

OUTSIDE COUNSEL

A Legal Update for Animal Care Providers.

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DONAHUE, TUCKER & CIANDELLA

Employment Contracts

The use of employment contracts for key employees in your practice can provide important benefits to your business. With the use of an employment contract, the employer can set the employee's responsibilities, benefits, grounds for termination, duration of employment, limit the employee's ability to compete with your practice, protect client lists as well as set up a method for resolving disputes with the employee.



The use of an employment contract can protect you from the unexpected and sudden departure of an employee by requiring the employee to give advance

notice of leaving, allowing your practice to find and train a replacement. Employment contracts can also be used to protect confidential information and trade secrets as well as restrict the employee's future competition with your practice. Employment contracts also provide an employer with greater control over the employee by setting standards of performance and grounds for termination.

Employment contracts are not for every practice. Disadvantages include binding your practice to a set term of employment for the employee as well as restricting your ability to make unilateral decisions. Employment contracts, however, are worth considering for key employees in your practice.



Professional Limited Liability Companies

What form is your business? Sole proprietorship, partnership, professional association, professional corporation? There are many different forms to choose from in

operating a veterinary practice. The form you choose will have consequences affecting taxes, operations, overhead expenses and liability issues. Existing veterinary practices and start-up practices should consider the relatively new business form of a Professional Limited Liability Company ("PLLC"). A PLLC can be formed at the time a veterinary practice is started and may also be used by an existing veterinary practice by what is known as a "conversion". Conversion allows an existing sole proprietor, partnership, or professional corporation/association/partnership to change its business form to a PLLC.



What are the benefits of a PLLC? In selecting the best business form for your practice, certain facts should always be considered: liability, tax regimens, simplicity, flexibility and cost. A PLLC offers benefits in all these areas. Sole proprietors have unlimited personal liability while a PLLC offers a liability shield to a member's personal assets when the claim is based on the acts of employees and other members. A multi-member PLLC offers protection to the organization's business assets from personal claims made against members of the PLLC. In addition, the cost of forming and administering a PLLC is normally less than a professional corporation. The basic legal rules governing a PLLC are simpler and easier to understand than those governing professional corporations. The rules governing PLLCs

also provide for greater flexibility in structuring equity investments and profit-sharing arrangements as well as providing for easier resolutions to disputes among owners when compared to professional corporations.

Although not for every practice, a PLLC offers another choice of business form to veterinarians.



Elements of a Personnel File.

Keeping comprehensive and accurate personnel files on your employees can help prevent costly problems and make it easier to address those that develop. However, not every record relating to an employee belongs in his or her file. The following is a breakdown of some of the more typical records an employer will come across and where they belong. A personnel file should contain an employee's job description, job application, offers of employment, employment contract, performance evaluations, emergency contact information, complaints and/or

commendations, IRS W-4, signed acknowledgment of receipt of employee handbook, continuing education attendance records, warnings and disciplinary notices and documents relating to an employee's termination. Other documents, however, legally must be kept separate. An employee's medical records, whether relating to the ADA, FMLA or worker's compensation, must be kept separate from the personnel file. Form I-9, verifying you have checked that an employee is authorized to work in the U.S., should be kept separately from the personnel file. I-9 Forms may be kept altogether in one folder. Records relating to discrimination charges, confidential references and wage garnishments are other examples of records that must be kept separate from the personnel file. Following the above, as well as keeping your employee records in a secure location and doing periodic reviews of their contents, will put you well on your way to keeping your personnel files in order.



Veterinary Medical Records

Original physical patient records are the property of the veterinarian. However, a veterinarian must comply with any request by an animal's owner for a copy of the records. A minimal fee may be charged but the sending of copies may not be contingent upon payment of an outstanding balance. Medical records must also be made available to a new owner of an animal. New Hampshire Law additionally requires that veterinary medical records be kept 5 years following the last treatment of the animal. This period is 4 years in Massachusetts.



Supposing is good, but finding out is better.

-Mark Twain

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