



LABOR AND EMPLOYMENT

Personnel Records: What to Keep and Where to Keep It

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Public sector employers, their management and Human Resources (“HR”) staff are routinely faced with decisions about which employee records belong in a permanent personnel file, which should be kept but in a separate file, where, and by whom. These decisions often become a focus of dispute during litigation between the employee and employer, or if the employer must respond to subpoenas or discovery requests for documents seeking personnel records. This article is designed to provide a quick reference guide to assist in deciding what to keep and where to keep it.

EMPLOYEE’S “PERMANENT PERSONNEL FILE”

The permanent “official” personnel record of each employee should be maintained in an individually labeled file for each employee and kept in a central file or files in the HR office. Examples of what belongs in the permanent personnel file include:

- Original employment application and resume.
- Correspondence to and from the employee related to recruitment, testing, selection results or offers of employment.
- Employee’s home address and phone number.
- Forms related to employee benefit programs (e.g. forms for enrollment, changes or beneficiary designations, but not medical information).
- Salary, classification and position records (initial and for subsequent changes).

- Discipline records and correction notices.▪ Significant awards, commendations or letters complimenting the employee.
- Performance evaluations after employee has been given the opportunity to review and sign.
- Signed acknowledgements of receipt for, or agreement to comply with, employer’s policies, procedures and similar documents.
- Records of employer’s property issued to the employee.
- Training records.
- Discipline records and correction notices.
- Requests or applications for promotion, transfer or reassignment.
- Verification of employment provided to outside parties or subsequent prospective employers.
- Record of termination and reasons.

OTHER PERSONNEL RECORDS

Additional employee records should be kept in the HR office but in separate confidential files:

- Verification of right to work in the United States.
- Charges of discrimination and related documents (whether brought internally or to an outside agency).
- Workers’ Compensation claims—caution for return-to-work forms with medical information.
- Medical information confidential under the Confidentiality of Medical Information Act Americans with Disabilities Act—special caution in handling records that disclose illness, diagnoses or medical history.
- Survey of ethnic, disabled or veteran status for reporting and record keeping purposes.





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LIMITING ACCESS TO PERSONNEL RECORDS

Employers are generally required to maintain the confidentiality of an employee's personnel records, and access should be limited to managers, supervisors and administrators who have a business need to review the records. Department rules and applicable Memoranda of Understanding may also address confidentiality of and access to personnel files. Personnel records should only be disclosed in connection with proper procedures (e.g. a signed release, subpoena or discovery request). Due to the privacy concerns raised by requests for confidential personnel records, it is recommended to consult with legal counsel before releasing such files.

EMPLOYEE'S RIGHTS TO PERSONNEL RECORDS

In a recent change in the law, Labor Code §1198.5, which provides a procedure for private sector employees to inspect their personnel files, now applies to the public sector. Even before the change in the law, public employers typically complied with an employee's reasonable request to review his or her personnel records.

PERFORMANCE RECORDS

Supervisory staff (department heads, managers, immediate supervisors) often maintain on-going notes and records of an employee's performance to help prepare the formal evaluations. Such notes may reflect both outstanding and unsatisfactory performance. They should reflect the date, time and location, describe the employee's conduct and other objective information such as the consequences of the employee's performance, the supervisor's actions and employee's response. With the proliferation of e-mail, supervisors and employees increas-

ingly communicate electronically about an employee's performance, both good and bad. Use of email for this purpose can be fraught with pitfalls and is not recommended.

ORAL REPRIMANDS AND COUNSELING

Generally, oral reprimands are not entered in the permanent personnel file unless subsequent action is required. A supervisor should make a note of an oral reprimand in a log, calendar or other convenient place, at or close in time to the oral reprimand, as this may become important to support progressive discipline or to respond to an employee's complaints. Work Units with formal or different procedures should consistently follow their rules.

Formal training should be documented and entered in the permanent personnel file. Other coaching, counseling or formal conferences, which frequently occur when an employee begins to exhibit performance problems, should be documented by the supervisor at or closely after the time of such counseling. These files do not belong in the permanent personnel file, but the supervisor should maintain them in his or her own files. If an action plan is developed, the supervisor should develop a follow up memorandum summarizing the meeting, what each person said and what performance or improvement is expected of the employee. These matters may be considered or discussed in formal evaluations, depending on the facts.

COMMENDATIONS AND THANK YOU LETTERS

Many commendations, awards and letters can be kept in a department or supervisor's file rather than the permanent personnel file. These may





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still be considered in the employee evaluations. Some jobs lend themselves to these items while others do not. Positive letters, awards and commendations are important and a source of pride to employees, and should be acknowledged. Deciding which ones are significant enough to be placed in the permanent personnel file is a matter of judgment and may vary with the type of work performed.

TEMPORARY, PART-TIME AND SEASONAL EMPLOYEES

While this employment is less formal, it is important to maintain accurate records for these employees. While these employees may not be entitled to the full scope of due process and other rights afforded to other public sector employees, they may still present wrongful termination, discrimination or wage complaints. Be prepared to justify adverse employment actions, if necessary. If the recruiting process for temporary, part-time or seasonal employees is handled by the supervising department rather than HR, it is important for the department to keep accurate and detailed recruiting records and to document personnel changes.

PEACE OFFICERS

This article is not intended to address Peace Officers' personnel records which are subject to special rules.

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