

Special Section to Retina Today

Vol 1, No 3

BUSINESS MATTERS

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Retina Today



PROTECT YOUR ASSETS

INSIGHTS ON HIRING AND FIRING

FINANCIAL ADVICE FOR NEW ATTENDING

COMMON CAUSES OF CLAIM DENIALS AND HOW TO FIX THEM

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WELL-ROUNDED



After spending years in training, retina specialists dedicate countless hours each week in the clinic, in the OR, and with our noses in the literature to stay current. Each day, once we part from the working day (as best we can, anyway), there is so much more yet to be done. Some

of us have family obligations or beloved pets to tend to. Some of us even find small bits of time to devote to our guilty pleasures. These are all vital parts of our lives, but if we're not also spending some of our precious time on ensuring that our financial futures are set, then we are already behind the ball.

Financial planning is so important, and it encompasses many areas of business. Lucky for you, *Business Matters* offers valuable business tips on an array of topics from trusted sources. Take, for example, this issue's feature article by David B. Mandell, JD, MBA, which offers guidance on the fundamental facts of asset protection. Mr. Mandell identifies the most common misconception physicians have on the topic and discusses the asset protection rating system on which relies.

But wait—there's more! Also in this issue you'll find helpful advice on how to handle the hiring and firing of employees, personal and professional considerations for those adjusting to earning an attending's salary, and examples of the causes and cures for claim denials submitted by American Academy of Ophthalmology members. Don't miss our next issue, which will come out with the November/December issue of *Retina Today* and will include a feature story on building a practice brand.

GEORGE A. WILLIAMS, MD

SECTION EDITOR

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CODING ADVISOR

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CURING CLAIM DENIALS



AAO members share their experiences with claim denials and how they were remedied.

BY SUE VICCHRILLI, COT, OCS, OCSR

Fourteen days. That's how long most insurance providers take to pay a clean claim—defined as a claim that has been submitted with the correct Current Procedural Terminology code, linked to the payable ICD-10 code and, when applicable, the correct modifier and place of service.

When a claim is denied, payment time is extended while the cause of the denial is researched. Then, once the claim is corrected by either phone review or resubmission, there is another 14-day wait for payment. The five examples below are true cases from American Academy of Ophthalmology members who share their experiences in the hope that other practices will not be subject to the same costly denials.

CASE NO. 1: CAUSE

First Coast Service Options, the Medicare Administrative Contractor (MAC) for Florida, Puerto Rico, and the US Virgin Islands, is denying retina OCTs on new patients referred to us. The denial states, "Payment adjusted because the payer deems the information submitted does not support this many/frequency of services." The referring physician has apparently already performed his or her own OCT.



CASE NO. 1: CURE

Obtain an Advance Beneficiary Notice from the patient and append modifier -GA to 92134. Why? The First Coast Local Coverage Determination (LCD) for scanning computerized ophthalmic diagnostic imaging (SCODI—better known as OCT in clinical language), effective January 25, 2018, contains the following language regarding frequency: "No more than one (1) exam per month will be considered medically

reasonable and necessary to manage the patient with retinal conditions undergoing active treatment. These conditions include wet AMD, choroidal neovascularization, macular edema, diabetic retinopathy (proliferative and nonproliferative), branch retinal vein occlusion, central retinal vein occlusion, and cystoid macular edema. With the development of treat and extend protocols for patients with wet AMD treated with antiangiogenic drugs, it



OTHER CAUSES FOR CLAIM DENIAL

Below are some other common causes for physician claims to be denied by payers.

- Patient's insurance changed and the practice was not notified, nor did the practice confirm insurance at the last appointment
- No preauthorization was obtained as required
- Injection of anti-VEGF drug was sooner than 28 days
- Modifier was wrong or missing
- Diagnosis was incorrectly linked to CPT codes
- Tests were deemed by commercial payer to be "experimental" (ie, not a covered benefit)
- Surgery was denied as "not medically necessary," indicating that the practice selected a diagnosis that the payer hasn't assigned to the specific CPT code used

is expected that SCODI (unilateral or bilateral) will be used for therapeutic decision making and utilized at a maximum of monthly with subsequent less frequency based on the patient treatment protocol and patient response as documented in the medical record."

