

# **DO'S AND DON'T'S OF EMPLOYEE PERSONNEL FILES**

## **Are employers required to keep personnel files?**

Personnel files are not required, but they are highly recommended for several reasons: They are a way of keeping ongoing documentation about how each employee (and the company as a whole) is doing. In addition, they can provide a critical legal defense, in case an allegation is made about discrimination or some other illegal activity on the employer's part.

## **Are employers required to keep an employee's medical information in a file that is separate from the personnel file?**

Yes. Both the federal ADA and the state disability law require that medical information be kept in a secure location that is separate from the personnel file. In addition, only certain people who have a need to know that information (such as safety inspectors, representatives from enforcement agencies and supervisors with a need to know) may be given access to the information.

## **If an employee requests permission to view or obtain copies of her personnel records, am I required to drop everything and provide them to her?**

No. In fact, an Oregon law went into effect this year that states that employers have up to 45 days to provide copies of personnel records to employees when they request them. Note, however, that the law does not mention "files," but simply describes "records" as anything used to make employment decisions about the employee. ORS 652.750.

## **May an employee's payroll records be kept in the personnel file?**

There is nothing to legally prohibit these records from being in a personnel file, as long as no medical information (such as insurance forms) is contained therein.

## **May employers keep I-9 forms in personnel files?**

Although there is no law prohibiting employers from keeping I-9 forms in personnel files, most employment experts recommend that they not do so. This is because the documents employees show for I-9 purposes might contain personal information (such as age, race, disability, etc.) which is not appropriate for personnel files.

In addition, if the Citizen and Immigration Service (formerly the Immigration and Naturalization Service) conducted a workplace inspection of I-9 forms and the forms were not all in one place, the employer might be forced to turn over each employee's entire personnel file to the CIS representatives. Not only would this be time-consuming, it might result in employees' personnel information being unnecessarily revealed. For this

reason, most employment law experts recommend that employers keep one file just for I-9 purposes.

**Q. Are there any penalties for failing to provide copies of an employee's personnel file to the employee upon request?**

A. As of January 1, 2008, BOLI has the authority to levy civil penalties of up to \$1000.00 per violation.

For more information about employment law related topics, join Technical Assistance for Employers at an upcoming seminar: Effective Supervisory Practices in Ontario on June 3 and Eugene on June 19; Oregon Leave Laws in Portland on June 3, La Grande on June 4, and Salem on June 12; Wage and Hour Laws in Pendleton on June 5 and Portland on June 10; and Advanced Leave Laws in Portland on June 5. Visit the website at [www.oregon.gov/BOLI/TA](http://www.oregon.gov/BOLI/TA) for registration information.