



This article presents general guidelines for Georgia nonprofit organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your particular situation.

Best Practices: Maintaining Personnel Files and Employment Documentation

Proper maintenance of employee personnel files and other employment files helps to ensure that all of the relevant information about employees is maintained in the appropriate place, and that employment actions that are taken by the organization are supported by correct documentation. Employers may choose to have several files for information that is maintained about employees, including personnel files, and the proper separation of files can be important if employment actions are ever challenged before federal agencies or in the courts.

There is no law in Georgia requiring that employees have access to their personnel files. Nevertheless, when considering what documents to maintain and how to maintain them, employers should remember that employees and the government may have access at various times to the contents of personnel and other files in the workplace. If a legal claim is filed against the organization, whether with a federal agency like the Equal Employment Opportunity Commission or in court, one of the first requests will be for access to the employee's personnel file. Do not include anything in those files that you would not want the employee, the government agency representative, or the jury deciding the employment claim to see.

WHAT TO KEEP IN PERSONNEL FILES

A personnel file should be created for each employee upon hiring, and should include a variety of relevant documents that relate to the individual's employment, compensation, behavior and performance. Here are some examples of the categories of documents that should be included in an organization's personnel files:

Employee Information – Hiring and Termination

- Application form
- Resume
- Reference checks
- Offer letter
- Non-compete or other agreements between the employee and the organization
- Emergency contact information
- Resignation letter
- Documents related to termination of employment

Organization Policies

- Acknowledgements of receipt of employee handbook
- Acknowledgement of anti-harassment policy
- Confidentiality agreement or acknowledgement of confidentiality policy
- Other relevant organization policies

Dated: 4/19/2016

www.pbpatl.org

© 2016 Pro Bono Partnership of Atlanta, Inc. All rights reserved.

Performance

- Job description
- Training records
- Performance reviews
- Attendance records
- Goals and objectives
- Awards
- Disciplinary documents, such as warnings or complaints
- Other performance documents

Compensation and Benefits

- W-4 Form
- State of Georgia Withholding Allowance Certification
- Authorization for direct deposit
- Commission/bonus calculations
- Forms related to employee benefits
- Other compensation documents

WHAT NOT TO KEEP IN PERSONNEL FILES

As indicated above, it is important to keep in mind that when litigation over employment is filed, one of the first items requested by the opposing party is the employee's personnel file. As a result, some documents should not be kept in employee personnel files. Personnel files should not be a receptacle for every document, note, or thought about the employee, and should be limited to content that relates directly to employment and performance, as described above. Other records maintained by the organization should be kept separately.

Here are some records that may be maintained by your organization, but that should be kept outside of personnel files:

Medical records. Do not put medical records into a personnel file. Under both the Family and Medical Leave Act ("FMLA") and the Americans with Disabilities Act, there are legal requirements to maintain medical information separate from personnel files. Therefore, if a worker requests a leave or an accommodation of a disability, the organization is legally required to keep all of the worker's medical records in a separate file -- and limit access to only to those who have a need to know the information. Even for workers who are not disabled or requesting FMLA leave, if the organization collects any medical information, the records containing that information should be kept private and separate from other records.

Form I-9s. Form I-9s are required by the U.S. Citizenship and Immigration Service to verify the legal authorization of employees to work in the United States, and many employers are also required to verify employment authorization through the E-Verify system. Form I-9s and other records related to this verification must be kept for all employees, but do not put Form I-9s or any other records related to E-Verify into employee personnel files. Employment verification documentation should be maintained together in one folder in a secure and separate location from the organization's personnel files. The government is entitled to inspect these forms, and if

Dated: 4/19/2016

www.pbpatl.org

© 2016 Pro Bono Partnership of Atlanta, Inc. All rights reserved.

it does, the organization may not want the agents viewing the rest of the employee's personnel file information at the same time. Not only would this compromise employee privacy, but it might also open the organization up to additional questions and investigation.

Supervisor Files. It is not uncommon for supervisors to maintain their own files related to employees that include the supervisor's notes and other documents that may be used by the supervisor in assessing performance. The supervisor's file should not be included as part of the personnel file maintained by the organization, and should be kept securely by the supervisor.

Investigative Files. If a grievance, complaint or other allegation is raised that relates to an employee, a separate investigation file should be maintained by the organization with all of the documents related to the investigation of the allegation and the conclusion of the investigation. Only those with a business reason to know about the investigation should be provided with access to such files.¹

Unnecessary material. Although an employee's personnel file may contain any other job-related documents, the contents of personnel files should be limited. While it is not the case in Georgia, in many states employees have the right to view their personnel files. Remember that if litigation is filed, the personnel file will be disclosed to the opposing party. Indiscreet entries that do not directly relate to an employee's job performance and qualifications -- like references to an employee's private life or political beliefs, unsubstantiated criticisms, or comments about an employee's race, sex or religion can compromise the organization's position and provide evidence to support a claim.

MAINTAINING SECURITY OF EMPLOYMENT FILES AND INFORMATION

Whether files are maintained physically in drawers or cabinets or by electronic means, it is important to take appropriate steps to protect the privacy and security of the information being maintained by the organization. File drawers and cabinets should be in a secure and locked location, and access should only be allowed to those who have a need to know the information for business purposes. If the information is maintained electronically, appropriate passwords and other protections should be in place. For additional information about protecting data in the workplace, including employees' personal information, see this webcast on data privacy: <http://www.pbpatl.org/resources/technology/privacy/data-privacy-protecting-personal-information-collected-by-nonprofits>.

TIME PERIODS FOR MAINTAINING RECORDS

For more information about how long various records should be retained in personnel and other files, please see the Record Retention Webinar that was part of Pro Bono Partnership of Atlanta's series on Legal Issues for New Nonprofits: <http://www.pbpatl.org/for-nonprofits/legal-issues-for-new-nonprofits>.

¹ Please keep in mind that if disciplinary action is going to be taken against an employee based on the result of an investigation, the write-up provided to the employee should include both the fact that an investigation occurred and information about the result of the investigation that led to the disciplinary action. The write-up itself, but not the documents related to the investigation, should be maintained in the employee's personnel file.

Dated: 4/19/2016

www.pbpatl.org

© 2016 Pro Bono Partnership of Atlanta, Inc. All rights reserved.