The remittance advice will notify the patient and practice that either the test is covered or the patient is responsible for payment.

To read the entire LCD, visit aao.org/lcds under First Coast.

CASE NO. 2: CAUSE

A bilateral injection for bevacizumab (Avastin, Genentech) was submitted as follows:

- 67028-RT and J9035 for H35.3213 Exudative age-related macular degeneration with inactive scar, right eye
- 67028-LT and J9035 for H35.3221 Exudative age-related macular degeneration with inactive choroidal neovascularization, left eye

The denial stated, "Payment adjusted because the payer deems the information submitted does not support this many/frequency of services." The right eye was paid. The left eye was denied.

The practitioner had seen the patient several weeks ago, a long time past the 28 days minimum frequency.

CASE NO. 2: CURE

The first rule of coding is: know the payer. For Medicare patients all bilateral surgeries performed after April 1, 2013, must be submitted as a single line item with modifier -50. Do not reduce your fee. Medicare will correctly pay at 150% of the allowable. Commercial payers that do not adhere to Medicare rules will require two lines with -RT and -LT. Correct payment for all bilateral surgeries is 150% of the allowable.

CASE NO. 3: CAUSE

It seems that each payer requires a different Healthcare Common Procedure Coding System (HCPCS) J code for bevacizumab. A problem occurs when a patient has coverage from two insurance carriers, and one payer requires one J code and the second requires a different code. As a result, the second or supplemental insurance denies payment. With phone reviews and appeals, the process costs us more than the payment is worth. Can't there be a single HCPCS J code?

CASE NO. 3: CURE

There isn't an actual cure for this one. Because ophthalmic use of bevacizumab is off label, it can't have an assigned J code. Practices must continue to contact each payer for claims

that automatically cross over.

Options are J9035, J3490, J3590, J7999, and/or C9257. Submit 1 unit for office-based procedures, 5 units for facility-based procedures.

For a list of all payer HCPCS options, look under Coding for Injectable Drugs at aao.org/coding.

CASE NO. 4: CAUSE

A few commercial payers are still denying appropriate ICD-10 codes for vitrectomy surgeries, stating that they follow the National Coverage Determination policy. This policy has been corrected, and yet the denials keep happening.

CASE NO. 4: CURE

CMS has asked to be notified if practices continue to see denials from commercial or Medicare Advantage payers. Notify your MAC representative or contact Centers for Medicare & Medicaid Services at 1-800-Medicare if this occurs.

For background information on the current status, visit aao.org/vitrectomy.

CASE NO. 5: CAUSE

A patient underwent panretinal photocoagulation in the right eye. The claim was paid correctly. The left eye was treated outside the 10-day global period. Payment for the left eye was denied. The patient has commercial insurance.

CASE NO. 5: CURE

Although Medicare changed its global period from 90 to 10 days, this commercial payer has not. It remains a 90-day global period. Submit with modifier -79 and -LT indicating that the second eye surgery is unrelated to the first. Payment should be 100% of the allowable. A new global period begins. ■

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Shielding Your Wealth From Liability



Not all asset protection is created equal.

By David B. Mandell, JD, MBA

As an attorney and consultant to physicians for more than 2 decades, I have advised many doctors on asset protection, the art of shielding assets from unforeseen future liability. In this article, I hope to dispel some incorrect assumptions you may have and inform you of one of the fundamental facts of asset protection—that not all protective tactics and tools are equally effective. In fact, various tools offer varying levels of protection, each shielding assets to different degrees.

ASSET PROTECTION: A MATTER OF DEGREE

The most common misconception physicians have regarding asset protection is that an asset is either protected or not protected. Protection is not a binary system. Rather, some assets may be protected more or less than others.

