

Colorado Bill Will Give Employees Right to Review Their Personnel Files

Insight — June 22, 2016

Most employees in Colorado currently have no legal right to review or copy their personnel files. But that is about to change. A bill awaiting signature by Colorado Governor John Hickenlooper will require private employers to allow employees to inspect and copy their personnel files at least annually upon request. If enacted, House Bill 16-1432 will also grant former employees the right to inspect their personnel files one time after termination of employment. Once signed, the bill will become effective on January 1, 2017.

Employers Must Allow Access to Pre-Existing Personnel Files

Under the bill, employers are not required to create or keep personnel files for current or former employees. They are also not required to retain any particular documents that are – or were – in an employee's personnel file for any particular period of time. However, if a personnel file exists when an employee asks to inspect it, the employer must allow access.

The inspection should take place at the employer's office and at a time convenient for both parties. Employers may have a manager of personnel data, or another employee of their choosing, present during the inspection. If an employee asks to copy some or all of his or her file, the employer may require payment of reasonable copying costs. Because the bill is silent regarding whether employees may bring others (such as their lawyers) to inspections, employers should likely limit inspections to only the requesting employees.

What Constitutes a “Personnel File”?

The bill defines a “personnel file” as an employee's personnel records which are used to determine his or her qualifications for employment, promotion, additional compensation, employment termination, or other disciplinary action. This encompasses both records kept in an actual file, and those employers may collect through reasonable efforts. Put differently, employers cannot avoid the bill's mandates by simply scattering employee records amongst multiple file cabinets.

The bill provides numerous exceptions to the documents that must be made available for inspection. The following are not included in the definition of “personnel files” and need not be made available:

- documents required to be placed or maintained in a separate file

from the regular personnel file by federal or state law;

- records pertaining to confidential reports from previous employers;
- an active criminal or disciplinary investigation, or an active investigation by a regulatory agency; and
- information which identifies another person who made a confidential accusation against the requesting employee.

Exceptions for Financial Institutions and Public Employees

The bill will not apply to financial institutions chartered and supervised under state or federal law, such as banks, trust companies, savings institutions, or credit unions. It will also not apply to public employees in Colorado who already have access to their personnel files under the Colorado Open Records Act.

Time to Clean up Those Files

Governor Hickenlooper is expected to sign the bill, and it is thus likely to become effective next January. Employers should get their personnel files in order before that date. For instance, they should separate information which must be provided from information that need not be provided (such as medical records, and documents related to active workplace investigations). They should also remove old, outdated, draft, and potentially inflammatory information from personnel files. Employers should create default rules for purging employees' personnel files a certain period of time following separation of employment (assuming no reasonably foreseeable legal action). Finally, employers should not permit supervisors to keep their own "unofficial" personnel records, as those will be subject to review as well.

If you have any questions about this bill or what should (or should not) be maintained in a personnel file, please contact me at bjwilliams@hollandhart.com or the Holland & Hart employment attorney with whom you typically work.

Subscribe to get our Insights delivered to your inbox.

This publication is designed to provide general information on pertinent legal topics. The statements made are provided for educational purposes only. They do not constitute legal or financial advice nor do they necessarily reflect the views of Holland & Hart LLP or any of its attorneys other than the author(s). This publication is not intended to create an attorney-client relationship between you and Holland & Hart LLP.

Substantive changes in the law subsequent to the date of this publication might affect the analysis or commentary. Similarly, the analysis may differ depending on the jurisdiction or circumstances. If you have specific questions as to the application of the law to your activities, you should seek the advice of your legal counsel.

