

Labor Negotiations

Matthew U. Watkins, *Consultant, NJLM*

What's in Your File? Personnel File Management

To borrow from that ubiquitous TV advertisement about your wallet, what you have in your personnel files for employees is critical for proper personnel management. This issue was recently highlighted in a NJ Supreme Court case *Libertarians for Transparent Government v. Cumberland County* that related to meeting the requirements of the Open Public Records Act (OPRA).

The opinion of the Court gives us clearer understanding of what should be in a public employee personnel file and what is disclosable to the public. As we know, personnel records are not subject to OPRA, but the Court has now clarified what may be disclosed. I hope to convey how you should keep personnel records; and, in specific circumstances, what is subject to OPRA. As always, you should always consult your labor attorney for specific advice.

What's in?

First, you should review each personnel file to determine what should be in there, and what should be separated into another subsidiary file? Many times, I have seen personnel files that have everything that relates to the employee. That could be a legal problem that you want to avoid.

To give you one example for keeping some information out of the primary file. An employee's personnel file is accessible to the HR Director/Manager, the employee, and sometimes an employee's manager or supervisor. Typically, medical information, doctors' notes, physical or drug test results, cannot be seen by anyone other than the personnel manager. If a supervisor or other who may review the personnel file sees medical information, you will have a HIPAA violation on your hands.

In the end, all personnel files for each and every employee, retiree, and former employee, should have at least two separate files: a primary personnel file, and a medical (other) information file. They may be kept in the same file drawer, but it would be better to keep in a completely separate file drawer.

So, what should be kept in an employee's personnel file? Here is a list of items to start:

- The employee's initial application.
- Resume and any reference letters.
- Job offers and acceptance documentation.
- The job description of the original job and any changes thereafter.
- Documents relating to promotions, transfers, or raises.
- Training certificates, professional development.
- Positive reviews and other types of review information about the employee.
- All disciplinary notices, suspension notices and termination records.

Medical records, drug tests, and workers' compensation information all are similar and should be treated with a great deal of confidentiality.

Management reports of investigations or recommendations should NOT be kept in this file. Keep those in a confidential file as support documentation. Remember that the employee has complete access to their personnel file. That does not mean that they have access to confidential notes and memos.

What's out?

Now you that have what should be in the personnel file, let's go through what should not be there—and what to do with that information.

The following documents should be kept separate and in a different file cabinet if possible:

- Any medical files or documents, medical/insurance records.
- Workers' compensation.
- Drug tests.
- Payroll file.
- I-9 file.
- Any investigation file or other management confidential reports.
- Employment tests.
- Reference/background checks.
- Employment/payroll verification.
- Immigration forms.
- Child support/wage garnishment.
- Any litigation documents and records of investigations.

You may want to consider further separation of the documents by medical information, then by all other information. Medical records, drug tests, and workers' compensation information all are similar and should be treated with a great deal of confidentiality. My recommendation is that this information be kept in a separate cabinet. You may want to bifurcate these items into (1) medical information and (2) all other information.

I recognize that my primary recommendation is to simply separate a file into two files. I suggest you separate these materials even further into three files. Initially, this may make for a lot of work, but it will save you in the future when someone wants to review their file or you are required to hand over files.

Last chance agreements and OPRA

Over the years, many of us have used a separation agreement, or last chance agreement, in order to terminate an employee from the service of the community. Last chance agreements have always been considered nondisclosable. In fact, all conversations with your governing body about the agreement are done in closed session. However, in

Remember that the employee has complete access to their personnel file.

the Supreme Court case *Libertarians for Transparent Government v. Cumberland County*, the Court found that the settlement agreement contained significant information that the law states is not a personnel record. Those items include:

- The individual's name.
- Title or position.
- Salary.
- Length of service.
- Date of separation.
- Reason for separation.
- Often the type of the employee's pension.

This case makes last chance agreements subject to OPRA requests. So, in the case of separation agreements, do NOT reject the request, but very carefully review it with your attorney to redact parts that are not to be disclosed. This is especially important to remember when drafting such an agreement.

I am hopeful that this provides you some guidance for properly keeping personnel files and to raise awareness of a recent court case that impacts this subject matter directly.

As a part of the New Jersey League of Municipalities Labor Advisory Service, you are welcome to contact me if you should have any questions or need clarification on this matter. 🇯🇵

@ To discuss about the NJLM Labor Advisory Service, email Matt@njcs.us

NORTH JERSEY
FREIGHTLINER
TRUCK CENTER

220 RT 46 Elmwood Park NJ 07407
973-478-0015



Class 4-8 Trucks
NJ State approved Co-op
65MCECCPS www.escnj.us
Bid # ESCNJ 20/21-55

Bid Term 4/23/21 thru 4/22/23



www.njtruck.com

We Build Tough Trucks!!