

**“TREATING EMPLOYEES EQUALLY –
even those nobody likes”**

Presented to the Missouri City Clerks and Finance Officers
Association Eastern Division

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Guidance for Maintaining Employee Files

The manner in which local governments maintain employee files is affected by a number of different laws including:

- Sunshine Act
- Title VII
- Missouri Human Rights Act (MHRA)
- Health Insurance Portability and Accountability Act (HIPAA)
- Genetic Information Nondiscrimination Act (GINA)
- Americans' with Disabilities Act Amendments Act (ADAAA)
- Immigration and Nationality Act
- Local Records Retention Schedules.

To comply with these statutes and to protect the confidential information of your employees, we recommend that you take the following steps:

Personnel Files

1. What should be included in a personnel file?

- Personnel files should typically include: job application, notice of appointment, personnel transaction records reflecting position, classification and salary level, employee orientation checklists, performance documentation, and training records.

2. How should personnel files be organized?

- Organize personnel files in a logical manner so that information is easy to find.
- See the Sample File Organization as an example.

3. What should NOT be included in a personnel file?

- All confidential or protected information including documents that include medical information and documents referencing an employee's membership in a protected class. 42 U.S.C. §2000ff et seq.; 42 U.S.C. §12101, et seq., 42 U.S.C. §1320d, et seq., RSMo § 610.021, 42 U.S.C. §2000e, et seq. and RSMo §213.010 et seq.
- Employment verification (I-9 forms) should be maintained separately to make it easy to produce the records for inspection by appropriate federal agencies. 8 U.S.C. §1324a.

4. Who should have access to personnel files?

- Personnel files should be maintained in a locked and secure cabinet. If personnel files are stored electronically, have proper electronic security features. RSMo §610.021.
- Establish a policy or consistent practice regarding employee access to personnel files.
- Establish a policy or consistent practice regarding decision maker access to personnel files.
- Decision makers should typically have access to personnel files to assist them in making employment decisions.
- Establish a policy regarding what employee records are accessible by the public. RSMo §610.028.

Employee Medical and Confidential Files

1. What should be included in Medical and Confidential files?

- Medical records, drug tests, background checks/credit checks, psychological testing, workers compensation, FMLA and accommodation requests are among the documents which should be kept in confidential files. 42 U.S.C. §2000ff et seq.; 42 U.S.C. §12101, et seq., 42 U.S.C. §1320d, et seq.
- Internal and external investigation files should also be maintained as confidential files. RSMo §610.021. Internal affairs investigations may be maintained by the police department but must be treated as confidential files. If the internal affairs investigation results in discipline, then the disciplinary action must be forwarded to human resources/city clerk.

2. How should medical and confidential files be maintained?

- Medical and confidential files should be maintained separate from the personnel file to ensure limited access.

3. Who should have access to medical and confidential files?

- Restrict access to only those who “NEED-TO-KNOW”
- Very limited number of people should have access to these files.
- Decision makers generally should not have access to medical or confidential files.
- Access to medical files should only be granted, for example, when considering a reasonable accommodation and even then access should be limited to only the records necessary for making the decision and not the entire file.

Location of Files and Retention Policy

- All personnel files and all medical and confidential files should be maintained by the human resources designee or custodian of records/City Clerk to ensure limited access to the files.
- All original personnel documents should be maintained by the human resources designee or custodian of records/City Clerk.
- To the extent that departments maintain copies of personnel files (supervisor files), they should only be copies of personnel documents. They should not include medical information.
- Personnel documents, medical documents and confidential documents should be retained pursuant to the retention schedule established by the Local Records Board which can be found at: www.sos.mo.gov/archives/localrecs/schedules.

Sample Personnel File Organization

While all organizations are different and this structure may not work for everyone, the following is one way to organize employee files.

- **Generally all employee files are closed records.** RSMo §610.021. Therefore, access to **ALL** employee files should be limited to those who “need-to-know.” The suggested color coding emphasizes that for some files fewer people have a need to know.
- Members of the public are only entitled to name, position, salary and length of service of officers and employees. RSMo §610.021.
- Maintain a separate record which contains the public information to make responding to requests easy and to avoid inadvertently disclosing confidential information.

Green—Official personnel file with subparts:

Master Personnel Record - has the longest retention period 75 years from date of hire. This entire file including the sub parts is accessed by supervisors when making employment decisions.

New Hire Forms

- Employment application and/or resume
- Notice of appointment
- Orientation checklist
- Equipment and property check-out forms
- Receipts for handbook and other policies, including anti-harassment and drug testing policy
- Consent forms for background check, credit check, etc.
- Special licenses and certifications

Performance and Discipline

- Performance appraisals, commendations, awards and other evidence of specific accomplishments
- Disciplinary records

Compensation and Job Status

- Compensation adjustment forms
- Job status change forms and related information

Training Record – Some training records have a shorter retention period – so maintain separate

- Training records

Attendance Record – Shorter retention period – so maintain separate

- Attendance records

Yellow—Confidential files:

Confidential File – Subparts have varying retention requirements. Contains employment related documents which are necessary for human resources and compliance with certain statutes but should not be used in employment decision.

