

## **Employers Should Ring in the New Year with the Right Note**

QUESTION: Our New Year's Resolution is to clean out all of the filing cabinets in our Human Resources office, which are overflowing with employees' personnel files, and throw away all of the papers we no longer need to save. We want to make sure we keep everything we are legally required to keep, but we also want to make sure we organize things the most effective way. We are unsure of what goes in the official personnel file for each employee. Since we know that we should not keep employee medical records with the personnel file, we are wondering what other records we may need to file separately from the personnel file. Also, how long do we have to hang on to employee personnel files once the employee is no longer employed?

ANSWER: If an employee asks to view or receive a copy of his or her "personnel file," the employer must provide access to all records used to make decisions about the individual's employment. So, what should an employer keep in an employee's personnel file?

Oregon law states that if an employee asks to view or receive a copy of his or her "personnel records," the employer must provide access to all records used to make decisions about the individual's employment. This includes all records related to the hiring decision, records used to decide on promotion or demotion, records used to determine pay raises or pay cuts, performance evaluations, disciplinary notices or warnings, and records related to a termination. ORS 652.750.

So if an employee requests copies of documents relating to any of the above subjects, the employer must provide them. Note that this is true even if some of the documents are not in a specific "file." In other words, that "sticky note" you attached to your day planner may be a "personnel record" if it directs the employee's supervisor to discipline or fire the employee. This is one of the many good reasons to keep all your employee records organized and in the same place.

You are correct that medical records should be stored separately from the personnel file. What else is not considered "personnel records?" ORS 652.750 defines this as the following: Records of an individual relating to the conviction, arrest or investigation of conduct constituting a violation of the criminal laws of Oregon or another state, confidential references or reports from previous employers, certain records related to the State Board of Higher Education maintained in compliance with ORS 351.065 and routine payroll records, timesheets or pay stubs which were not used to make employment decisions about the employee.

In addition, the Immigration and Naturalization Service (INS) routinely conducts audits of I-9 forms, which are best filed together and stored separately from employee personnel files.

Under Oregon law, personnel records must be retained by an employer for 60 days after employment ends. However, because the statute of limitations to file a claim could be as long as six years in some cases, many attorneys recommend that their employer clients keep personnel records for seven years.

If a former employee requests a certified copy of his or her personnel file within the 60 day period, the employer must furnish a copy. If the employee requests a copy of the personnel file more than 60 days after employment ends, the employer must furnish a copy if the employer still has the records.

Whether the person requesting the file is a current employee or a former employee, the employer may charge a reasonable fee reflecting the actual costs of providing a copy of the file.

Although the Oregon law regarding employees' requests for copies of personnel files refers to providing a "certified" copy of the personnel file, no formal or legal certification of the records is required. Rather, the employer's personnel manager (or other member of management who is facilitating the employee's request for a certified copy of the personnel file) should sign a statement indicating that the documents provided represent a true and correct copy of the employee's personnel file.