

Guidelines for Maintaining Employee Records

This White Paper was written by Ned Frazier, HR professional and founder of Frazier International.



Federal and state privacy laws over the last few years require all employers to review how they are maintaining their records on employees. Gone are the days where every piece of information on an employee was filed in the “Personnel file.” The primary driver behind this is HIPAA (Health Insurance Portability and Accountability Act). Legislation that was initially enacted to permit a terminating employee to continue to purchase the employers health insurance for up to 18 months, has evolved into a larger program that protects the privacy of certain employee records. Employers should greatly restrict the access to employee privacy information, and establish a policy on who within the company is permitted access to employee information.

There is a simple and effective process that protects employee privacy and also enables supervisors or other qualified managers and supervisors to have access to some information. By organizing the HR file (Personnel File) into three separate files, and restricting access to files, employers will be in compliance with privacy laws and still be able to effectively manage their Human Capital programs within their company. Files can be maintained electronically by scanning documents and saving them in the appropriate files. Files maintained on your computer system should always be password protected to meet HIPAA requirements. Files maintained in a traditional “paper” file must always be stored in a locked cabinet with limited access to the information. Reference in this report to “Files” can be either electronic or paper files.

File One- HR File. Access to this file is available to employees (with someone from HR present), managers or supervisors who have a need to know, and your Human Resources department. Information kept in the HR File should include:

- Employment application and resume
- College transcripts
- Position Descriptions
- Hiring, promotion, demotion, transfer, layoff, changes in rate of pay, other forms of compensation and education and training records
- Letters of recognition from the company and from clients or vendors
- Disciplinary notices or documents
- Performance evaluations
- Test documents used by the employer to make an employment decision
- Termination records and documentation of Exit interviews.

File Two- Privacy File. Access to this file is restricted to senior management on a need to know basis and the Human Resources department. The Health Insurance Portability and Accountability Act (HIPAA) and the Americans with Disabilities Act (ADA) ensure the protection of very sensitive and private information about an employee's medical condition (and member's of the employee's family) and such information must have limited access. The Privacy File should contain:

- Employers must keep all medical records for an employee separate from other employee information. All medical records including physical examinations, medical leave requests (and documentation to support a request for a medical leave), worker's compensation claims, and drug and alcohol testing programs and results.
- Source documents that identify an individual's race and sex.
- Any documents that relate to any internal or external charges or investigations (harassment, discrimination, etc.).
- Invitation to Self-Identify Disability or Veterans Status. This information is required to be maintained for federal contractors.
- Safety Training Records. OSHA may audit a company's training records. Keeping this information separate from the HR File will protect the employer from an auditor pursuing and investigating other information in the HR File.

File Three- Employer Sanctions File. All employers are required to complete a Form I-9, Employment Eligibility Verification, on all new hires within three (3) days of employment. Employers with federal contracts are required to use the E-Verify system to confirm eligibility of employees to work in the United States. In addition, the state of Colorado requires employers to complete a Colorado Affirmation Form on all new hires. Human Resources and limited senior management are the only groups that should be authorized to have access to the Employer Sanctions files. The information related to Employer Sanctions should be organized in five three-ring binders (may be stored electronically or in file folders, whichever is more convenient for the company) and stored in a safe, locked location with Human Resources as follows:

- **Notebook 1- Current Employees Form I-9.** This Notebook will be used to file the original Form I-9 for all current employees, and filed alphabetically, using the appropriate alphabetical tabs. Keep a list (usually a current payroll report) of all current employees in the inside pocket of the notebook. This is used to periodically confirm you have completed Form I-9's on all current employees. Attach the "Employment Authorized" memo from E-Verify or confirmation from the Social Security Number Verification system (SSNVS) to the employees Form I-9 and file in Notebook 1. Also attach copies of the documents the new hire presented to you for the Form I-9. The current Form I-9 form has an expiration date of March 31, 2016.

- **Notebook 2- Current Employees Colorado Affirmation Form.** Notebook 2 is used to file alphabetically the Colorado Affirmation Form for all current employees. Colorado Affirmation Form was revised; effective September 01, 2014 (expires 10/01/2017) and employers should use the current form for all new hires as of their date of hire. This is a good place to file the photo copies of the documents you received from the employee for the Form I-9. Keep a list (usually a current payroll report) of all current employees in the inside pocket of the notebook. This is used to periodically confirm you have completed Colorado Affirmation Forms on all current employees.

- **Notebook 3- Terminated Employees Form I-9's** will be filled in this Notebook by month, by year, according to the retention date you determine when the employee terminates. When the employee terminates, pull their information from Notebook 1, and file in Notebook 3. Information in Notebook 2 for the Colorado Affirmation Form should be removed from your files on date of termination and shredded. Use the Form I-9 Checklist to determine the termination date. Terminated employees' Form I-9 can be removed from your records and shredded either a) - three years after date of hire, or b) one year after date of termination, whichever is later. Here is a simple process to follow to determine the date you can shred or delete the Form I-9:
 - **Review and determine retention requirements**
 1. Date Employee hired: **06/02/07**
 2. Date Employee terminated employment: **12/10/09**
 3. Form I-9 must be retained until: **12/10/10**
 - Determine the **“one year after termination”** date. Example: if an employee terminates on 12/10/09, the “one year after termination” date is **12/10/10**)
 - Determine the **“three years after date of hire”** date. The employee's hire date should be on the Form I-9 in Section 2 in the “certification section”; Example: If the employee is hired on 06/02/07, then three years after date of hire is **06/02/10**). The retention date is 12/10/10 since it is later than the three years after date of hire.
 - File the terminated employee's Form I-9 and copies of their documents by the retention date you just determined. If you file the documents by date (in this example, December, 2010) then you have a system to properly shred the documents at the correct time.
 - Notebook 3 should have date tabs chronologically for up to three years to ensure you are correctly retaining the documents for the time period required.

- Check Notebook 3 regularly to see if any retention dates have passed. If so, pull those Form I-9's and related documents from Notebook 3 and shred them. Keep a spreadsheet of the name of the employee and the date the documents are shredded.
- **Notebook 4-** This notebook is used to file any **Problem Form I-9's**. They should be filed by month, using the month tabs. Examples of Problem Form I-9's include employee's whose work authorization terminates prior to his or her employment and must be renewed before it expires. Another example would be for hires that need a grace period to obtain Social Security numbers or birth certificates.
- **Notebook 5-** All correspondence and memos relating to Form I-9's and Colorado Affirmation Form for employees should be filed in Notebook 5. This includes any memos from management confirming the company's support of and compliance with Employer Sanctions, the utilization of E-Verify or SSNVS, the completion of Colorado Affirmation form, the decision to post the E-Verify posters in the hiring area for applicants to see, etc.

Maintain All Three Files in Safe, Secure Location. Each of the three records management programs for employees contain confidential information about your employees. You have a responsibility to maintain these records in a safe and secure location. They should all be kept within the Human Resources department, and locked in a filing cabinet or a locked office that has limited access by other employees, or stored on your computer with limited password access to the information. Remember Super Storm Sandy and the fires in Colorado from last summer.....make sure you have a backup to the employer sanctions files you have worked so hard to complete correctly!

The processes described in this White Paper will provide you with an organized and secure method to properly store your regular HR file information, any HIPAA-protected information, and your Employer Sanctions records.

Feel free to contact Ned Frazier of Frazier International with any questions about the process or to schedule an audit to proactively confirm your employer sanctions records are current and up to date.

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