Pre-employment Documents

- Employment references
- Background investigation reports
- Criminal history reports
- Pre-employment screening tests
- Interview notes
- Data collection forms on gender, race/ethnic origin, military status and disability

Employment Verification

- I-9 forms

Benefit Documents

- Benefits enrollment forms and related documents
- Termination of Employment Benefit Documents and COBRA

Tax Documents

- Tax forms (W-4, etc.)

Investigations

- Internal and external investigation files of complaints by or against the employee (Excluding Internal Affairs Investigations)

Notes and Correspondence

- Supervisory notes and correspondence

Termination of Employment

- Exit interview forms and notes

Red—Restricted file:

Restricted File – Subparts have varying retention requirements. The file contains medical information about employees that is necessary for human resources but should not be used in employment decision, except some information from this file may be necessary when considering a reasonable accommodation request.

Medical Records

- Medical history questionnaires
- Medical evaluations and related documents
- Notes from doctors
- Any documents about past or present health, medical condition, or disabilities

FMLA/ADA

- Requests for leave including FMLA leave and related documents
- Requests for Americans with Disabilities Act (ADA) accommodations and related documents

Work Comp

- Workers' compensation history, claims and related documents

Drug and Alcohol Testing

- Results of drug/alcohol tests and related documents

EMPLOYEE PUBLIC INFORMATION SHEET

Fiscal Year _____

Name: _____

Position: _____

Change in Position: _____

Date: _____

Salary: _____

Change in Salary: _____

Date: _____

Length of Service: _____

File Retention Policies

In Missouri, the Local Records Board sets the minimum retention periods for records of local governments. These retention policies are maintained by the Secretary of State and can be found at <http://www.sos.mo.gov/archives/localrecs/schedules/>. Make sure to check for the most recent retention policies. The following is taken from the General Records Retention Schedule August 2011 revision.

Employee Personnel Records

The master personnel records maintained for each employee may include: job application, notices of appointment, personnel transaction records reflecting position classification and salary level, employee orientation checklists, payroll withholding information, leave summary record, performance documentation, and other records related to an individual's employment.

- ❖ **Minimum Retention:** 75 years from date of hire

Note: Duplicate copies may be kept at the office or department level. These records should be retained one year following separation, and then transferred to the Personnel Officer for evaluation.

Employee Medical Records

Records documenting an individual employee's work related medical history. Records may include but are not limited to: medical examination records (pre-employment, pre-assignment, periodic, or episodic), X-rays, records of significant health or disability limitations related to job assignments, documentation of work related injuries or illnesses, hearing test records, hazard exposure records (see below), drug testing records, first aid incident records, physical examination statements, Family Medical Leave Act records, release consent forms, and related correspondence. Hazard exposure records document an employee's exposure to hazardous conditions such as chemicals, toxic substances, blood borne pathogens, biological agents, bacteria, virus, fungus, radiation, noise, dust, heat, cold, vibration, repetitive motion, or other dangerous conditions.

- ❖ **Minimum Retention:** Hazard Exposure Records 30 years after separation; all other records 7 years after separation

Note: These records are not personnel records. Pursuant to the Americans with Disabilities Act, medical records must be kept physically separate from personnel records. See also: 29 CFR 1910.1020 for more information on the retention of Hazard Exposure Records.

Time and Attendance Records and Leave Requests

Records documenting hours worked and leave hours accrued or taken by employees on a daily, weekly, or monthly basis. Also documents hours of court ordered community service completed by non-employees. Records documenting an employee's request for sick, vacation, compensatory, or other leave time.

- ❖ **Minimum Retention:** 3 years plus completion of audit

Equal Employment Opportunity (EEO) Records

Records documenting the adoption, administration and compliance with US Equal Employment Opportunity Commission regulations may include: policies, plans, procedures, work place analyses, EEO-4 reports and related records and complaint records (which may include reports, exhibits, withdrawal notices, copies of decisions, hearing and meeting records, and related documentation and correspondence).

- ❖ **Minimum Retention:** Plans, policies and updates: Permanent; Complaint records: 3 years after final decision; other records: 3 years

Employment Eligibility Verification Forms

Also Called: I-9 Forms

Function: Documents the filing of US Immigration and Naturalization Service form I-9, which verifies that an applicant or employee is eligible to work in the United States.

- ❖ **Minimum Retention:** Retain for length of employment plus one year

Note: This form is not part of the Employee Personnel Record and should be filed separately.

Employee Benefit Records

Document an individual employee's benefit information such as selection of insurance plans, retirement, pension and disability plans, deferred compensation plans, and other benefit information.

- ❖ **Minimum Retention:** Retain year-end leave balance reports and a copy of retirement enrollment records 75 years after date of hire. Retain other records 3 years after employee separation or eligibility

Federal and State Tax Records

Records used to report the collection, distribution, deposit, and transmittal of federal and state income, social security, and unemployment taxes. Examples include W-2, W-4, the federal miscellaneous income statement (1099), request for taxpayer identification number and certificate (W-9), employers' quarterly federal tax return (941, 941E), tax deposit coupon (8109), and similar federal and state completed forms.