An asset protection professional approaches a client with unprotected

assets much in the same way that a physician approaches a patient seeking treatment for an ailment. The asset protection professional, like the physician, will first try to get the client to avoid bad habits. For a patient, bad habits may include smoking, drinking alcohol, or an unhealthy diet. For someone seeking asset protection, bad habits may include owning

property in one's own name, owning property jointly with a spouse, or operating any medical practice with business assets exposed.

Beyond curbing bad habits, asset protection professionals will try to structure clients' assets so they have the best protection possible under the circumstances. Circumstances to consider include how much the

AT A GLANCE

- ▶ All physicians should take steps to protect their personal and professional assets from potential liabilities.
- ▶ Physicians may need different levels of asset protection at different points in their careers.
- ▶ While state laws vary widely, state-exempt assets enjoy the highest levels of protection.

FLPs AND LLCs PROVIDE GOOD ASSET PROTECTION AGAINST LAWSUITS, ALLOW THE CLIENT TO MAINTAIN CONTROL, AND MAY PROVIDE INCOME AND ESTATE TAX BENEFITS IN CERTAIN SITUATIONS.

physician wants to spend; how much an asset is worth; and the physician's marital status, state of residence, and interest in estate planning. During this process, the asset protection professional is aware that each asset protection tool—similar to pharmacologic therapy options—has certain efficacy, costs, and benefits.

I use an asset protection rating system with a range from -5 (very vulnerable) to +5 (very protected). The goal of asset protection planning is not to move all of a client's assets to a +5 position; that is not possible, even in states with the most protective laws. Still, too many physicians, including ophthalmologists, have too many of their personal or practice assets in negative positions on my scale. At a minimum, nearly all physicians ought to move the bulk of their personal and practice assets to positive positions.

HIGHEST LEVEL OF PROTECTION: EXEMPT ASSETS

When we meet with a new client, my team always begins by making sure he or she leverages the best +5 tools available: state and federally exempt assets. We recommend exempt assets first because they enjoy the highest level of protection and they involve no fees (eg, legal fees, state fees, accounting fees, gifting programs). This means that a physician can own an exempt asset

outright in his or her name, have access to any value, and still have it 100% protected from the typical lawsuit against him or her. Each state outlines assets that are exempt from creditor claims, allowing the asset to achieve +5 status. Many states provide exemptions for qualified retirement plans and individual retirement accounts, cash within life insurance policies, annuities, and some value of equity in primary homes. Consult an asset protection expert to learn about the exemptions in your state. If protection is important to you, be sure to maximize these +5 tools.

BRIDGING THE GAP: LEGAL TOOLS

Legal tools such as limited liability companies (LLCs), family limited partnerships (FLPs), and a variety of trusts are often used to bridge the gap between negative positions and +5 exempt assets (or tenancy by the entirety in limited circumstances, as described in the sidebar above).

FLPs and LLCs provide good asset protection against lawsuits, allow the client to maintain control, and may provide income and estate tax benefits in certain situations. These tools generally keep creditors outside the FLP/LLC structure by restricting a successful claimant to a charging

IS JOINT OWNERSHIP AN OPTION? IT DEPENDS ON WHERE YOU LIVE

Joint ownership forms may offer top protection for some assets against some creditors in some states. In about 20 states, there exists an ownership form that can provide +5-level protection in certain circumstances. Tenancy by the entirety (TBE), a form of joint ownership available to married couples in these states, may provide the top level of protection for claims against only one spouse. In some states, this protection applies only to real estate owned by TBE; in other states, both real property and personal property, such as investment accounts, may be shielded through TBE.

However, inherent in TBE are several risks, including the fact that TBE provides no protection against joint risks, such as lawsuits that arise from jointly owned real estate or potentially from auto accidents. Also, all protections are lost in the event of divorce. For this reason, even in states where TBE may be protective, we often recommend that it be combined with other legal tools such as those described in this article.

order, or the right to distributions paid out of the FLP/LLC, not the assets inside the entity. These protections typically allow the physician to create enough of a hurdle against creditors to negotiate favorable settlements. For these reasons, we often call FLPs and LLCs the “building blocks” of a basic asset protection plan.

