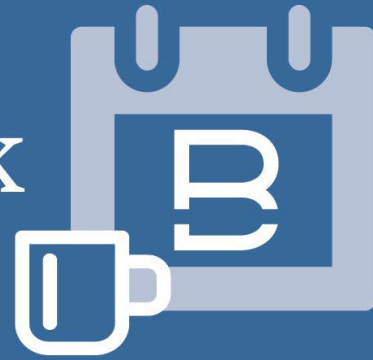


The Work Week

Bassford Remele Employment Practice Group



September 30, 2024

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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Let's Talk About Employee Records

[Michael J. Pfau](#)

From small businesses to large, record keeping policies range from stringent to nonexistent. While it often seems like an after-thought, failing to maintain employee personnel records could have real consequences. So here is your guide to all things on the Personnel Record Review and Access Statutes.

What is a "Personnel Record"?

"Personnel Record" is defined by state law. It includes, to the extent maintained by an employer:

any application for employment; wage or salary history; notices of commendation, warning, discipline, or termination; authorization for a deduction or withholding of pay; fringe benefit information; leave records; and employment history with the employer, including salary and compensation history, job titles, dates of promotions, transfers, and other changes, attendance records, performance evaluations, and retirement record.

Minn. Stat. § 181.960, subd. 4. While it is always best practice to keep robust and complete records, the law acknowledges that employers will not retain each of the enumerated records. In other words, if an employer does not keep a list of the dates of promotion of an employee, it is not necessarily violating the law, though it's not advisable.

The Personnel Record Review and Access Statute also excludes certain records from the definition of Personnel Records. A few examples include:

- written references respecting the employee, including letters of reference supplied to an employer by another person;

- information relating to the employer's salary system and staff planning, including comments, judgments, recommendations, or ratings concerning expansion, downsizing, reorganization, job restructuring, future compensation plans, promotion plans, and job assignment;
- any portion of a written or transcribed statement by a coworker of the employee that concerns the job performance or job-related misconduct of the employee that discloses the identity of the coworker by name, inference, or otherwise; and
- certain privacy information related to education and medical records.

Minn. Stat. § 181.960, subd. 4.

Employee's Right to Review Personnel Record

Employees have a right to review their personnel records upon written request. An employer, however, does not have to provide an employee the opportunity to review their personnel records if the employee reviewed it during the previous six months. Minn. Stat. § 181.961, subd. 1.

An employee who is separated from employment may review their personnel records once each year after separation for as long as the personnel record is maintained. *Id.*

After a written request is received, an employer must comply no later than seven working days if the Personnel Record is maintained in Minnesota, otherwise no later than 14 working days if it's located outside of Minnesota. Minn. Stat. § 181.961, subd. 2(a).

With respect to current employees, the personnel record or an accurate copy must be made available for review by the employee during the employer's normal hours of operation at the employee's place of employment or other reasonably nearby location, but need not be made available during the employee's working hour. If the employee is separated from employment, the employer must provide a copy. The employer cannot charge a fee in either scenario. Minn. Stat. § 181.961, subd. 2(b)-(d).

An employer may deny the employee's request if the employee's request is not made in good faith.

What if the Employee Disputes Information Contained in their Personnel Record?

If an employee disputes certain information in the Personnel Record, the employer and employee may agree to remove or revise the disputed information or if such an agreement is not reached, the employee may submit a position statement, not to exceed five pages. Minn. Stat. § 181.962, subd. 1. The position statement along with the disputed information must be included in the Personnel Record for as long as the record is maintained.

Additional Considerations

Employers must provide written notice to a job applicant upon hire of the rights and remedies provided in the Personnel Record Review and Access Statutes.

The Department of Labor and Industry may assess a fine of up to \$5,000 for violating the Personnel Record Review and Access Statutes.

Finally, as of August 1, 2024, the definition of “Employer” for purposes of the Personnel Record Review and Access Statutes was revised to include a person who has one or more employees. In other words, all Minnesota businesses that employ even one person must comply.

Whether it’s advising on proper personnel record keeping or complying with employee requests, the [Bassford Remele](#) Employment Law group regularly advises employers on laws and regulations to ensure full compliance. We can assist in creating a personnel record policy tailored to the size of your business and industry considering both compliance with state law and cost. Finally, if an employee does request their personnel records, be sure to check out an earlier edition of the [Work Week](#) discussing considerations when responding to a request. Please feel free to reach out to our team with any questions.

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