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Personnel/Medical Records: Is Your Business Complying With the Law?

What personnel records must be maintained?

Pursuant to Pennsylvania's Inspection of Employment Records Law, if personnel files are maintained, they should include specific records. Personnel files should contain applications for employment, wage and salary information, notices of commendations, warnings or discipline, authorization for a deduction or withholding of pay, fringe benefit information, leave records, employment history with the employer, including salary information, job title, dates of changes, retirement records, attendance records and performance evaluations. Personnel files do not need to include any records relating to investigation of possible criminal offenses, letters of reference, documents that are being developed or prepared for use in civil, criminal or grievance procedures, as well as medical records or materials that are used by the employer under the Fair Credit Reporting Act. Personnel files should be kept confidential and should only be disclosed when required by law or with an appropriate authorization.

Who has the right to access personnel files?

The Inspection of Employment Records Law permits an employee, at reasonable times, to inspect the employee's own personnel file. The employer may require an employee to provide a written request and to designate exactly which documents the employee would like to examine. The employer may also require the inspection to occur on the employee's free time during the regular business hours of the employer. An employee may designate an agent such as a lawyer or union representative to inspect the employee's personnel file. Despite the fact that an employee can inspect their personnel file, an employer is not required to give the employee copies of any personnel record. The employee may take notes while reviewing the personnel file.

The employer may require inspection of the records in the presence of an official designated by the employer. An employer may limit an employee to inspection of the personnel file once every calendar year by the employee and once every calendar year by the employee's designated agent. Only employees currently employed, laid off with re-employment rights, or on a leave of absence have the right to inspect their personnel file. Ex-employees have no right to access their personnel files or to obtain copies of personnel records, except in a legal proceeding.

What medical records must be maintained?

The Americans With Disabilities Act places strict limitations on the maintenance of medical records. All records containing medical information must be maintained in separate medical files and treated as a confidential medical record. An employer must not place

any documents containing medical information in an employee's personnel file. Although it is sometimes difficult to determine which records must be maintained in medical files, the clearest guideline is that any record that contains a medical diagnosis or other medical information should be treated as a confidential medical record file. An employee's medical file must be kept in a separate locked cabinet, apart from the location of the personnel files. A person should be designated to maintain and control the medical files.

Who has the right to access medical files?

Federal and state laws significantly limit access to medical information that is maintained in a confidential medical record file. Only supervisors and managers may be informed about necessary restrictions on the work or duties of an employee and necessary accommodations. First aid and safety personnel can be informed if a disability might require emergency treatment or if any specific procedures are needed in the case of fire or other evacuations. Additionally, information can be provided to government officials investigating compliance with the ADA and other federal and state laws. Medical information can also be provided for purposes of processing workers' compensation claims.

Conclusion

In order to comply with federal and Pennsylvania law, employers should review their policies and practices on maintenance and disclosure of personnel and medical records. Compliance with these laws is very simple and can help to avoid unnecessary legal exposure.

What You Should Know:

- Maintenance and disclosure of personnel and medical records are regulated by Pennsylvania and federal laws.
- Personnel files and medical files must be separately maintained.
- An employee may review his/her own personnel file one time per year.
- An employee is not entitled to receive copies of any personnel records.
- Medical records must be kept under the control of a designated person.
- Medical information can only be disclosed to limited persons for specific reasons.

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