

## **EMPLOYMENT LAW**

With all the new information concerning HIPAA, which is scheduled to be fully implemented by April of 2005, you need to be aware of the confidentiality laws that govern your practice. One aspect of confidentiality concerns employment law. There are federal and state guidelines that address employment and discrimination laws.

The common law governs the relationship between employer and employees in terms of tort and contract duties. These rules are a part of agency law and the relationship between Principle (employer) and Agent (employee). In some instances, but not all, this law has been replaced by statutory enactments, principally on the Federal level. The balance and working relationship between employer and employee is greatly affected by government regulations. The terms of employment between management and the employee is regulated by federal statute designed to promote employer management and welfare of the employee. Federal law also controls and prohibits discrimination in employment based upon race, sex, religion, age, handicap or national origin. In addition, Congress has also mandated that employers provide their employees a safe and healthy environment to work in. All states have adopted Worker's Compensation Acts that provide compensation to employees that have been injured during the course of their duties for the employer.

As I mentioned above, a relationship that is closely related to agency is the employer-employee and principle-independent contractor. In the employer-employee relationship, also called the (master-servant relationship), the employer has the right to control the physical conduct of the employee. A person who engages an independent contractor to do a specific job does not have the right to control the conduct of the independent contractor in the performance of his or her contract. The contract time to complete the job depends upon the employer's time frame to complete the desired task(s), or job. Keep in mind that the employer may still be held liable for the torts committed by an employee within the scope of his or her employment. In contrast an employer ordinarily is not liable for torts committed by an independent contractor, but there are instances when the employer can be held liable for the acts of the independent contractor. Know your laws governing hiring a person as an independent contractor.

Labor law is not really applicable to your practice of Chiropractic in a practice setting. We will concentrate on employment and discrimination law. There are a number of Federal Statutes that prohibit discrimination in employment based upon race, sex, religion, national origin, age and handicap. The main framework of Federal employment discrimination law is Title VII of the 1964 Civil Rights Act, but also the Equal Pay Act, Discrimination in Employment Act of 1973, the Rehabilitation Act of 1973, and many Executive Orders. In all cases each state has enacted laws prohibiting the same discriminations as Federal Statutes.

### **Equal Pay Act:**

This act prohibits an employer from discriminating between employees on the basis of sex by paying unequal wages for the same work. The act also forbids the employer from paying wages at a rate less than the rate at which he pays for equal work at the same establishment. Once the employee has demonstrated that the employer pays unequal wages for equal work to members of the opposite sex, the burden of proof shifts to the employer to prove that the pay difference is based upon the following:

1. Seniority system
2. Merit system
3. A system that measures earnings by quantity or quality of production
4. Or any factor except sex.

Remedies may include recovery of back pay and enjoining the employer from further unlawful conduct and or sizeable fines.

### **Civil Rights Act of 1964:**

**Title VII** of the Civil Rights Act prohibits discrimination on the basis of race, color, sex, religion, or national origin in hiring, firing, compensating, promoting, training or employees. Each of the following could constitute a violation prohibited by the Act:

1. Employer utilizing a proscribed criteria in making an employment decision.  
Prima Facie evidence would show, if the employee was within a protected class, applied for an open position and was qualified for the position, was denied the job and the employee continued to try to fill the position. Once these criteria's are established, the burden of proof shifts to the employer to justify a non-discriminatory reason for the person's rejection for the job.
2. An employer engages in conduct which appears to be neutral or non-discriminatory, but continues to continue past discriminatory practices.
3. The employer adopts rules, which are adverse to protected classes, which are not justified as being necessary to the practice business.

The enforcement agency is the Equal Employment Opportunity Commission (EEOC). It has the right to file legal actions, resolve action through mediation, or other means prior to filing suit. Investigate all charges of discrimination and issue guidelines and regulations concerning the enforcement policy of discrimination law.

The Act provides three defenses: A bona fide seniority or merit system, an occupational qualification or a professionally developed ability test. Violations of this act include: enjoining the employer from engaging in unlawful conduct, or behavior. Affirmative action and reinstatement of employees and back wages from a date not more than two years prior to the filing of the charge with the EEOC.

### **Age Discrimination in Employment Act of 1976:**

This Act prohibits discrimination in hiring, firing, salaries, on the basis of age. Under Title VII it address all these areas and ages, but it is especially benefits individuals between the ages of 40-70 years. The language in this act is substantive for individuals between 40-70 years of age. The defenses and remedies are the same as the Civil Rights Act of 1964.

### **Employee Safety:**

In 1970 Congress enacted the Occupational Safety and Health Act. This Act ensured that every worker have a safe and healthful working environment. This Act established that OSHA develop standard, conduct inspections, monitor compliance and institute and enforce actions against non-compliance.

The Act makes each employer to provide a work environment that is free from recognized hazards that can cause or likely to cause death or serious physical harm to the employees. In addition, employers are required to comply with specific safety risks outlined by OSHA in their rules and regulations.

The Act also prohibits any employer from discharging or discriminating against an employee who exercises his rights under this Act. The enforcement of this Act involves inspections and citations for the following:

1. Breach of general duty obligations
2. Breach of specific safety and health standards
3. Failure to keep proper records, make reports or post notices required under this Act

When a violation is discovered, a written citation, proposed penalty, and corrective date are given to the employer. Citations may be contested and heard by an administrative judge at a hearing. The Occupational Safety and Health Review Commission can grant a review of an administrative law judge's decision. If not, than the decision of the judge becomes final. The affected party may appeal the decision to the US Circuit Court of Appeals.

Penalties for violations are both civil and criminal and may be as high as \$1000.00 per violation per day, while criminal penalty be imposed as well for unlawful violations. OSHA may shut down a business for violations that create dangers of death or serious injury.

### **Worker's Compensation:**

Most actions by injured employees against an employer are due to failure of the employer to use reasonable care under the circumstances for the safety of the employee. In such actions the employer has several well-established defenses available to him. They include defenses of the fellow servant rule. This rule does not make an employer liable for

injuries sustained by an employee caused by the negligence of a fellow employee. If an employer establishes that the negligence of an employee contributed to the injury he sustained in the course of his employment, in many jurisdictions the employee cannot recover damages from the employer. Voluntary assumption of risk is the third defense. An employer in most jurisdictions is not liable to the employee for harm or injury caused by unsafe conditions of the premises **if** the employee, with knowledge of the facts and understanding the risks involved, voluntarily enters into or continues in the employment of the employer.

Keep in mind that all states have enacted Worker's Compensation Acts. These statutes create commissions or boards to determine whether an injured worker is entitled to receive compensation. Defenses above are not available in most jurisdictions to employers in proceeding under these statutes. The only requirement is that the employee be injured in the course of his employment.

### **Fair Labor and Standards Act:**

This act regulates the employment of child labor outside of agriculture. This act prohibits the employment of anyone less than 14 years of age in non-farm work. Fourteen and Fifteen years old may be employed for a limited number of hours outside of school hours, under specific conditions of non-hazardous occupations. Sixteen and seventeen year olds may work any non-hazardous jobs. Eighteen and older person may work in any job. This Act imposes wage and hour requirements upon covered employers. This act provides for a minimum hourly wage and overtime pay.

Keep in mind HIPAA laws are involved in confidentiality and proper record keeping and address many of the areas discussed in this article.