



## Employee Personnel Files

Few of us enjoy dealing with paperwork, but taking the time to properly establish and maintain your employee's personnel files will save you time and will pay off in the long run. Properly maintaining employee files will ensure you will have all the important documents relating to each employee in one place, easily accessible when it's time to make decisions on promotions, lay offs, and comply with government audits. And when the situation arises where you have to terminate a problem employee, a well-organized and complete file will go a long way in providing your organization legal protection.

### **Three reasons why well maintained employees files are a must:**

1. Both federal and California state law require employers to keep certain records regarding each individual employee.
2. Most employers at some time will need to produce documentation regarding employee performance and/or work history.
3. It simply makes good business sense to have your information accessible and organized for those times when you need it.

### **What belongs in a personnel file?**

Any job-related materials pertaining to, but not limited to information on employment such as;

- Application
- Resume
- Offer letter
- Job description
- Tax forms
- Performance evaluations
- Documentation on disciplinary issues
- Attendance records
- Compensation history
- Resignation letters

Remember that in many states employees have a right to view their files. Indiscrete entries that do not directly relate to an employee's job performance and qualifications, like reference to an employee's private life or an employee's race, sex or religion, can have negative consequences for an employer. A good rule of thumb is to not put anything in a personnel file that you would not want a jury to see.

### **What does not belong in a personnel file?**

Anything that is not directly related to the job or employee, for example a pre-employment reference, affirmative action/EEO data, credit reports, wage garnishments, or any medical records, medical information or health insurance applications.

The INS Form I-9 should also be kept separate from the personnel files. Many government agencies are authorized to inspect your I-9 forms if they visit your work location. If you have the forms in your personnel files, then the government gets to go through your personnel files, which could raise additional questions or issues. Any reference to an employee's date of birth should always be kept separate from the employee personnel file.

## **Who has a right to view personnel files?**

Personnel files should be treated like any other private company records and should be kept in a secure place. You do not want just anyone rummaging through the information in a personnel file. Make employee files available only to those who have legitimate business needs for access to the files. For example, you might establish a policy that only the human resource manager, the individual employee's manager and the employee have a right to see an employee's file. This will ensure your employee's privacy and limit any opportunity for inappropriate documents to find their way into the files.

Many states have laws giving current and former employees access to their own personnel files. The details of this access vary from state to state. Typically, if your state allows employees to see their files, your organization can insist that a supervisor be present to make sure nothing is taken, added or changed. California Labor Code allows most private and public employees to see their personnel files. In addition, employees who have resigned, who are on a leave of absence, or who have been terminated or laid off have the same inspection rights as current employees. Some state laws allow employees to copy specific items from their file, but not necessarily the entire file. For example, the law may limit the employee's access to only copies of documents that he/she signed, such as a job application or Offer of Employment. If an employee is entitled to copies of the file or documents in the file, a company representative, rather than the employee, should make the copies.

In closing, the time and effort that it takes to organize and maintain employee personnel files is time well spent. Don't delay checking your files to see what shape they are in. This HR responsibility goes a long way in protecting your organization.

## **Suggestions on how to tackle the review of personnel files:**

- Make a checklist of documents that should be in personnel files.
- Make a checklist of documents that should not be in personnel files.
- Confirm that each employee has a personnel file. For employees who do not have a file, create one.
- Using the checklists, organize the file accordingly.
- For documents that you are unsure what to do with, don't throw them away! Contact your HR department, HR consultant or legal counsel.
- Store the files in a safe place.
- Mark it on your calendar to make a review of files every twelve months.

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