



When Casual Behavior Crosses the Professional Line

By TDIC Risk Management Staff

Dental offices typically have a small number of employees who work closely together. This can lead to a relaxed, family-like atmosphere, and it may seem natural for practice owners or staff to let their guard down and make off-the-cuff statements or jokes.

While a lighthearted office environment is a good thing, dental practice analysts and advisors emphasize the practice owner's role in setting the standard for appropriate and respectful conduct in the workplace. Dentists are employers with a "duty of care" to maintain an office free from harassment or discrimination, and this includes comments made by dentists themselves.

"The message is that practice owners must be careful about their casual statements and view the effects of their words as a potential liability," said Jaime Welcher, a senior risk management analyst with The Dentists Insurance Company. "When it comes to personal commentary, a little goes a long way."

Analysts say it's important for dentists to keep in mind that they are managers and not friends of employees. Good employee relations are formed through clear communication of office policy and fair application of policy, not by "buddy-buddy" behavior.

Marcela Truxal, a CDA practice advisor, said, "Dentists set the tone for the culture of the practice. I have worked with many clients who form close relationships with staff and they become more like part of the family instead of employees. In turn, the staff feels entitled and dentists have a hard time holding the team accountable or vice versa."

Dental analysts and advisors say they receive ongoing inquiries about situations that cross the line into problematic behavior. In one instance, a dentist became close to her RDA, which led the dentist to feel more comfortable in asking the RDA to perform duties outside of her scope of responsibilities, such as babysitting the dentist's children, watching the dog and getting the dentist's lunch.

Practice owners who allow an atmosphere that is too casual also risk letting inappropriate comments or behavior slip into professional situations.

Legal case studies show numerous examples of off-handed comments made jokingly in the workplace resurfacing later as evidence of harassment or discriminatory intent. Such jokes may not be sufficient to result in a verdict against an employer, but they can be enough to force a case to trial, resulting in costly legal fees and a damaged

reputation.

In 2005, a plaintiff's case in Utah proceeded to trial in a pregnancy discrimination case, based on evidence that her manager nicknamed her "Prego" and used the term repeatedly. The manager also allegedly suggested the employee take disability leave during pregnancy or quit. The court found this behavior "pervasive" and deemed that it could constitute a hostile, harassing environment.

Repetition of a phrase or idea is key in discrimination cases. In a high-profile case in California, a 54-year-old high-tech director sued for age discrimination after he was discharged. Much of the evidence consisted of remarks made by a 34-year-old executive who said the older employee was "not a cultural fit," was "obsolete" and that his "ideas were too old to matter." The California Supreme Court found these were not just "stray remarks" and upheld consideration of such comments along with other admissible evidence.

Courts do, however, reject a standard of "political correctness," as witnessed in the New Jersey case where the 3rd Circuit Court stated it would be "unfortunate if the courts forced the adoption of an employment culture that required everyone in the structure to be careful so that every remark made every day passes the employment equivalent of being politically correct lest it be used later against the employer in litigation." In this case, the plaintiff's main evidence was a higher-level employee referring to him as "the old man of the operation." The court found this remark too isolated for consideration as valid evidence.

It is unreasonable to expect that an occasional comment about age, gender or physical condition will not be made, but discretion, common sense and a clear policy on acceptable and unacceptable behavior can make a big difference in reducing liability.

The best action for practice owners is to include a policy in the employee manual and give examples of unprofessional and unacceptable behavior as well as examples of respectful behavior and professional conduct.

It is important to include a clear definition of harassment as well. The U.S. Equal Employment Opportunity Commission states that it is "unlawful to harass a person (employee) because of that person's sex." The commission also notes, "Harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's sex. For example, it is illegal to harass a woman by

making offensive comments about women in general.” The commission points out that harassment can happen to either a man or a woman, and the harasser can be the same sex. Clearly, comments about race, ethnic origin and religious beliefs are best left unsaid, even in jest.

With unacceptable actions clearly defined, everyone in the office will be less likely to cross the line.

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