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PROPER CARE AND FEEDING OF PERSONNEL FILES

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I. CREATION AND MAINTENANCE

A. *ILLINOIS PERSONNEL RECORD REVIEW ACT*

1. Personnel record information which was not included in the personnel record but should have been as required by this Act shall not be used by an employer in a judicial or quasi-judicial proceeding.
2. An employer shall not gather or keep a record of an employee's associations, political activities, publications, communications or nonemployment activities, unless the employee submits the information in writing or authorizes the employer in writing to keep or gather the information.
3. An employer shall not gather or keep a record identifying an employee as the subject of an investigation by the Department of Children and Family Services if the investigation by the Department of Children and Family Services resulted in an unfounded report as specified in the Abused and Neglected Child Reporting Act.
 - a. An employee upon receiving written notification from the Department of Children and Family Services that an investigation has resulted in an unfounded report shall take the written notification to his or her employer and have any record of the investigation expunged from his or her employee record.

B. *ILLINOIS MINIMUM WAGE LAW*

1. Every employer subject to any provision of this Act or of any order issued under this Act shall make and keep for a period of not less than 3 years, true and accurate records of the:
 - a. name, address and occupation of each of his employees;
 - b. the rate of pay, and the amount paid each pay period to each employee; and
 - c. the hours worked each day in each work week by each employee.
2. The following basic information must be contained in the records of the employers (Department of Labor regulation):
 - a. Name of each employee;

- b. Address of each employee;
 - c. Birthdate of each employee eighteen years of age or under;
 - d. Social Security Number;
 - e. Sex and occupation in which employed;
 - f. Hours worked each day and hours worked each workweek;
 - g. Time of day and day of week when employee's workweek begins;
 - h. Basis on which wages are paid;
 - i. Additions and deductions from employee's wages for each pay period and an explanation of additions and deductions;
 - j. Type of payment (hourly rate, salary, commission, etc.), straight time and overtime pay and total wages paid each pay period;
 - k. Dates of payment of each pay period covered by the payment; and
 - l. For employees who earn vacation time, records of vacation days granted and vacation days used.
3. While the regulations literally apply to all employees, very few employers track daily hours worked for employees exempt from overtime.

C. *OTHER RECORDS COMMONLY MAINTAINED IN THE PERSONNEL FILE*

1. Documents showing eligibility to work in the United States;
2. Tax withholding documents;
3. Criminal background check results;
4. Union dues withholding authorization;
5. Benefit selections (e.g. insurance, 403(b), etc.);
6. DCFS Mandated Reporter Acknowledgment;

7. Performance Evaluations;
8. Discipline Records; and
9. Application.

D. BOARD POLICY (GENERALLY 5:150) AND ADMINISTRATIVE PROCEDURES SHOULD BE COMPLIED WITH IF ADOPTED IN YOUR DISTRICT

1. For example, the administrative procedure requires you to keep unsuccessful applicant information for at least five years.
2. There is an extensive list of records to be kept in the personnel file.

E. WHAT NOT TO KEEP IN THE PERSONNEL FILE

1. Medical Records – A separate file, with restricted access on a need-to-know basis can contain:
 - a. FMLA records;
 - b. Doctor notes;
 - c. Medical information from worker’s compensation cases; and
 - d. Accommodations under the *Americans with Disabilities Act*.
2. Documentation regarding DCFS allegations when DCFS determines the allegations to be unfounded.

F. GENERAL RULE FOR RETENTION

1. 3 years after separation from employment.
 - a. Allows most statute of limitations to run.
2. Exception – Pending litigation
 - a. Court rules require the maintenance of all possibly-relevant records. We recommend maintenance for 3 years after the final order in the litigation is entered.

G. FORMAT

1. Records can be maintained electronically, but the electronic version must reproduce the original accurately and legibly, and the storage medium must not allow the record to be altered (e.g. secure PDF).
2. Once records are properly stored electronically (with secure backup), the original hard copies can be destroyed in accordance with IL law.

II. ACCESS

A. WHO CAN ACCESS THE PERSONNEL FILE?

B. *ILLINOIS PERSONNEL RECORD REVIEW ACT*

1. Employee – Includes former employee separated within last 365 days.
2. Employee's designated representative (think union rep, but could be others).
 - a. Get designation in writing, keep it in the file.
3. Access granted within 7 working days of request, unless for some reason 7 additional working days are needed.
4. Inspection should be supervised by the employer to ensure no documents are removed or destroyed.
5. Employee/Representative can get copies of requested materials.
6. Exceptions – No access to the following:
 - a. Letters of reference for that employee.
 - b. Any portion of a test document, except that the employee may see a cumulative total test score for either a section of or the entire test document.
 - c. Materials relating to the employer's staff planning, where the materials relate to or affect more than one employee, provided, however, that this exception does not apply if such materials are, have been or are intended to be used by the employer in determining

an individual employee's qualifications for employment, promotion, transfer, or additional compensation, or in determining an individual employee's discharge or discipline.

- d. Information of a personal nature about a person other than the employee if disclosure of the information would constitute a clearly unwarranted invasion of the other person's privacy.
- e. Records relevant to any other pending claim between the employer and employee which may be discovered in a judicial proceeding.
- f. Investigatory or security records maintained by an employer to investigate criminal conduct by an employee or other activity by the employee which could reasonably be expected to harm the employer's property, operations, or business or could by the employee's activity cause the employer financial liability, unless and until the employer takes adverse personnel action based on information in such records.

C. **FOIA**

- 1. There is no blanket exception for personnel files under the *Freedom of Information Act*.
- 2. Some common exceptions that would apply in response to a FOIA:
 - a. "Private information" means unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address.
 - b. Personal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information. "Unwarranted invasion of personal privacy" means the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information. The disclosure of information that bears

on the public duties of public employees and officials shall not be considered an invasion of personal privacy.

- c. Records relating to a public body's adjudication of employee grievances or disciplinary cases; however, this exemption shall not extend to the final outcome of cases in which discipline is imposed.
- d. Information prohibited from being disclosed by the Personnel Record Review Act.
 - (1) This includes disciplinary records more than 4 years old; and
 - (2) Performance evaluations
- e. Information prohibited from being disclosed under the Illinois Educational Labor Relations Act.
 - (1) No employer shall disclose the following information of any employee: (1) the employee's home address (including ZIP code and county); (2) the employee's date of birth; (3) the employee's home and personal phone number; (4) the employee's personal email address; (5) any information personally identifying employee membership or membership status in a labor organization or other voluntary association affiliated with a labor organization or a labor federation (including whether employees are members of such organization, the identity of such organization, whether or not employees pay or authorize the payment of any dues of moneys to such organization, and the amounts of such dues or moneys); and (6) emails or other communications between a labor organization and its members.

III. DESTRUCTION

A. LOCAL RECORDS ACT

- 1. Each agency must have an Application for Authority to Dispose of Local Records (APP) approved by the appropriate Local Records Commission before submitting a Disposal Certificate for any record.

2. After the APP has been approved by the Local Records Commission, it will become the District's Records Retention Schedule and determines the lifecycle of your records.
3. You are now able to dispose of records after the minimum retention period listed for each record series is met, provided no litigation is pending or anticipated and providing all audit requirements (local, state, and federal) have been met and after you have submitted and received an approved Local Records Disposal Certificate from the appropriate Local Records Commission.