Maintaining Accurate & Secure Personnel Files



There are three reasons why proper record keeping is a requirement for employers. The first is simply that it makes good business sense to have accurate information handy and organized when you want to use it. The second reason is that most business owners and managers will eventually encounter the need to produce documentation about employee performance and work history. Having the proper records to retrieve is vital when the need presents itself. The third reason is that some employee records are required by federal and state laws to be retained by the employer for a period of time.

In addition, some state laws give employees the right to access and examine their personnel records. The purpose for some such state laws is to allow employees the opportunity to confirm the information in the file and, potentially, identify any such information that they may believe to be incorrect. Employees are not universally guaranteed the right to copies of all file contents, however. As the employer, you usually have the right to reasonably control the time and location of these examinations provided state law doesn't otherwise specify the employer's obligations in this regard. One of the objectives of such laws that entitle employee examination of his or her personnel records is to ensure the accuracy of information contained therein.

- ***Access to information about employees should be strictly limited to those people in your business with a need to use the information in their jobs. Many states are aggressive protectors of employee privacy and random or unauthorized access to personnel files can bring on severe penalties. Make sure that you store personnel files in a secure location and that they are not left unattended even during the business day. When asked by people outside the company to provide "verification" of certain employment information about your employees, make it a practice to confirm only the information your employees have authorized you to release. Employment verifications are usually required to support such things as mortgage applications, credit applications and the like. Employee authorization should be in writing and specify the information they wish you to reveal. Tell your employee the policy is designed for his/her protection.***

When it comes to information contained on job applications, it is generally considered an unlawful employment practice for an employer to make employment

decisions based on a job applicant's protected categories such as race, color, sex, religion, national origin, etc. Therefore having any information on the application which identifies these categories is inappropriate and may be considered illegal. Some employers may be required by law to track and collect certain demographic data from job applicants. Such information should not be viewed by the employer's decision-makers in charge of hiring and/or other terms and conditions of employment so as to avoid even the suspicion of discrimination.

When it comes to new hires, an employer may come into possession of information pertaining to employees' protected characteristic such as an employee's birth date for enrollment in health insurance programs. To avoid potential discrimination concerns, employers must be cautious to ensure that such information is in no way used to make employment decisions.

There may be additional state laws in your jurisdiction that protect against identification of marital status, living arrangements, medical history, arrest records or other personal characteristics. However, examples of potentially personal identifying information that employees are required to disclose stems from the requirements set forth in the Immigration Reform and Control Act of 1986. This Act mandates that employers complete the Form I-9 upon hiring employees to work in the United States. In connection with completing the Form I-9, employees may present documentation that reveals protected personal information such as their age or national origin if they present a driver's license or passport. Accordingly, employers should safeguard such information and ensure that it keeps I-9 forms and supporting documentation in a file that is separate and apart from employee personnel files.

It is also important to note that medical records should be maintained in a completely separate file away from your employees' personnel file. Here are some examples of information you should extract from your personnel files and place in separately protected files as medical information:

- Health insurance application form
- Life insurance application form
- Request for medical leave of absence regardless of reason
- Personal accident reports
- Workers' compensation report of injury or illness
- OSHA injury and illness reports
- Any other form or document which contains private medical or genetic information for a specific employee.

RECOMMENDED CONTENTS OF PERSONNEL FILES EMPLOYMENT

- Request for application
- Employee's original employment application
- Employment interview report form
- Employment verification
- Rejection letter
- Employment offer letter
- Employment agency agreement if hired through an agency
- Employee Handbook acknowledgment form showing receipt of Handbook
- Checklist from new employee orientation showing subjects covered
- Transfer requests

- Relocation offer records
- Relocation report

PERFORMANCE APPRAISALS

    - New employee progress reports
    - Performance appraisal forms

- Performance improvement program records **Training and Development**

    - Training history records
    - Training program applications/requests
    - Skills inventory questionnaire
    - Training evaluation forms
    - In-house training notification letters

- Training expense reimbursement records **Employee Separations**

- Exit interview form
- Final employee performance appraisal
- Exit interviewer’s comment form
- Record of documents given with final paycheck **Benefits**
- Vacation accrual/taken form
- Request for non-medical leave of absence
- Retirement application
- Payroll deduction authorizations
- Hazardous substance notification and or reports
- Tuition reimbursement application and or payment records
- Employer concession and or discount authorization
- Safety training/meeting attendance/summary forms **Wage/Salary Administration**
- Job description form
- Job analysis questionnaire
- Payroll authorization form
- Fair Labor Standards Act exemption test
- Compensation recommendations
- Notification of wage and or salary increase/decrease

EMPLOYEE RELATIONS

- Report of coaching/counseling session
- Employee Assistance Program consent form
- Commendations
- Employee written warning notice
- Completed employee suggestion forms
- Suggestion status reports

WHAT SHOULD NOT BE IN A PERSONNEL FILE MEDICAL RECORDS

- Physician records of examination
- Diagnostic records
- Laboratory test records
- Drug screening records
- Anything protected under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), which is a federal law that provides data privacy and security provisions for safeguarding medical information.
- Any other medical records with personally identifiable information about

individual employees

INVESTIGATION RECORDS

- Discrimination complaint investigation information
- Legal case data
- Accusations of policy/legal violations

SECURITY CLEARANCE INVESTIGATION RECORDS

- Background investigation information
- Personal credit history
- Personal criminal conviction history
- Arrest records