

Best Practices for Documenting Employee Files



LAUBER MUNICIPAL LAW

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Personnel Files

- ④ What is the personnel file?
 - ④ A confidential, official record containing an employee's history with a company, including hiring, performance, training, and termination documents.
 - ④ Employers may maintain multiple files
 - General file
 - Confidential File
 - Payroll File
- ④ Who maintains it?
 - ④ Human resources or a designated custodian of records.



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Personal Files – General File

Ⓜ The general file normally has documents related to work history, job performance, and employment status from hiring to separation.

Ⓜ Documents include:

- Application Materials

- application
- resume
- certificates

- Offer of Employment Letter

- Handbook/Code of Conduct Acknowledgments

- Evaluations



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Personal Files – General File

- Promotions/Work History
- Discipline
- Compensation changes
- Results of an Investigation
- Recognition
- Training Records
- Separation Records
- May include job description

Personnel Files – Confidential File

- ④ The confidential file should be maintained as a separate file.
- ④ Documents include:
 - I-9 are required to be stored separately
 - Background checks
 - Drug test results
 - Medical records
 - FMLA records
 - Workers' Compensation records



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Personnel Files – Confidential File

- Litigation documents
- Workplace investigation records
- Grievances
- Benefit documents
- Records of unemployment claims and responses

Personnel Files – Payroll File

- ④ The payroll file should be maintained as a separate file.
 - ④ Documents include:
 - Compensation records
 - Time and attendance records
 - Tax forms (W-4s) and deductions
 - Banking documents
 - Garnishment documents



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Personnel Files – What Not to Include

- ④ What should not be kept in the personnel file?
 - ④ Documents include:
 - Supervisor working files (maintained by supervisor)

How to Maintain Personnel File

- ④ Personnel Files should be maintained in locked files or in a locked room with limited access.
- ④ Employees may generally see what is maintained in their personnel file but may not be allowed to copy documents.
- ④ Former employees may not have access to their personnel file.



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Retention Schedule

Ⓜ Human Resource Records

- Ⓜ **Employee Personnel File:** Four (4) years after termination.
- Ⓜ **ADA Accommodations (Public Employers):** Two (2) year from the date of the record or personnel action.
(ADAAA)
- Ⓜ **Drug Tests:** One (1) year from test date and up to five (5) years for DOT positions.

Retention Schedule

Ⓜ Human Resource Records

Ⓜ Hiring and eligibility records

- **I-9s:** Three (3) years after the date of hire or one (1) year after their employment ends, whichever is longer. (USCIS)
- **Job applications, Resumes, Job ads, Screening Tools/tests, Interview notes or other hiring records:** One year after creation or the hiring decision is made, whatever is later. (EEOC)
- **Background checks:** One (1) year. (EEOC)
 - **Consumer/Credit report:** Five (5) years (FCRA)

Retention Schedule

Ⓜ Leave and benefits documentation

- **Family Medical Leave Act (FMLA) records:** Three (3) years. (US Dept. of Labor)
- **COBRA and Health plan records:** Six years after the plan ends.

Ⓜ Tax and payroll records

- **W-4s:** Four years. (IRS)
- **Payroll records:** Three (3) years, and two years for records that wage calculations are based – time sheets, work schedules, etc. (FLSA)
- **Overtime records:** Three (3) years. (FLSA)

Retention Schedule

Ⓜ Health and Safety Records

- **Occupation injuries and illnesses, medical records, exposure to toxic substances:** Five (5) years after the year the record pertains to.
- **Exposure to toxic substances:** Duration of employee's job tenure plus 30 years.

Retention Schedule

④ State Requirements

④ Employers must keep a record of the name, address, and job description of each employee, the rate of pay, the amount paid each pay period, and the number of hours worked each day and each workweek for a period of no less than three years. ***Section 290.520 RSMo.***

- The records shall be open for inspection by the Missouri Division of Labor Standards.

Exceptions

- Ⓜ Litigation Hold
 - Ⓜ If an employees files a claim or lawsuit, the records should be maintained until the case is fully disposed.



Documenting Employee Performance

- ④ Effective documentation is essential to ensure transparency, fairness and accountability in the workplace.
- ④ Documentation is used for a history of employee and manager's actions, compensation decisions, disciplinary actions, terminations, promotions.

Documenting Employee Performance

- ④ Documenting employee performance is an important tool in providing feedback to employees
 - ④ Good performance
 - ④ Bad Performance
 - ④ Goal setting
 - ④ Areas of Improvement



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Documenting Employee Performance

- Ⓜ Performance concerns should never to a surprise to an employee.
- Ⓜ Be factual, fair, legal, objective, complete, and consistent: *Avoid opinions*



Best Practices in Documenting

- ④ Describe expectations clearly: Be specific - say you must arrive at 8:00 am, not you must arrive on time.
- ④ Describe the **behavior or performance** that must change, not the individual. Be specific – include dates, when, where, impact on other employees, and any positive comments.

Best Practices in Documenting

- ④ Document all performance counseling.
 - ④ Should be done as soon as possible.
 - ④ Be an accurate record of the conversation – stick with the facts.
 - ④ Follow-up.
 - ④ Have employee sign written warnings or counseling.
- ④ Create a detailed action plan for improving performance – coaching, not a performance improvement plan.

Best Practices in Documenting

- ④ Set clear deadlines for improving performance and the consequences if it does not improve.
- ④ Always be specific, do not use vague statements.

Sunshine Law – Personnel Records (Chapter 610, RSMo.)

- Ⓜ Names, current and previous positions, salaries, and dates of service (hire/separation) of public employees are public and available upon request
- Ⓜ Most individually identifiable personnel records, performance ratings, and records regarding employees or applicants are closed.





LAUBER MUNICIPAL LAW, LLC

Best Practices for Documenting Employee Files

Lee's Summit

4031 NE Lakewood Way, Ste. 1
Lee's Summit, MO 64064
(816) 525-7881

Jefferson City

308 E. High Street, Suite 108
Jefferson City, MO 65101
(660) 672-4597

Springfield

1855 S. National Avenue, Suite A
Springfield, Missouri 65804
(417) 605-3400



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