ALP: Do employees have a right to see their personnel files, and if so should I be concerned about what I put into employees' personnel files?

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Under Ohio law, employers do not have to turn over personnel files to employees. However, it's always a good idea to monitor what is included in personnel files. If an employee brings a law suit against the Company, you may be required to turn over the employee's personnel file in connection with the suit.

There are three basic rules for keeping personnel files. First, do not place anything in the file that the employee has not already read or signed. Second, the Health Insurance Portability and Accountability Act (HIPAA) requires employers to protect medical records as confidential, keeping them separate and apart from other business records. That means you should never retain medical information in a personnel file. Ohio law also requires employers to turn over medical records upon written request by the employee. Therefore, if the employees' medical records are maintained separately, they can be accessed and provided to employees on demand.

Third, do not keep secret or "side" files. Supervisors often keep side files that contain personal notes about employees' job performance, skills, etc. From a practical perspective, these files help the supervisor recall information about employees. However, the contents can easily be taken out of context and later used against the employer. There are times when it is necessary to make temporary files for a particular HR function (i.e., compensation review, promotions, etc.) However, the necessary documents should be incorporated into the personnel file as soon as the HR function is completed, and the remaining documents should be destroyed.

If supervisors are trained to follow these three simple rules most of the common pitfalls that come up in employment litigation can be avoided. Finally, if you have questions about your personnel files or

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need to audit your files, consult with an employment lawyer.

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