

Are your personnel files too personal?

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A reader asks: A former employee has requested her personnel file from my company. What are my obligations to her?

Answer: There's no federal law on the subject of personnel files, so you'll have to look at your applicable state law. In general, however, you should operate under the assumption that your company is in a jurisdiction that requires you to let employees see their personnel file.



Personnel files are comprised of a myriad of information including confidential employer, employee and third party material. Therefore, most states generally impose rules that protect the rights of all three. The following shows how states try to balance these interests to come up with a viable system.

Many states allow access to personnel files by the employee. They include: Alaska, California, Connecticut, Delaware, Illinois, Iowa, Maine, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, Oregon, Pennsylvania, Rhode Island, Washington, and Wisconsin.

That said, it is almost universally agreed upon that the actual file belongs to the company and that the company may restrict the manner in which the employee accesses the files. For example, a company can generally require that the file be viewed at its offices. Also, the company will usually have a supervisor present during the review of the file to confirm that no part of the file are destroyed or altered.

Many states exclude certain parts of the personnel files from inspection, including letters of reference, recommended personnel actions, confidential internal management information, or investigation materials. The reason for these restrictions is usually based on third-party privacy issues and/or trade secret protections. For example, it would be difficult to get an honest appraisal of an employee's work if the person evaluating them was afraid of reprisal by the employee. That said, it's a good practice to have these materials already segregated so that if an employee wants to view them, the papers are not mixed together.

Health-related documents present a special problem. The employee is entitled to have access to documents concerning his or own health, but the Americans With Disabilities Act and certain state laws strictly limit the employer's access to such documents. Accordingly, such documents should be placed in a file that is separate from the regular personnel file – and the employer should implement security measures that protect such health files from unauthorized access.

To be safe, your company should follow these procedures:

- Determine, with the assistance of counsel if necessary, what personnel file documents the employee will be allowed to see under the laws applicable to your business.
- Prepare such documents with care, on the assumption that sooner or later the employee (or the employee's lawyer!) is going to see them
- Keep documents that are about the employee, but that the employee will *not* be allowed to see, in separate files. Similarly, keep health-related documents in files that are separate and carefully secured.

By following these simple rules, you should be in good shape if an employee requests to access their personnel file.