

Take Care of Personnel Files and they will Return the Favor

I've been told that employers are required to keep personnel files for 10 years. Is that true?

Like the proverbial fish that “got away,” the rumored retention period for personnel files seems to just keep growing! In actuality, most employment records do not need to be kept longer than 3 years. In some cases, as with the I-9 Form, the required retention period is dependent upon how long the employee works for you; it must be kept for 3 years or one year after the individual has left your employment - whichever is longer.

Because of these varying and confusing requirements, and because the statute of limitations for employment claims could potentially be as long as 6 years, many employment experts recommend that employers keep personnel records for seven years. While that is more than is required, you will at least have the satisfaction of knowing that you didn't throw out potentially vital information, only to discover the next day that you have just been sued.

I know I have to keep an employee's medical information separate from her personnel file, but what exactly does “separate” mean? Separate folders? Separate drawers? Separate rooms?

That is a very good question, but one to which the law does not provide a clear answer. While the Americans with Disabilities Act (ADA) requires that medical information be kept in a separate location, the law does not go into more detail than that. Thus, we must rely on common sense to fill in the blanks. As a practical matter, it would probably be difficult to argue that a folder next to a personnel file is a “separate” location. On the other hand, a separate file cabinet or even a separate file drawer is probably enough to meet this requirement.

Equally important to the “separateness” of the information is its security. Both personnel files and medical information must be stored in a way so that the employee's privacy is protected from those who have no right to the information – which is almost everybody in your workplace.

For more information on this and other employment related issues, join BOLI's Technical Assistance for Employers at an upcoming seminar: Wage and Hour Laws in Salem on June 25; Leave Laws in Salem on June 12 and Corvallis on June 24; Effective Supervisory Practices in Eugene on June 19 and Albany on June 25; and Basic Supervision-A 2-Day Basic Training in Portland on June 17-18. Visit our website at www.oregon.gov/BOLI/TA or call 971-673-0825 for information.