**Personnel Files (Province of Alberta)**

Human Resource professionals know that keeping an organized and well-maintained employee file is crucial for conducting proper performance and salary reviews, considering promotions, documenting discipline and termination, and handling other day-to-day dealings with employees. But it’s not just common sense that governs how employee files should be handled; there are important legal requirements too.

***Employment Records***

A good practise is that each employee’s file contain the following records, in English:

1. Name, date of birth, occupation, telephone number, residential address;
2. Start date, wage rate, basis for pay (hourly/salary/flat rate/piece rate/commission/other incentive);
3. hours worked (including by managers), benefits paid, gross and net wages for each pay period, deductions made and the reason for deductions;
4. statutory holidays taken and amounts paid, annual vacation taken and owed, amounts paid for vacation and owed;
5. Amount taken from the employee’s time bank, how much remains, amounts paid and dates taken.

These records must be kept at the employer’s principal place of business and must be available for inspection by *Employment Standards* upon demand. Failing to adhere to this requirement can result in a monetary penalty against the employer.

***Employee Personal Information***

An employer must also comply with applicable privacy legislation (federal or provincial, depending on the employer) relating to employee personal information (defined loosely as recorded information about an identifiable individual other than business contact information).

Employee personal information in the possession or control of the employer must be kept secure to prevent unauthorized access, use, disclosure, copying, modification, or disposal.

Employers are sometimes caught by surprise by the right of an employee (or former employee) under privacy legislation to access their personal information in their employment file, as well, in the private sector, as the employee’s right to know how their employer has used their personal information and to whom the employer has disclosed the information. While there are some limits on the right of access (e.g. access can be denied where the documents containing the employee’s personal information are protected by solicitor-client privilege or contain sensitive commercial information or personal information of others that cannot be severed), disclosing an employee file can be a major concern, with many issues about the extent of the required disclosure. Following best practices, therefore, becomes key to managing this issue.

***Document Retention***

Different statutes set out different retention obligations. For example:

* Under *Employment Standards*, employee records must be kept for at least 2 years after termination of employment.
* Under privacy legislation, any employee personal information upon which a decision was made affecting the employee must be retained for at least 1 year.
* Privacy legislation also requires private employers to destroy records containing employee personal information as soon as retention is no longer necessary for legal or business purposes.

Employers must also keep in mind the limitation periods for lawsuits. Generally speaking, there is a six year limitation period for an employee to bring an action against his or her former employer for breaching the employment contract (e.g. wrongful dismissal). Limitation periods are shorter for human rights and employment standards complaints and for actions against municipal employers. If an employee has left in circumstances that could give rise to a wrongful dismissal action, the employer should keep all the records for six years following the date of termination.

***Best Practices***

We recommend that employers adopt a few basic practices in organizing and maintaining employee files:

* To the extent possible, keep employee files in a fire and flood-proof location. Computer records must safely stored with a secure backup system.
* Organize files into separate and clearly marked chronological sub-files dealing with different aspects of employment. For example, maintain sub-files such as:
1. Employment Standards records
2. Hiring, promotion, pay adjustments, and termination documents
3. Performance and discipline
4. Medical issues/workers’ compensation documents
5. Legal issues
* Allow employees to see the information that they are entitled to see in their files on request, under supervision. However:
1. do not allow employees to take their files home.
2. do not allow employees to see privileged information in their file, such as any legal advice received about the employee.
3. do not allow employees to see file information which contains the personal information of other employees; screen the employee file well before handing it over.
* Keep only original documents or copies of signed final documents in files; do not keep drafts. Stamp all documents with the dates sent/received.
* Keep hand-written notes but make sure they are identified by date, author, and subject matter.
* Always document discipline, even if it is delivered verbally; make a note of verbal discipline.
* Document all significant meetings with employees, even non-disciplinary ones.
* Don’t retain employee files forever. Keep the file for six years if there may be a wrongful dismissal claim. If there is no possible claim, the file should only be retained for two years from the date of termination in order to comply with the *Employment Standards*.

There is no cookie-cutter approach, however, and different situations may require different policies. The key is to have good policies and procedures for document management and retention in order to comply with legal requirements and to protect the interests of the employee and the employer.