

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.