There are also many types of trusts that provide significant protection for clients, including life insurance trusts, charitable remainder trusts, grantor retained annuity trusts, and more. About a dozen states have passed statutes allowing domestic asset protection trusts (also known

as DAPTs), which can be ideal trust protection tools for physicians in those states.

The strength of asset protection benefits depends on expert drafting of the documentation, routine maintenance, respect for formalities, and proper ownership arrangements. If all of these are in place, then the physician can enjoy solid asset protection at a relatively low cost.

SEEK GUIDANCE

Asset protection planning, like any sophisticated multidisciplinary effort, is one in which each tactic and strategy has relative pros and cons. When you undertake this task, be sure you

are guided by an advisor who will use all available tools to give you the highest levels of protection with reasonable costs. ■

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Mr. Mandell is an attorney, consultant at the OJM Group, and author of more than a dozen books for doctors. To receive a free print copy or an e-book download of his latest works, For Doctors Only and Wealth Management Made Simple, visit ojmbookstore.com and enter promotion code RETINA01.



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TEN FINANCIAL PEARLS FOR NEW ATTENDINGS



Adjusting to your new financial situation requires discipline.

BY JAYANTH SRIDHAR, MD; AND CHIRAG SHAH, MD, MPH

Being a new attending comes with opportunities and challenges, many of which have little to do with the finer details of phase 3 clinical trial results or the mechanics of an efficient vitrectomy. As a new attending, you will enjoy an increase in salary. With this financial boon comes the responsibility to plan for the future. Here, we offer 10 financial pearls, some personal and some professional, for newly minted retina attendings.

PERSONAL FINANCES

Pearl No. 1: Determine Your Family Philosophy Regarding Financial Goals

Given your pending increase in salary, it is important to discuss and agree upon your family's financial philosophy with your spouse or partner. Do you want to accumulate wealth and achieve financial independence? Do you want to have a rich lifestyle and live to the limit of your means? When do you want to retire, and how well do you want to live in retirement? Do you want to save for your legacy, ensuring that your kids and grandkids have a nest egg for education and other expenses? Or does your legacy perhaps involve a charity? Ultimately, your life will follow a path with all of these goals in a balance dictated by your family's philosophy. There is no universally right balance, only a balance that is right for you and your family.

Pearl No. 2: Get It Out of Your System

After years of deferred financial grat-

ification in medical school, residency, and fellowship, it can be refreshing to reward yourself with a nice one-time splurge (within reason). This can be an experience such as a nice summer trip before starting your job or a tangible item such as a new car. Allowing yourself to dream big this one time can help you get the luxury bug out of your system before you again begin living well below your means.

Pearl No. 3: Live Like a Trainee

After you are mentally refreshed by your one big purchase, it is time to buckle down again and live like a resident or fellow. That means managing your living expenses, sticking to a budget, and trying to live well below the means afforded you by your new attending salary. Besides the benefit of establishing good financial habits for the future, living like a trainee produces a big revenue surplus. Remember,

medicine is changing. Ophthalmology is seeing decreasing reimbursements and trends toward private equity acquisitions. Even a few years of living like a fellow will go a long way toward accumulating wealth and decreasing financial stress in the future.

Pearl No. 4: Know Your Personal Financial Plan

Take a hard look at your finances and decide your financial priorities. Do you still have student loans or credit card debt to pay off? Have you set up an emergency fund? What sort of retirement plan options are most efficient to pursue? Are you saving for a major real estate purchase in upcoming years?

Your individual circumstances will dictate the exact details. In general, one should focus on paying off all debt, planning for retirement, and saving. It is a good idea to enroll in an

AT A GLANCE

- ▶ Understanding your personal finance goals and creating a plan to reach them are important steps for new attendings.
- ▶ Fluency in coding for services may make you more efficient and allow you more time for patient care.
- ▶ Some elements of financial planning are easier than others. Knowing your state's income tax burden or learning what type of retirement plan to invest in may be time-consuming, but the payoff is worth the effort.

