

Colorado Bill Grants Employees the Right to Review Their Personnel Files

Article By:

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The Colorado General Assembly recently enacted a statute that gives employees the right to review and copy their personnel file at least annually and at least one time after the termination of employment. House Bill 16-1432 passed the legislature by a 22 to 13 vote, and was signed into law by the governor on June 10, 2016. The law becomes effective on January 1, 2017. A similar bill died in the General Assembly last year, but this year opponents and proponents worked out a compromise. The bill received bipartisan support, including from small business groups like the National Federation of Independent Business.

Colorado employers should become familiar with the main provisions of the new law and take note of several exceptions and limitations.

The new Colorado law does not require employers to create or keep a personnel file for current or former employees. Moreover, it does not require that an employer keep any particular type of document in the personnel file, or maintain the file for a specified period. However, when a personnel file exists, it must be accessible to the employee at least one time annually and at least one time after the termination of employment.

A personnel file is defined by the legislation as "the personnel records of an employee, in the manner maintained by the employer and using reasonable efforts by the employer to collect, that are used or have been used to determine the employee's qualifications or employment, promotion, additional compensation, or employment termination or other disciplinary action." The definition is broad, and includes documents that employers might not generally consider to be part of the personnel file, such as desk files maintained by supervisors.

The statute provides that the employee's personnel file may be inspected at a mutually convenient time inside the employer's office. The employer may have a manager present during the inspection. The employee is allowed to ask the employer to copy all or part of the file, which is to be done at a reasonable cost to be paid by the employee.

The statute contains several exceptions from its coverage. The following are excepted from the disclosure requirements:

- Documents required by federal or state law to be placed or maintained in a separate file from the regular personnel file;
- Records pertaining to confidential reports from previous employers;
- Active criminal or disciplinary investigations or active investigation by regulatory agencies;
- Information which identifies another person who made a confidential accusation against the requesting employee; and
- Personnel files maintained by financial institutions, including banks and credit unions.

The law does not create a private right of action or create any new record retention policies.

Next Steps for Employers

Before the law goes into effect on January 1, 2017, employers should consider taking several steps. First, employers should consider segregating those documents from the personnel file that are not required to be disclosed under the law. Employers should also create a standardized process and train human resources professionals on how to administer employee access.

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