

ADMINISTRATIVE POLICY



STATE OF WASHINGTON DEPARTMENT OF LABOR AND INDUSTRIES EMPLOYMENT STANDARDS

TITLE: EMPLOYEE ACCESS TO PERSONNEL FILE

NUMBER: ES.C.7

CHAPTER: [RCW 49.12.240](#), [.250](#), [.260](#)

ISSUED: 1/2/2002

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ADMINISTRATIVE POLICY DISCLAIMER

This policy provides the current interpretations of the Department of Labor & Industries. It guides the department's application of the relevant statutes (RCW) and rules (WACs). It also does not replace current standards provided by the relevant laws.

This policy is effective as of the date of print, but may be impacted by new legislation, changes to the department's rules, or later court decisions. The Director or designee may update this guidance as necessary.

This policy provides guidance about the right for employees, former employees, and their representatives to access employees' personnel files under the [RCW 49.12.240](#).

1. Employees Have the Right to Review Their Personnel Records and Receive a Copy Upon Request.

Employers must allow employees to access their personnel record(s) on an annual basis. See [RCW 49.12.240\(1\)](#). Employees, former employees, or their representatives also have the right to receive a copy of any personnel files maintained by their employer within 21 calendar days of their request, at no cost. See [RCW 49.12.240](#).

"Former employee" means a person who separated from the employer within three years of the date of the person's request. A former employee has the same rights to request a copy of their personnel file as a current employee. Public employers must provide a copy of a requested personnel file in accordance with the requirements of the Public Records Act. See [RCW 42.56](#).

2. An Employee Does Not Need to Make a Written Request to Receive a Copy of Their Personnel File.

An employee does not need to make a request in writing. However, employers may ask employees to provide a written request to document the request. An employee should follow any reasonable workplace rules to help the employer meet the request, but an employer may not apply any workplace rules that create an unreasonable burden to accessing the personnel files they maintain.

3. Personnel File(s) Include Records an Employer Makes in the Usual Course of Business.

Personnel files include records that are regularly maintained by the employer as part of the business records or that the employer uses when sharing information outside the business. This includes the following records, if the employer creates such records:

- All job application records;
- All performance evaluations;
- All nonactive or closed disciplinary records;
- All leave and reasonable accommodation records;
- All payroll records; and
- All employment agreements.

Although employers are not required to create personnel files they would not otherwise create in usual course of business, employers do have the independent obligation to create and maintain certain business records. See Administrative Policies [ES.D.1](#) and [ES.D.2](#).

4. Disciplinary Records and Performance Reviews.

Employees are entitled to copies of their disciplinary records and performance reviews unless they are actively under review by their employer. If an employer declines to provide any such records because they are under review, they should be provided when any employment action related to those records has been completed.

5. Employers are Not Required to Create and Maintain Records That They Would Not Otherwise Create Under Their Existing Business Practices.

Personnel files include records that are regularly maintained by the employer as part of the business records. Except for the discharge statement described below, businesses are not required to create or provide personnel file records they would not create in the normal course of business.

6. An Employer Must Provide a Signed Statement About a Termination of Employment to Any Employee Discharged From Employment, If Requested.

Within 21 days of a request, an employer must provide a signed written statement to the former employee or their designee stating the effective date of discharge, whether the employer had a reason for the discharge, and if so, the reasons. See [RCW 49.12.250](#).

7. Employers Should Retain Personnel Files For At Least 3 Years Following a Discharge.

Employers are not required to create a retention schedule for their records. However, the department recommends that employers retain personnel files for at least 3 years following a discharge. Employers may be subject to an investigation by the department if it receives a complaint and could also be the subject to a private right-of-action for workplace violations.

8. An Employer Should Remove “Irrelevant or Erroneous” Information Identified in the Personnel File.

If an employee reviews their personnel records and believes there is irrelevant or erroneous information, the employee can request the employer review the personnel records and remove any such information. The employer should remove any information if it agrees it is irrelevant or erroneous. If an employer determines the information is not irrelevant or erroneous they are not required to remove the information. If an employee believes information maintained in their personnel file is irrelevant or erroneous and the employer does not remove it, the employee may request to have a statement containing the employee’s rebuttal or correction placed in the employees personnel file. The employer is not prevented from removing information more frequently. See [RCW 49.12.250\(2\)](#).

Former employees retain the right to rebut or correct the employer’s determination of erroneous or disputed information for up to two years from the termination of the employment relationship. See [RCW 49.12.250\(3\)](#).

9. Employees Have a Private Right of Action If An Employer Fails to Meet Its Obligations Under Access to Personnel Records Law.

An employee or former employee can exercise their rights through a private right of action in superior court if they believe their employer has violated the law. Before filing a lawsuit, the employee or former employee must give notice of an intent to sue. The employee may not start legal action until 5 calendar days after the employee provided the notice to the employer.

The statutory damages for each violation are the following:

- (1) \$250 if the complete personnel file or the statement of discharge is not provided within 21 calendar days;
- (2) \$500 if the complete personnel file or the statement of discharge is not provided within 28 calendar days;
- (3) \$1000 if the complete personnel file or the statement of discharge is not provided within 35 calendar days;
- (4) \$500 for any other violations. See [RCW 49.12.250\(1\)](#)

10. Employers Have Additional Obligations Under Federal Law to Maintain the Confidentiality of Certain Medical Information.

Individuals with questions regarding employee privacy and medical files under the [Health Insurance Portability and Accountability Act \(HIPAA\)](#) should contact the U.S. Department of Health and Human Services. For information related to documentation related to reasonable accommodations, individuals should seek clarification about the application of [Americans with Disabilities Act \(ADA\)](#) from the United States Department of Justice Civil Rights Division.

For any questions, please contact L&I at ESGeneral@Lni.wa.gov.