TABLE 1. COMMON CURRENT PROCEDURAL TERMINOLOGY CODES FOR RETINA SURGEONS

| CPT Code | Definition | Example Indication |
|----------|--|---|
| 67036 | Pars plana vitrectomy | Vitreous hemorrhage (no laser performed) |
| 67039 | Pars plana vitrectomy with focal endolaser | Vitreous hemorrhage due to retinal tear (laser performed) |
| 67040 | Pars plana vitrectomy with panretinal endolaser | Vitreous hemorrhage due to proliferative diabetic retinopathy (laser performed) |
| 67041 | Pars plana vitrectomy with removal of preretinal membrane | Epiretinal membrane |
| 67042 | Pars plana vitrectomy with internal limiting membrane peeling, including intraocular tamponade | Macular hole |
| 67107 | Scleral buckle for retinal detachment | Retinal detachment |
| 67108 | Vitrectomy (with or without scleral buckle) for retinal detachment | Retinal detachment |
| 67113 | Vitrectomy with complex repair of retinal detachment (eg, membrane peeling) | Retinal detachment with proliferative vitreoretinopathy |
| 66850 | Removal of lens material with phacofragmentation | Retained nuclear lens material |

employer retirement plan such as a 401(k) plan (especially one that allows you to obtain free revenue via a company match) or to build tax-efficient savings in the form of an individual retirement account (IRA). A 529 plan allows account holders to save for their children's higher education in a tax-efficient manner, taking some of the burden of future education costs off you, your spouse, or your children.

After long-term savings have been addressed, one should start saving in the form of an individual taxable investment account. Consider keeping it simple by investing in a total stock market index fund. Also consider dollar cost averaging (investing a small amount on a regular basis rather than a lump sum once a year) to maximize your long-term returns.

Warren Buffet once said, "Do not save what is left after spending, but spend what is left after saving." Pay yourself first by investing, and then live off of what you have budgeted for discretionary spending. Again, living below your means the first few years of your attending career can give you the financial flexibility to readily tackle your long-term goals one by one.

The website White Coat Investor (whitecoatinvestor.com) is a free resource of articles and podcasts addressing the subject of physician investments.

Pearl No. 5: Enough Is Absolute, Not Relative

Your partner, former co-fellow, or college roommate may make more money than you, but remember the concept of *enough*. If you have as much as is necessary, you have enough. Do not compare your income to the income of others. This will only bring you stress and unhappiness.

Pearl No. 6: Know Your Tax Burden

Your attending salary is likely the first time you've earned anything substantial. With great power comes great responsibility—that is, responsibility to pay income taxes.

Do not forget to account for your tax bracket when creating your budget. If you moved to a different state, do not get caught off-guard by your new state's income tax structure. Also, remember that your first calendar year in practice will usually carry a lower tax burden than subsequent years

because the first 6 to 7 months were spent in fellowship on your trainee salary. Depending on your exact figures, this may allow you to use more creativity, such as investing in a Roth IRA instead of a traditional IRA. In 2018, the income limit for contributing to a Roth IRA starts phasing out at \$120,000, and one becomes ineligible with income of more than \$135,000.

PRACTICE FINANCES

Pearl No. 7: Understand Your Practice's Finances

Just as you would not walk into the OR without knowing about your patient's previous eye surgeries, you should not start your job without understanding the basics of your practice's finances. Typically, your initial take-home pay as an associate is determined by a base salary that may be supplemented by an incentive bonus that is a function of some calculation of generated revenue versus overhead expenses. Do not be afraid to ask questions of senior doctors and practice managers to understand how your individual calculation will work.

