

Human Resource Associates

Employment Consultants

PERSONNEL FILES Who Gets To See Them? Part II

In the previous issue of Personnel Notebook, we outlined the regulations concerning access to personnel files on a state-by-state basis covering Alabama to Nebraska. In this issue, we will complete the list of states from Nevada to Wyoming.

But first, let's do a quick review:

1. There are no federal laws governing this issue for private companies (nongovernment employers).
2. However, many states do have regulations on this issue.
3. In some states, only public employees have a legal right to see their personnel files.
4. Use common sense in the use of personnel files. Don't put anything in them that is not employment related.
5. Protect the privacy of all medical and health information in those files. (See the Personnel Notebook on the association's Web site entitled "HIPAA — Keeping Health Information Private.")

6. Be reasonable. Allow employees to see their personnel files, but only in the presence of an HR employee. Do not allow anything to be removed, added, or altered.

7. Other than an HR employee, allow only those in the direct, upward chain of command to see an individual's personnel file.

Now, here's what the rest of the states have to say on the issue of who gets to see those personnel files.

Nevada

Upon request, all employees (including employee referral agencies) are required to give employees a reasonable opportunity to see their personnel records. Companies are allowed to charge a reasonable copying fee. This includes information regarding the employee's qualifications and any disciplinary actions or terminations. Companies may not keep secret records of employment. Companies are not required to show confidential reports from previous employers or any information concerning

an investigation, arrest, or conviction of the employee.

New Hampshire

Companies must provide a reasonable opportunity to inspect personnel files. This does not include information regarding an ongoing investigation. Companies may charge a reasonable copying fee.

New York

Public employees only.

North Carolina

Employees as well as former employees have a right to see their personnel records that indicate their exposure to toxic materials. Public employees are entitled to examine their personnel files but not reference letters and certain medical information.

North Dakota

Public employees only. Employees and/or their representatives must be allowed to inspect their personnel files during normal business hours. Companies may charge a reasonable copying fee.

Ohio

Employees have a right to see the medical records from a physical examination that is required for employment or medical records relating to any injury/disease related to the job. Employees may also obtain such records from a physician, health care provider, or a laboratory with a written request.

Oklahoma

Upon written request, employees and/or their representatives may review their personnel files being held by the employer or a former employer.

Oregon

Companies are required to provide a reasonable opportunity for employees to see their personnel files. This includes records used to qualify the employee for employment, promotion, additional compensation, or termination. Companies may charge a reasonable copying fee. Personnel records do not include records relating to the investigation, arrest, or conviction of a criminal act nor confidential reports from a previous employer.

Pennsylvania

Employees may review their personnel files. This includes qualification documents for employment, promotion, additional compensation, termination, or disciplinary actions. Access is not required for records related to investigations of a possible criminal offense, letters of reference, medical records, or documents being processed for use in civil, criminal, or grievance procedures. Nor is access required for materials used by the company to plan future operations or information otherwise available to the employee under the Fair Credit Reporting Act (FCRA).

Rhode Island

Employees must be permitted to inspect their personnel files upon seven (7) days notice. This includes information that was used to determine the employee's qualification for employment, promotion, extra pay, termination, or disciplinary actions. Companies may charge a reasonable copying fee. This access is not required for records relating to the investigation of a possible criminal offense; records prepared for use in civil, criminal, or grievance proceedings; or any letters of reference, recommendations, or

managerial records kept or used for confidential reports.

South Carolina

Employees and former employees and/or their representatives must be granted access to records concerning the monitoring and measurement of employee exposure to potentially toxic materials.

South Dakota

Public employees only. Employees are allowed to see their personnel files. Although employment records are subject to public inspection, employment tests and performance appraisals must be excluded from those files before public access is granted.

Tennessee

Public employees only. Employees must have access at any reasonable time.

Texas

Public employees only. Personnel files are subject to public inspection, but may not include information that constitutes a clearly unwarranted invasion of the employee's personal privacy.

Utah

Public employees only. Employees may examine and make copies of their personnel file documents. This does not include documents classified as confidential under the Utah Information Practices Act. Companies may charge a reasonable copying fee.

Vermont

Public employees only. Employees are entitled to have access to all information in their personnel files.

Virginia

Public employees only. The employee is allowed access to all personnel files. Public access is allowed under the Virginia Freedom of Information Act. However, all information revealing the identity of the person in those files must be withheld.

Washington (State)

Employees may review all information in their personnel files. This includes any references the company gives to anyone outside the company.

Wisconsin

Employees are permitted to inspect any personnel files that are used for employment qualifications, transfer, additional compensation, termination, and disciplinary actions as well as medical records. This does not include records relating to a possible criminal investigation, letters of reference, any part of a test document (except the final scores), materials used by the company for staff management planning, personal information about other employees, or records relevant to any judicial proceedings. Companies may charge a reasonable copying fee. Companies that do not keep personnel files are not subject to these requirements.

Wyoming

Public employees only. Employees may have access to all information in their personnel files.

Maintaining the privacy, accuracy, and validity of the personnel files in your possession is in your best interest. These records will be called upon, inspected, or subpoenaed for almost every civil or legal claim, employment suit, or grievance affecting any employee.

Document all employment actions, particularly good or bad performance issues. It is a common story — when a company is sued for discriminatory or illegal terminations, they defend their actions by stating that the termination was for poor performance or behavior. Yet when the personnel file is subpoenaed, it shows wage increases and title promotions but no documents relating to poor performance or warnings.

It is equally important to document good performance. Not only for the recognition that the employee may deserve, but if another employee claims the promotion or pay increase was denied to him based on a discriminatory decision, you will want to have documentation in the personnel file showing that the decision was based on good performance and/or solid reasoning.

Access to personnel files is a volatile issue. States may change their position as the political environment changes. Check with your state laws for the latest changes.

For more information about working with personnel files see the Personnel Notebooks “HIPAA Keeping Health Information Private” and “Keep Those Personnel Files” on the association’s HR University site.

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