

HUMAN RESOURCE ASSOCIATES

Employment Consultants

PERSONNEL FILES Who Gets To See Them? Part I

We all have one of our own. Those of us in HR, or who have people reporting to us, also have someone else's. There is even a debate about whether you can see your own file. So this question affects us all. Who gets to see those personnel files?

There are two answers. The first deals with the fair and responsible handling of personnel files as well as the avoidance of legal actions from several fronts that can arise from the mishandling of all that sensitive information, in other words—common sense.

The second is that 43 states have laws addressing the accessibility of personnel files. There are no federal laws governing this issue for private companies (non government employers).

1. Common Sense

In order to protect the privacy of the individual and to avoid the potential charges of the HIPAA act (revealing ones medical records), the ADA (identifying ones actual or perceived disabilities) the EEOC (discriminating because of ones race, age, sex, religion etc.) or maliciously releasing information about an employee

that could be harmful, a rigid control of all employees personnel files is advised. This would include:

- Segregating and keeping those personnel files separate by keeping them in private offices, secure archives and/or locked files.
- Removing and separately securing all medical information to a specific area, accessible only to those handling medical processes or who files or is in charge of medical records.
- Allowing access to only those HR people who need to have access for business related purposes.
- Allowing access to those in the upward chain of command. That is, the employee's supervisor, and up to that person's supervisor, on up to the CEO, but only in the line of command.

2. State Laws

The following states have legislation controlling the issue of who may have access to personnel files. In many states only government employees have that right, while private employees do not. If the state has no law affecting private

companies, then allowing those employees access to their personnel files is at the discretion of the company.

Alabama

Public employees only. Employees must receive a copy of all disciplinary documents within 10 days.

Alaska

Employees or former employees are allowed to obtain copies of their own personnel files. Companies may charge a reasonable copying fee.

Arkansas

Public employees only. All personnel and evaluation records must be made available.

California

Employees are allowed to inspect all records related to their application and qualifications for employment, promotion, compensation, termination or discipline. Does not apply to potential criminal investigations, letters of reference, or records that were obtained prior to the persons employment or documents prepared by testing committees for a potential promotion. The employee records held by a labor union must also be included.

Colorado

Public employees only. Personnel records and graded promotion exams must be shown to the employee and the supervisor.

Connecticut

Employees are allowed to inspect their own personnel files upon a written request. Companies may charge a reasonable copying fee. A physician approved by the employee may also inspect medical records.

Delaware

Employees are allowed to inspect personnel records related to their employment application, qualifications for employment, promotion, compensation, termination or discipline. Does not apply to potential criminal investigations, letters of reference, or records being prepared for civil, criminal grievance procedures or information obtainable in the Fair Credit Reporting Act.

District of Columbia

Public employees only. Employee may see his/her records and may include the presence of his/her representative. Does not include information covered by a confidentiality agreement or medical records unless requested by employee's physician, criminal records, confidential questionnaires used for merit considerations, test and examination materials still viable for use.

Georgia

Public employees only. Employee has the right in a termination agreement, to have his/her entire personnel file purged, including all work related performance records.

Hawaii

State employees only. Does not include criminal investigation records, disclosure of identity of anyone providing information in confidence, Test scores and examination materials or information of investigations concerning current or pending actions against employee.

Idaho

Public officials only. Allows a public official and/or hi representative to inspect the official's personnel records. Does not

include records information used to screen and test for employment.

Illinois

Employees, upon written request, may see their personnel files. Including records used to determine their qualifications for employment, promotion, transfer, compensation, discharge or any disciplinary action. Company may charge a reasonable copying fee. Does not include medical records, letters of reference, test documents, staff planning materials, information about someone other than the employee, court proceedings or criminal activities.

Indiana

Public employees only. Employees have the right to see their personnel files.

Iowa

Both public and private employees may see all records of evaluations, discipline and all employee relations affecting the employee. Does not include information about employment references. Companies may charge a reasonable copying fee.

Kansas

Public employees only. Does not allow employees access to their personnel files. However, all the information in those files must be open for public inspection. But employee's name, position, salary and length of service may only be released if separated from any of that information.

Kentucky

Public employees only. Employee may see all records that relate to them or include their name. Does not include employment examination records, or criminal or administrative investigations.

Louisiana

Employees may have access to all records related to positive drug tests and records of any certification or suspension processes.

Includes any records of employee exposure to toxic materials or harmful substances and medical records related to such exposures.

Maine

Both public and private employees are allowed to see their personnel files. This includes all information except privileged medical records. If company does not deliver within 10 days, employee may sue for damages and attorney fees.

Companies may charge a reasonable copying fee. Company may store records in any paper, microfiche or electronic format, but must make necessary equipment available to view and copy the information.

Maryland

Public employees only. Employees and the official who supervises them may inspect employment records.

Massachusetts

Both public and private employees must be provide with access to their personnel files upon written request. Does not include the name or information of any other person whose information may be in that file if that information would be harmful to that person.

Michigan

Employees must have access to their personnel files upon written request. Companies may charge a reasonable copying fee. Does not include employee references, companies staffing records if other employee's names are included, medical records, personal information

about another employee, criminal investigations if those records are kept separate, educational records maintained by an educational institution, grievance investigations that are kept separate. Nor does this include records kept by an executive, professional or administrative employee that are not accessible to any other persons.

Minnesota

Employees, upon good-faith request must be provided access to their personnel records. This includes employment applications, wage and salary histories, commendations, warnings, discipline, termination, all deductions from pay, fringe benefit information, complete employment history, compensation history, job titles, promotions and dates, transfers, changes, attendance, performance evaluations and retirement records. Does not include written references from another person, criminal or civil investigations, educational records maintained by an educational institution, company testing, company's salary or staffing planning, information about another person, comments written by the employee's supervisor or an executive, professional or administrative employee as long as they are kept in the sole possession of the author, information that is held confidential in a Worker's Compensation, grievance, arbitration, administrative or legal proceeding or any information from a coworker regarding an employee's job performance, behavior or misconduct or medical records.

Nebraska

Public school districts only. Teachers, administrator or full time employees of any public school may inspect their personnel files upon written request. Unsuccessful job applicants who were not

finalists are not subject to inspection unless publicly disclosed in open court or disclosed by a public entity in the course of it's duties. Finalists are defined as job applicants who were offered and accepted a job interview for a public school position.

In part II of "Personnel Files" we will complete the list of states from Nevada to Wyoming.

(For more information about working with personnel files see the **Personnel Notebooks** "['HIPAA' Keeping Health Information Private](#)" and "[Keep Those Personnel Files](#)" on your association's HR University site.

Bill Cook

Human Resource Associates

e-mail: hrahtl@consulthra.com