



2021 EMPLOYMENT LAWS AND TRENDS FOR HEALTHCARE EMPLOYERS

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2021 EMPLOYMENT LAWS & TRENDS

- Federal Wage and Hour Guidance Impacting the Industry
- Expanding state regulation of physician noncompete agreements
- Paid leave laws: recent trends and legislation
- Diversity, Equity and Inclusion Initiatives
- Documenting Employee Performance Issues



WAGE & HOUR – HIGH RISK ISSUES

- Meal and Rest Periods
 - Interruptions
 - Automatic Deductions
- Failure to include non-discretionary bonuses or incentive pay in OT calculation
- Failure to pay for training time



WAGE & HOUR

- Training Time
- (a) Attendance is outside of the employee's regular working hours;
- (b) Attendance is in fact voluntary;
- (c) The course, lecture, or meeting is not directly related to the employee's job; and
- (d) The employee does not perform any productive work during such attendance.



WAGE & HOUR

- State law – sometimes more restrictive than federal law
- Different minimum wage requirements in some cities/states
- Vacation / paid time off
 - Forfeiture
 - Payout upon separation



PHYSICIAN NON-COMPETE AGREEMENTS

- Important tool v. barrier
- Patient access concerns & increased state regulation
 - Prohibited or restricted in several states:
 - California, Colorado, Connecticut, Delaware, Indiana, Florida, Massachusetts, New Mexico, Tennessee, Texas, Rhode Island



COLORADO EXAMPLE

- No injunctive relief
- Carve-out for those who treat rare disorders
- Case law regarding liquidated damages

PHYSICIAN NON-COMPETE AGREEMENTS

Take-aways for hospitals, medical practices
and physicians

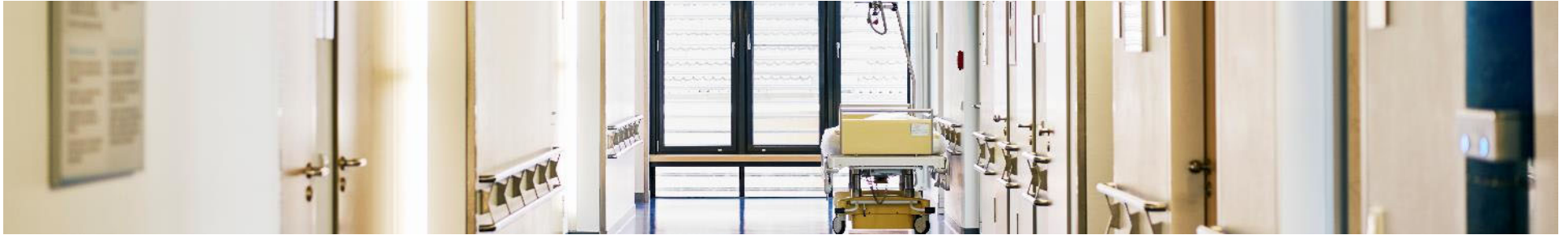


"You are so in violation of your non compete."



STATE LEAVE LAWS

- States (and cities) are enacting paid leave laws
- Don't assume your policy is compliant
- Example: per diem nurses – are they eligible for paid time off?



OTHER STATE LAWS

- Pay Equity (e.g., Colorado, California, Massachusetts)
- Strict requirements
- Is this a trend?



DIVERSITY, EQUITY & INCLUSION

- Why DEI matters
- Committing to DEI
 - Know your constituents
 - Bring everyone to the table
 - Get leadership buy-in
 - Action Plan
 - Measure success



DIVERSITY, EQUITY & INCLUSION

Putting DEI Into Practice Success Stories

- *Mercy Health West Michigan*
 - Evidence-based selection screening process
- *Johns Hopkins Hospital*
 - Commitment to hiring in untapped candidate pools



DIVERSITY, EQUITY & INCLUSION

Pitfalls to avoid:

- Focusing on one demographic
- Not casting a wide enough net
- DEI initiatives can backfire



DOCUMENTING EMPLOYEE PERFORMANCE ISSUES

- Why
 - Risk mitigation: wrongful discharge, discrimination, retaliation claims
- What
 - Accurate record of conversation
- When
 - Same day



DOCUMENTING EMPLOYEE PERFORMANCE ISSUES – THE DO'S

Make sure you:

- State the expectations
- Focus on the Facts
- Describe performance/behavior problems
- Include employee explanation
- Provide a specific plan



DOCUMENTING EMPLOYEE PERFORMANCE ISSUES – AND DON'TS

Don't:

- Diagnose a medical condition or issue that you believe may be contributing to poor performance
- Generalize the issues
- Include your mental impressions
- Overstate the facts

THANK YOU – ANY QUESTIONS?



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