overall expenses, ensure that you take maximum advantage of the legal opportunities to make your payroll expenditures fully rational and a sound business investment.

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

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