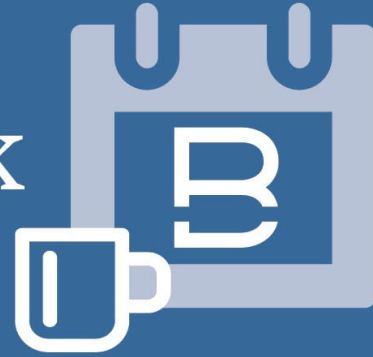


The Work Week

Bassford Remele Employment Practice Group



September 18, 2023

Welcome to another edition of *The Work Week with Bassford Remele*. Each Monday morning, we will publish and send a new article to your inbox to hopefully assist you in jumpstarting your work week.

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Employer Considerations When Responding to Employee-Records Requests

[Bryce D. Riddle](#)

As we barrel toward the fourth quarter, many employers look to update policies and procedures heading into the next year. One issue that employers often overlook is how to respond to a request for an employee's employment records. Responding to requests for employment records is an important responsibility for employers, and it is essential to handle such requests with care to protect employee privacy and comply with relevant laws and regulations. Here are some key points that employers need to know when responding to requests for employee records:

1. Legal Requirements:
 - Familiarize yourself with federal, state, and local laws that govern the release of employee records. These laws can vary significantly, so it is crucial to know the specific requirements that apply to your jurisdiction.
2. Privacy and Confidentiality:
 - Employee records contain sensitive personal information, so it is essential to maintain strict confidentiality. Only share employee records with individuals who have a legitimate need to access them.
3. Consent:
 - In many cases, you may need written consent from the employee before releasing their records to a third party. This consent should specify what records will be disclosed and to whom.

4. HIPAA Compliance (if applicable):
 - If you are an employer in the healthcare industry, you must also consider compliance with the Health Insurance Portability and Accountability Act (HIPAA) when handling employee health records.
5. Employee Access:
 - Employees generally have the right to access their own records. Ensure that you have a process in place for employees to request and review their records.
6. Record Retention:
 - Maintain clear record retention policies to determine how long various types of records should be kept. Different types of records may have different retention requirements.
7. Document All Requests:
 - Keep a detailed record of all requests for employee records, including who made the request, the purpose of the request, and when it was fulfilled.
8. Redact Sensitive Information:
 - When fulfilling requests, redact sensitive information such as Social Security numbers, medical information, and other private details that are not relevant to the request.
9. Third-Party Requests:
 - Exercise caution when responding to requests from third parties, such as government agencies or legal authorities. Ensure that the request is valid and that you are complying with any legal requirements.
10. Consult Legal Counsel:
 - If you have any doubts or concerns about how to respond to a specific request, it is advisable to consult with legal counsel experienced in employment law to ensure compliance with all applicable laws and regulations.
11. Training:
 - Train your HR and management teams on the proper procedures for handling employee record requests to ensure consistency and compliance.
12. Maintain Data Security:
 - Protect employee records from unauthorized access, both in physical and digital formats. Implement robust cybersecurity measures to safeguard electronic records.
13. Employee Communication:
 - Inform employees about your record-keeping policies and their rights regarding access to their records. Transparency can help build trust.
14. Timely Responses:
 - Respond to record requests promptly within the timeframes specified by applicable laws.
15. Penalties for Non-Compliance:
 - Understand that failure to comply with legal requirements regarding employee records can result in penalties, fines, and legal liabilities for your organization.

Remember that the specific requirements for responding to requests for employee records can vary widely depending on your location and the nature of the records in question. Therefore, it is crucial to consult with legal counsel who are knowledgeable about local laws and regulations to ensure compliance. At Bassford Remele, we regularly advise and counsel employers on handling records requests to ensure that disclosure of such information is done in accordance with applicable laws and regulations. Please feel free to reach out if you need assistance in developing protocols to deal with employee records requests.

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