Whether you operate at an ambulatory surgery center or a hospital, you

TABLE 2. COMMONLY USED CODING MODIFIERS FOR RETINA SURGEONS

| Modifier | Definition | Example Application |
|----------|--|--|
| 24 | Added to an evaluation and management service (not procedure) to indicate unrelated service in postoperative period | Examination for left eye flashes and floaters within 90 days of retinal detachment repair of right eye |
| 25 | Significant, separately identifiable evaluation and management service by the same physician on the same day as a procedure (or other service) | Examination for right eye flashes and floaters on same day as intravitreal injection for left eye wet age-related macular degeneration |
| 57 | An evaluation and management service (not procedure) on the day of or the day before a major surgical procedure when the service results in the decision to go to surgery | Examination for flashes and floaters reveals a retinal detachment, which is surgically repaired the next day |
| 58 | Staged or related procedure or service by the same physician during the postoperative period. The procedure is 100% reimbursed, and the global period does not reset. | Vitrectomy for retinal detachment of the right eye (67108) within 90 days of failed pneumatic retinopexy (67110) of right eye |
| 78 | Unplanned return to the operating room by the same physician following initial procedure for a related procedure during the postoperative period. The reimbursement is reduced by 20%. The global period does not reset. | Retinal detachment repair (67108) for recurrent retinal detachment of right eye within 90 days of retinal detachment repair (67108) of right eye |
| 79 | Unrelated procedure or service by the same physician during the postoperative period | Retinal detachment repair (67108) for retinal detachment of the left eye within 90 days of retinal detachment repair (67108) of the right eye |

should understand and know the costs of the equipment you prefer and plan to use. Your disposables and reusables will include vitrectomy packs and instruments such as forceps, soft-tipped cannulas, and endolaser probes. Fellowship can insulate you from the real-world price tags of modern retinal surgery. When you learn the true costs of your equipment, you may modify your surgical preferences. You may find equivalent but more cost-efficient instruments and maneuvers that allow you to complete certain surgeries. Being financially responsible within your practice will save you from uncomfortable conversations with your partners and practice managers at the end of your first fiscal year.

Pearl No. 8: Know Basic In-Office Coding

Before your first day in the clinic, familiarize yourself with the world of coding. Online coding articles, such as those published in *Retina Today* or on the American Academy of Ophthalmology website, are a good place to start. Talk to the senior doctors at your new practice to get a sense of how coding works in the context of your new electronic medi-

cal record system. In-office coding with ICD-10 can be complicated, and knowing the basics will simplify your clinic day and allow you to focus more on building a good reputation via excellent patient care.

Pearl No. 9: Know Your CPT Codes

Some of the most common Current Procedural Terminology codes for retina surgeons and example indications are listed in Table 1. Consider keeping two lists saved on your mobile device: one with commonly used codes for quick reference and one with a comprehensive overview for unusual cases. Doing so will save your mental energy on OR days for patient care.

Pearl No. 10: Know Your Modifiers

The most commonly used modifiers and example situations are listed in Table 2. Modifiers allow you to receive appropriate payment for procedures done in the context of another overarching situation, such as during the postoperative period of a major procedure. Using modifiers appropriately will prevent payment rejections and the headaches generated by the ensuing paperwork.

GO FORTH AND PROSPER

Being a newly minted retina attending is exceptionally rewarding, both professionally and financially. We hope that these simple pearls will help the next generation of retina surgeons achieve success so they can focus on what matters most: patient care. ■

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TIPS FOR HIRING AND FIRING EMPLOYEES



Be smart, don't make rash decisions, and be sure to follow state regulations.

BY ROHIT ROSS LAKHANPAL, MD, FACS; AND KLEBER GEOVANNY CABRERA, BS

Hiring and firing employees is an unavoidable and legally delicate aspect of running a practice. So delicate, in fact, that most large-scale companies have human resources departments and legal counsel dedicated solely to dealing with the many intricacies and sensitivities of these two processes. Dedicated departments, however, are a luxury that most small medical practices cannot afford.

