



AIA Best Practices: Maintaining personnel files

Contributed by Lynda Fitzgerald, Culpepper, McAuliffe and Meaders Inc.

Summary

Maintaining complete and confidential personnel files is an important and attainable employer responsibility. Lynda Fitzgerald lists the documents that comprise a complete employee personnel file and discusses effective ways for a firm to maintain file confidentiality; handle employee medical information; and communicate the firm's policies, rules, and regulations.

Consult your attorney: *The information herein should not be regarded as a substitute for legal advice. Readers are strongly advised to consult an attorney for advice regarding any matter related to personnel files.*

Document personnel from day one

Opening a personnel file for each employee on the date of hire is a helpful first step in maintaining complete personnel records. The following important job-related documents should be included:

- A job description for the position
- The employee's completed original job application
- The employee's resume—especially important for firms that do not require applicants to complete job applications
- A copy of the written offer of employment—a letter that often contains important information about the original understanding between the firm and the employee such as the position being offered, starting salary, and summary description of benefits
- A copy of the employment contract, if one is written and signed for the position
- A copy of the employee's U.S. Citizenship and Immigration and Services (CIS) Form I-9, Employee Eligibility Verification, which must be completed to verify each employee's eligibility to work in the United States
- A copy of the employee's Internal Revenue Service (IRS) Form W-4, Employee's Withholding Certificate, and a state withholding form, if applicable
- An employee personal information sheet that includes the employee's home address; telephone numbers (both home and mobile, if applicable); emergency contact information; pertinent medical information (at the employee's option); and the name of the employee's spouse or partner

- Forms relating to employee benefits (e.g., medical insurance, life insurance, and retirement plan)

Additional documents

Other documents should be added to the personnel file as they are created, including the following:

- performance evaluations
- documentation of training or professional continuing education
- commendations
- documentation related to unsatisfactory performance, such as formal written warnings or the supervisor's notes of oral warnings
- documentation of disciplinary actions in response to unsatisfactory performance
- records of complaints about the employee from clients or colleagues

Acknowledgment of firm policies

An employee handbook is the most effective way to communicate to employees the firm's policies, rules, and regulations; standard operating procedures; and expectations concerning general performance, professional behavior, and attire.

Each employee should receive a printed copy of the handbook or be instructed in how to access it electronically, and should sign a statement acknowledging receipt of the handbook that should be placed in the employee's personnel file. A sample acknowledgement could read as follows:

"I acknowledge that I have received or have access to a copy of the XYZ Architects' Employee Handbook, which includes, among other things, the firm's Problem-Solving Procedure, Equal Employment Opportunity Policy, and Harassment Policy. By affixing my signature below, I affirm that I have read the Handbook and understand its contents. I understand that the Handbook represents only current policies and benefits, that it does not constitute a contract of employment, and that XYZ Architects reserves the right to alter these policies at its sole discretion at any time without notice."

Whenever the employee handbook is revised, all employees should sign an updated acknowledgment form.

Propriety of personnel file contents

While it is advisable to retain documents related to unsatisfactory performance and disciplinary action, such documents should reflect objectivity and professionalism, and should pertain to specific performance deficiencies that are measured against objective, defined, and reasonable performance criteria. Notes or reflections about an employee's personal habits, personal life, or appearance should be avoided unless the issue directly affects job performance.

Personnel file review and maintenance

Reviewing personnel files periodically may be useful to ensure that important documents are complete and up to date. The checklist below, while not intended to be exhaustive, may be helpful in conducting such reviews. Check personnel files to confirm that they include the following:

- a signed original copy of every contract or agreement between the firm and the employee
- a copy of the employee's current job description and all job descriptions since the employee's date of hire
- copies of all performance evaluations
- documentation of all salary adjustments since the date of hire, including salary increases and bonuses
- copies of all awards for performance and other commendations
- documentation of all disciplinary actions
- documentation that any imposed probationary period has ended, including whether and how the underlying performance deficiency has been corrected

If the firm has a policy that records unsatisfactory performance, and if related disciplinary action will be removed from personnel files after a specified period of time following satisfactory resolution of the matter, review the files and remove any outdated documents to maintain conformity with firm policy.

Confidentiality

Maintain every personnel file as a confidential record whose access is limited to the employee and authorized members of the firm. Personnel files contain sensitive and confidential information to which unauthorized persons should not have access. Store personnel records securely and make them accessible only to persons with a legitimate purpose, such as the employee's supervisor and the human resource director or manager.

Employees have the right to inspect their personnel files. The firm can require that the human resource director or the employee's supervisor be present to ensure that no documents are removed or altered without the knowledge and consent of the firm.

Employees should be informed whenever documents are placed in their personnel files, particularly if the documents pertain to unsatisfactory performance or disciplinary action. An employee who discovers negative information in the file after being disciplined or terminated may claim that he or she had no prior knowledge or notice of the incident and that the documents were created after the fact to justify the termination.

Medical information

State and federal laws related to the confidentiality of medical records include the Americans with Disabilities Act (ADA) and the Health Insurance Portability and Accountability Act (HIPAA). Some provisions of these laws may apply to the way employers handle medical information about employees.

NOLO (www.nolo.com), a publisher of self-help legal information for more than 30 years, advises employers to securely maintain all employee medical information separate from nonmedical information. Be careful not to disclose employee medical information to any party, except in accordance with the law. It may be lawful to disclose employee medical information in the following situations:

- Informing supervisors of chronic medical conditions such as diabetes or epilepsy when advance knowledge of the medical condition by others may be necessary to respond appropriately in a medical emergency.
- Informing first-aid or emergency medical personnel about a known medical condition or disability during a medical emergency when the employee cannot communicate the necessary information.
- Providing information to government agencies or insurance companies as permitted or required by law in connection with medical or life insurance applications, claims, or benefits.

About the contributor

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