

PERSONNEL FILES & CONFIDENTIALITY

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Overview of Personnel Records & Confidentiality

What records should be kept in a personnel file?

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- ❑ Recruiting and screening documents: applications, resumes and transcripts
- ❑ Job descriptions
- ❑ Records relating to job offers, promotion, demotion, transfer, layoff, education and training records
- ❑ Performance evaluations and goal setting records



More Items



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- ❑ Letters of recognition
- ❑ Warnings, counseling and disciplinary notices
- ❑ Test documents used to make an employment decision
- ❑ Documents related to departure from employment
- ❑ Termination records
- ❑ Records relating to employment practices
- ❑ Pay and compensation information

With consideration

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- ❑ Complaints from customers and co-workers
- ❑ Notes regarding tardiness, attendance and other issues
- ❑ Exit interviews
- ❑ Employers should only collect information about an employee that is job related or necessary to administer payroll or benefits



Information to Keep Separately

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- Medical/Insurance information
 - ▣ Benefit enrollment forms, beneficiary forms, & claims
 - ▣ Doctors notes
 - ▣ Accommodation Requests



Information to Keep Separately

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- Form I-9
 - ▣ One file for current employees, one for termed employees
 - ▣ Kept for 3 years after hire or 1 year after termination, whichever is later
 - ▣ <https://www.ice.gov/factsheets/i9-inspection>
- Payroll Records
 - ▣ Includes voluntary and involuntary deductions



Information to Keep Separately

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- ❑ Background investigations and security checks
- ❑ Investigation materials involving employee complaints, witness interviews, employee interviews and findings. (Although relevant disciplinary action, counseling or other direct communication are included in the personnel file.)
- ❑ Child support/garnishments



Information to Keep Separately

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- Medical related information including:
 - Worker's compensation claims
 - FMLA/AFLA Records
- Requests for employment or payroll verification
 - Requests from creditors
 - Requests from Unemployment Insurance Division

Personnel Records Security Note!

- There should be only one personnel file maintained by human resources.
- Do not allow supervisors or managers to maintain a separate personnel file.

Managers and Supervisors



- Managers/supervisors may maintain notes and observations for all employees on a calendar or in a notebook, but no files on individual employees. If files are maintained, they are subject to the same regulations, including employee access and discovery for litigation, as the regular personnel file.
- Remind managers not to write derogatory handwritten notes on documents. Handwritten notes can become a part of the permanent record and, if negative, may be used in litigation.

Remember

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- ❑ Files may be viewed by the employee and others.
- ❑ Certain items must be maintained separately.
- ❑ Not everything goes in the personnel file.



- ❑ Files must be kept secure and limited to those who have a legal right to them.
- ❑ If the security is breached the employer has obligations.

Access to Personnel Files in Alaska

Alaska Stat. § 23.10.430

(a) An employer shall permit an employee or former employee to inspect and make copies of the employee's personnel file and other personnel information maintained by the employer concerning the employee under reasonable rules during regular business hours. The employer may require an employee or former employee who requests copies of material under this subsection to pay the reasonable cost of duplication.

(b) This section does not supersede the terms of a collective bargaining agreement.

Drug Test Results Communications

Alaska Stat. § 23.10.660

A communication received by an employer relevant to drug test or alcohol impairment test results and received through the employer's testing program is confidential and privileged communication and may not be disclosed except

- (1) To the tested employee or prospective employee or another person designated in writing by the employee or prospective employee;
- (2) To individuals designated by an employer to receive and evaluate test results or hear the explanation of the employee or prospective employee; or
- (3) As ordered by a court or governmental agency.

Alaska Personal Information Protection Act

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□ *Alaska Stat. § 45.48.010 – 090: Disclosure of breach of security*

(a) If a covered person owns or licenses personal information in any form that includes personal information on a state resident, and a breach of the security of the information system that contains personal information occurs, the covered person shall, after discovering or being notified of the breach, disclose the breach to each state resident whose personal information was subject to the breach.



Now What

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- ❑ **Develop a personnel recordkeeping policy.**
- ⦿ Identify what personnel records to be maintained and how they will be filed.
- ⦿ Identify record formats available and decide on your storage formats.
- ⦿ Establish archive and destruction dates.
- ⦿ Arrange for record safe-guarding.
- ⦿ Train personnel who have access to records.



Now What

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- ❑ **Ensure record retention:**
- ⦿ Include a document preservation and storage plan in your policy and test the plan for adequacy.
- ⦿ You are required to ensure the survival of the records in the event of fire or other disaster.
 - ▣ Off site storage and duplication
 - ▣ Electronic
- ⦿ Keep a reference copy of the Model Records Retention Schedule for Alaska.



Document Destruction

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- Establish a schedule for reviewing, removing, and destroying records whose legally mandated retention period has expired.
- Destroy paper records by shredding and electronic records by destroying the disks.



Key Retention Timelines

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- ❑ Recruitment, Selection & Appointment: 2 years after date of hire (06.19)
- ❑ FMLA/AFLA Files: 3 years then destroy (06.15)
- ❑ Employee Personnel Records: 50 years after separation (06.10)
- ❑ Collective Bargaining Records: 75 years after contract expires (06.02)

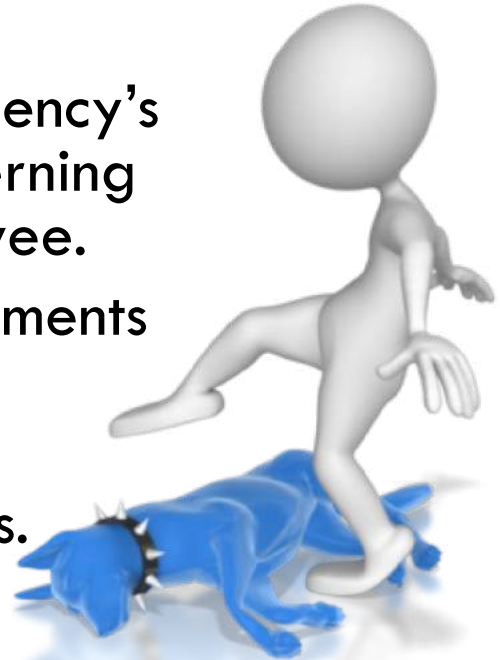
Key Retention Timelines

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- ❑ PERS/TRS Records: 75 years after date of hire (06.06)
- ❑ OSHA Hazard Communication & MSDS: 30 Years (06.23)
- ❑ Criminal Background Check Records: 2 years (06.04)
- ❑ Drug Testing Records: 5 years then destroy (06.05)

Careful . . .

- ❑ Retain documents that are relevant to anticipated, current or future **litigation**. When it is first realized that an employee may file legal action, the employer should immediately contact the agency's attorney to seek guidance and advice concerning records retention as it relates to that employee.
- ❑ Any regularly scheduled destruction of documents should be halted pending advice from legal counsel.
- ❑ This includes electronic documents and emails.



Questions - Discussion



For Additional Information Contact:

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