To help you avoid some of the major legal errors that can be made during both the hiring and firing processes, we asked General Counsel PC, Attorneys at Law, a law firm in McLean, Virginia, for permission to quote from their advice.

HIRING EMPLOYEES

According to General Counsel, "The interview can be one of the most dangerous minefields an employer faces."¹ Following a few rules of thumb and checking your state's regulations can help to avoid future problems.

Interviews

It may seem like common sense not to ask an applicant about his or her sexual orientation or disability status during an interview. However, it can be easy to slip into a casual conversation that crosses legal boundaries and gives any candidate not chosen for a position grounds for a discrimination claim later on.

General Counsel specifies the following guidelines for hiring employees:

- Do not discriminate based on race, color, gender, religion,

disability status, etc.

- Respect the applicant's right to privacy regarding marital situation, economic background, and personal life
- Don't imply things you can't deliver, such as job security or benefits
- Observe all laws relating to minimum wage and hiring young or immigrant workers
- Follow Internal Revenue Service guidelines for hiring independent contractors
- Follow all federal and state requirements for new hires.

Background Checks

According to General Counsel, "Background checks are another large landmine that employers must treat with special care." Special care is needed in this area because laws vary from state to state.

In some states, extensive background checks are required for certain types of jobs, such as child care; in others, preemployment background checks are banned in all forms. It is important that you pay special attention to your state's laws regarding background checks.

General Counsel cautions that,



AT A GLANCE

- ▶ Hiring and firing employees can be legally treacherous for employers.
- ▶ Avoid asking personal questions during the hiring process, as this may later be used as grounds for a discrimination suit if the candidate is not selected.
- ▶ Firing employees is delicate. Taking the appropriate amount of time and preparing for the termination will help the process go as smoothly as possible.

under the Fair Credit Reporting Act, before engaging an outside agency to conduct a background check and prepare a report on a potential employee, the employer must obtain the applicant's written consent. The employer must also provide a copy of the report's findings to the applicant and allow him or her to challenge the findings before taking any adverse action.

Adhering to the guidelines described above will help you avoid making legal mistakes during the hiring process that may end up costing you a great deal in the end.

FIRING EMPLOYEES

In much the same way that the hiring process can be a quagmire to a practice, the firing process is rife with hazards. As uncomfortable and undesirable for all parties as it may be, there will inevitably come a time when you need to fire an employee. It's better to acquire a baseline understanding of the firing process now than to be scrambling and unprepared when the time does come.

Cool Off

First things first: Take a chill pill. Firing an employee when you are angry may be a decision you regret. Make sure that you have taken an appropriate amount of time to evaluate your decision before executing it.

It is also good practice to document

the reasons for termination. The employee being fired should have a documented record that outlines the grounds for termination. If this history does not exist, you may need to take some more time to cool off before taking action—and to start documenting his or her unsatisfactory behavior.

Limit the Likelihood of Litigation

Offering a severance package is a good way to hedge against resentment on the part of the employee. However, General Counsel points out, careful consideration is needed regarding severance packages. The firm states that any severance agreement contingent upon the employee releasing claims against the employer should be drafted by an attorney. An improperly drafted release may have no legal force.

General Counsel also advises employers to have an observer present during the termination meeting, to document what is said; to draft a termination letter so that there is ample time to think about what to say and how to say it; and to be respectful during the termination. If the termination meeting is not cordial, the likelihood of legal action increases.

WRAPPING UP

A variety of potential legal problems can be encountered in the hiring and firing of employees. Being informed

about and operating within the confines of the laws of your state will help guide you and your practice toward appropriate decision-making and toward taking appropriate actions during these processes. If you are not certain about how to proceed during either the hiring or firing processes, retaining the services of an attorney may be worth the money. ■

1. Guidelines for Hiring or Firing Employees. General Counsel PC, Attorneys at Law website. generalcounselaw.com/practice-areas/labor-and-employment-law/cornerstone-law/employment-guidelines/. Accessed July 20, 2018.

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