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Recordkeeping: Employee Personnel Files and Records[©]

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The legal requirements for employer recordkeeping and the retention of employee files are not as straightforward as your average business owner would hope. In fact, sorting through the complex and varied requirements can be a daunting task. Here's why: recordkeeping obligations stem from a number of federal and state laws that vary based on the industry, location, and number of employees. To confuse things even further, similar records are often required by more than one law with varying retention requirements.

To simplify the recordkeeping process, one must consider the four basic elements of legal requirements: create, maintain, protect, and destroy. Once these elements are understood in the context of recordkeeping, it will be easier to approach the process methodically.

Create:

Employers should begin by establishing policies and procedures for recordkeeping in their operations manual, ensuring that they comply with all state and federal employee privacy laws. The manual should define what files are created, how long they should be stored, and who has access to them.

An employee's personnel file should contain a clear record of his or her employment history. It should provide insight into the individual's work history, benefits history, prior work performance, training, career development, and other documented employment-related facts. The specific layout of these files is up to the employer as long as it fulfills applicable laws. The following records should be stored in each personnel file:

- Employment application, offer letter, and resume
- Job description, and handbook acknowledgements
- Hiring, plus records of promotion/transfers, rates of pay, and other forms of compensation
- Training/education documentation
- Letters of recognition
- Performance evaluations

- Disciplinary and demotion notices
- College transcripts, and background screening
- Test documents used to make employment decision
- Termination records, and exit interviews

As already mentioned, it is important to determine who has access to employee files. Some people will have access to the entire file, while others may only have limited access; some auditors, for example, may have access to some portions of each file but not to others. It is therefore recommended that you keep sub-files within employee files to distinguish what is permitted for certain people to review and what is not. The following records should be included in the sub-file:

- Medical files; the Americans with Disabilities Act (ADA) and the Health Insurance Portability and Accountability Act (HIPAA) require employers to keep all medical records separate and many states also have privacy laws to protect employees
- Payroll files to maintain time keeping records, garnishments, and wage deductions
- Equal Employment Opportunity information and investigations to minimize claims of discrimination
- Immigration (I-9) forms to reduce the opportunity for an auditor to pursue and investigate information unrelated to the audit at hand
- Safety training records from the Occupational Safety and Health Administration (OSHA) to protect the employer from an auditor pursuing and investigating information unrelated to the audit at hand

Maintain:

Records retention encompasses three components: what, how long, and how. These are dictated by federal and state laws. Nevertheless, there is considerable debate on record retention, so it is recommended that management err on the side of caution and base record retention upon risk tolerance and available resources. In other words, do as much as you can to minimize risk (without proper records, employers may be vulnerable to unfounded claims by former employees) with the resources available. The following list is the recommended retention period for each type of record:

<u>Records</u>	<u>Retention Period (Years)</u>
· All HR-related records	6

- Any record to support gender pay difference 3
- Payroll records 3
- IRS tax-related payroll info 4
- FMLA/USERRA 3 (after termination)
- I-9 3 (after hire) OR
1 (after termination)
- Pension & welfare plan documents 6
- OSHA logs & summary of recordable injuries 5
- Employee exposure to toxic substances, including MSDS 30
- Employee workers compensation claims 30+
- Resumes & applications 1-2
- Polygraph test results 3

It is important to take the time to double check that personnel files and records are up to date and stored accurately as practice liability issues can result from improper employment record maintenance procedures. Fortunately, technological advances have greatly facilitated the maintenance of record keeping and personnel files, and records can now be stored on paper or in digital format. No matter which method you choose, the records must be maintained in a reasonable order, in a safe and accessible place. Digital recordkeeping systems must have controls in place to ensure the integrity, accuracy, authenticity, and reliability of the records. They also must be able to be converted into a readable paper copy, if necessary.

Protect:

Employment records are confidential. Security procedures should therefore be in compliance with all relevant current federal and state laws. Access must be limited to the human resource department and other personnel with a need to know. This will apply to personnel files, payroll, and medical records. Auditors and investigating agencies may also be allowed access to data, but only limited to the scope of the audit; employers should be aware that many states have laws regulating employees' access to their personnel files.

Destroy:

Any time that records containing personal information need to be destroyed, acceptable methods include the following: shredding, erasing, or otherwise modifying personal information

to make it unreadable or indecipherable. Employers should obtain a lawyer's advice on establishing a destruction schedule to limit liability.

Conclusion

Recordkeeping of employee records may seem like a daunting task at first, but it can be managed by taking a systematic approach. Employers should begin by establishing a set of procedures that indicates the necessary documents and timeframe on storage. If there is a question about whether or not to retain a document, always err on the side of caution. The documents should be periodically audited to make sure they are up to date and stored accurately. Finally, the documents must be destroyed in an appropriate manner to ensure confidentiality.

Society for Human Resource Management (SHRM), *2013 SHRM Learning System*, Module 2: Workforce Planning and Employment, Section 2-12, 2:282-292, 2013.