

WHAT'S IN A PERSONNEL FILE? (AND WHAT SHOULD NOT BE)

CAUTION

The following information is provided as a convenience to our clients. It is meant only as professional advice and is not intended to represent legal advice. If you have specific issues regarding personnel file contents, you would be well advised to discuss them with a qualified Professional in Human Resources or your labor attorney. Information in this report is subject to change without notice.

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. And, the third reason: Some employee records are required by federal or state governments and must be kept somewhere. Organizing them by employee name makes access easy.

There are some important cautions to be given about the subject of identifiable employee information. Generally, state laws permit employees the right to examine their personal employment records. This simply allows individuals the opportunity to confirm information in the file and identify any specific information which is believed 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 control the time and location of these examinations as long as you are reasonable in doing so. The objective, of course, is to ensure accuracy of information about each person. In most states, ownership of the personnel file and its contents rests with the employer who maintains it.

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.

Job applicants may not have decisions about their applications made based on 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. It is permissible, and for some employers required, to request demographic data from job applicants. This information is directed to a location separate from the hiring manager, however, to avoid even the suspicion of discrimination.

For employees (someone you have put on your payroll), it is necessary to have information in the personnel file which would be considered illegal to gather prior to the job offer being made. For example, you need a birth date to enroll your employee in health insurance and life insurance programs. As long as such information is used for legitimate purposes, employers will have no problem.

You may find your state laws further protect against identifying marital status, living arrangements, medical history, arrest records or other personal characteristics. Another example of information required of employees stems from the famous I-9 form. Completion of this document is mandated for every employee hired after November 6, 1986. As the implementation tool for the *Immigration Reform and Control Act of 1986*, employers are required to log document numbers which prove the employee's identify and right to work in this country. Normally a Social Security Card and driver's license meet these requirements. We recommend that you ensure you utilize the most recent I-9 form provided by the federal government to ensure you comply with all laws. **We also suggest you keep I-9 forms in a file separate and apart from your personnel files.** The reason is simple. Many government agencies are authorized to inspect your I-9 forms if they visit your work location. If you have them in your personnel files, the government gets to go through your personnel files. Anything they find there can raise additional questions or issues. In a separate I-9 file, you have the ability to hand the inspecting agent one file folder with all your I-9 forms. No problems can arise from that if you have completed all your I-9s as required. Be sure that you use the current version of the I-9 Form. Using an outdated version can cost you \$1,000 per document. Errors on the form can cost you up to \$1,000 each as well.

Part of being a professional business manager is keeping quality professional records. Take a look at your organization's practices and find out if you have what you need. If not, plan to get it. It will save you trouble in the long run.

The federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) requires employers and health care providers to protect medical records as confidential, separate and apart from other business records. That means we may no longer retain medical information in a 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 information for a specific employee.

RECOMMENDED CONTENTS OF PERSONNEL FILES

Employment

- Request for application
- Employee's original employment application
- Prescreening application notes
- College recruiting interview report form
- Employment interview report form
- Education verification
- Employment verification
- Other background 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
- Veterans/Disabled self-identification form
- Transfer requests
- Relocation offer records
- Relocation report
- Security clearance status

Payroll

- W-4 Form
- Weekly time sheets
- Individual attendance record
- Pay advance request record
- Garnishment orders and records
- Authorization for release of private information
- Authorization for all other payroll actions

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

- Emergency Contact Form
- Medical/Dental/Vision coverage waiver/drop form
- Vacation accrual/taken form
- Request for non-medical leave of absence
- Retirement application
- Payroll deduction authorizations
- COBRA notification/election
- Hazardous substance notification and or reports
- Tuition reimbursement application and or payment records

- Employer concession and or discount authorization
- Annual benefits statement acknowledgment
- 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 history record
- 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
- Any of the records listed above in the discussion on HIPAA
- 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

Insupportable Opinions

- Marginal notes on any document indicating management bias or discrimination (e.g.: "This guy's too fat. He'd never make it," or "She's too old for this job.")