- ❖ **Minimum Retention:** 5 years

Volunteer Program Records

Document the activities and administration of volunteer programs, are used for program planning and may also include volunteer hour statistics, volunteer program publicity records, insurance requirement information, inactive volunteer files, and related records.

- ❖ **Minimum Retention:** 5 years

Volunteer Worker Records

Document work performed by citizens without compensation for their services and may include agreements, applications, skills test results, training documentation, task assignment and monitoring records, and related information.

- ❖ **Minimum Retention:** 3 years after separation

Drug Testing Records

Document the testing of current and prospective employees for controlled substances prohibited by policy, procedure, or statute.

- ❖ **Minimum Retention:** Positive test results 5 years. Negative test results 1 year. If filed with Employee Medical Records, retain 7 years after separation.

Employment Grievance and Complaint Records

Grievances or complaints filed by current employees, terminated employees, applicants, or private citizens regarding employment practices. Often relate to interpretations and alleged violations of employment contracts and may include complaints, investigation records, interview and hearing reports, arbitrator's findings and decisions, tape recordings and related records.

- ❖ **Minimum Retention:** 5 years after final disposition

Note: May be filed with employee's personnel records.

Employment Recruitment and Selection Records

Document the recruitment and selection of employees. Records may also document the recruitment and selection of contracted service providers such as attorneys, auditors, insurance agents, consultants, and others. Records may include but are not limited to job announcements and descriptions, applicant lists, applications and resumes, position advertisement records, civil service and other examination records, classification specifications, affirmative action records, interview questions, interview and application scoring notes, applicant background investigation information, letters of reference, civil service records, position authorization forms, certifications of eligible applicants, recruitment summary records (job announcement, position description, documentation relating to the announcement and test, and test items and ratings levels), and related correspondence and documentation.

- ❖ **Minimum Retention:** Retain announcement records, position description, and test and rating records 3 years; Retain unsolicited applications and resumes 6 months if not returned to the solicitor; Retain unsuccessful applications and other records 1 year after position filled or recruitment.

Position Description, Classification, and Compensation Records

Records document the description, classification, and compensation of jobs and positions. Usually includes details of duties and responsibilities of each position, time percentage breakdowns of tasks, skills and abilities needed for each position, and related records documenting the development, modification, or redefinition of each job or position. Records often include reports, position descriptions, position evaluations, compensation studies, wage determination surveys, job analyses, interview data, selection criteria, authorizations, agreements, and related records.

- ❖ **Minimum Retention:** 3 years after obsolete or superseded

Training Records

All records associated with or documenting the job-related instruction of employees/officials for job proficiency, enhancement or for the promotion of skill attainment or improvement and may include: 1) Training materials including but not limited to: course descriptions, manuals, textbooks, worksheets, handouts, films, videos, and course outlines; 2) Program records including but not limited to: instructor roster and certifications, planning and development documentation, class enrollment and attendance records, and course evaluations; and 3) Individual Employee/Official Training Records including but not limited to: name of employee, social security number, date attended, course title, agency or educational institution, hours of credit, test scores, final grades, certificates of training.

- ❖ **Minimum Retention:** 1) Training materials, retain one copy permanently; 2) Program materials, retain 3 years; 3) Individual Employee/Official Training Records, retain 5 years after termination of employment any records not transferred to the employee/official's master Personnel Record.

Unemployment Insurance Case Files

Documents unemployment claims.

Minimum Retention: 2 years after last action

Worker's Compensation Case File

Document claims filed against local government and may include: insurance claim forms, copy of hospital, physician, ambulance and medication bills, death and birth certificates, reports, photographs, summaries, reviews, notices, audio and videotapes, transcriptions of recorded statements, memoranda, correspondence, and related documents used in processing the claim.

- ❖ **Minimum Retention:** If action taken, retain 10 years after case closed, dismissed, or date of last action; If no action taken, retain 3 years

Accident Report Files

Contain reports which describe accidents involving city employees that result in personal injury.

Minimum Retention: 5 years after case concluded.

Employee Pension Plan File

Records used to establish and administer the municipal pension plan such as the official pension plan and may include the official pension plan, amendments, financial statements, audit reports, annual reports, annuity payments and actuarial valuation of the fund.

- ❖ **Minimum Retention:** 10 years

Retirement System Monthly Transaction Registers

LAGERS - Report that shows the status of individual pension accounts

- ❖ **Minimum Retention:** 10 years

Internal Affairs Records

Documents internal investigations

- ❖ **Minimum Retention:** Complaint Report, Not Sustained, 1 Year; Complaint Face Sheet, Not Sustained, until termination; Complaint Report, Sustained, 5 Years; Complaint Face Sheet, Sustained, until termination; Unfounded, Exonerated, Withdrawn Complaints, until settlement.

Note: Not part of personnel file, however, any disciplinary action taken as a result of the investigation would be part of the personnel file.

All personnel records which are beyond the retention period should be **securely** destroyed, unless they are the subject of litigation or possible litigation then they should be maintained until after the completion of the litigation.

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