

Personnel Files

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What legal requirements must library trustees understand about the management of personnel files?

The library trustees, as the governing board of the library, have supervisory control and authority over the employees of the library. Therefore, as employers, the library trustees are tasked with understanding the nuances of employment of law, including the management of personnel files.

The starting point is understanding what the law considers to be a “personnel file.” Under the New Hampshire Department of Labor Administrative rules, a “personnel file” means

any personnel records created and maintained by an employer and pertaining to an employee including and not limited to employment applications, internal evaluations, disciplinary documentation, payroll records, injury reports and performance assessments, whether maintained in one or more locations, unless such records are exempt from disclosure under RSA 275:56, III or are otherwise privileged or confidential by law. The term does not include recommendations, peer evaluations, or notes not generated or created by the employer.

— *N.H. Dept. of Labor Rule, Lab. 802.08*

So, even if you keep all payroll records in one place, and, in another place, maintain separate files for each employee, each employee’s “personnel file” constitutes all personnel records pertaining to that employee, even though kept in two physical locations.

The above definition is also important because RSA 275:56, I requires an employer to give an employee access to his or her personnel file and to provide a copy of that file if the employee requests it, with some exceptions. Paragraph II creates a mechanism whereby an employee who contests information contained in his or her file can “submit a written statement explaining his version of the information together with evidence supporting such version,” which must be maintained as part of the personnel file.

Reading the definition of personnel file above, you can see that personnel files contain sensitive information. For example, “payroll records” will contain sensitive and private information, such as bank accounts for direct deposit. For that reason, personnel files must be maintained so that they cannot be lost, tampered with, or misplaced. Furthermore, library trustees should not be reviewing personnel files on their own. This comes from the basic principle that the library trustees, like any other public body, act through a quorum, not as individuals. Therefore, personnel-related decisions must be made through a quorum of the board.

The Right-to-Know Law and laws governing retention of records retention also come into play. Although all the nuances of those laws are too much to be covered here, there are three important things to keep in mind with regard to personnel files. First, personnel files are “governmental records” under the Right-to-Know Law, per RSA 91-A:1-a, III. As you know, governmental records are subject to public disclosure unless an exemption applies, and this leads to the second important thing to keep in mind: personnel files are not *per se* exempt from the disclosure. Although it’s easy to look at RSA 91-A:5, IV and assume that the entirety of every personnel file is exempt from public disclosure, upon closer examination, you will see that RSA 91-A:5, IV exempts from disclosure “personnel... files whose disclosure would constitute an invasion of privacy.” In fact, in 2016, the New Hampshire Supreme Court confirmed that for information in personnel files to be exempt from disclosure, it must *also* constitute an invasion of privacy if disclosed. *Reid v. New Hampshire Attorney Gen.*, 169 N.H. 509 (2016).

The final point is that some information in a personnel file must be kept for a particular time period under the Disposition of Municipal Records law, RSA Chapter 33-A. For example, RSA 33-A:3-a, LX says an employee’s application for employment must be kept until last employee’s retirement or termination, plus 50 years. Consult the full statute — and any local record retention rules you may have — for more information. □