

## Employee Rights under Pennsylvania's Personnel File Act

Employees who want to review their personnel file to determine if there are any blemishes on their record have the right to do so. Pennsylvania's Personnel Files Act, which is codified at 42 P.S. §1321 *et seq.*, provides employees with the right to inspect certain portions of their employment records. Both public and private employees have the right to review certain information contained in the employer's possession. The fundamental purpose of the Act is to provide a method for the employee to correct errors in the personnel file. As explained by Judge Friedman's dissent in the Commonwealth Court case of *Beitman v. Department of Labor and Industry*, 675 A.2d 1300 (Pa. Cmwlth, 1996), without this right of inspection, an employee would have virtually no way of asserting and enforcing rights to promotion, compensation, and the like, or protecting herself from improper or illegal termination." There are notable limitations to the right of an employee to inspect their personnel file.

First, the Act defines an "employee" as a person who is currently employed, laid off with reemployment rights or on leave of absence. "Employee" does not include applicants for employment or any other person. However, employers should proceed cautiously when determining whether to provide access to an individual who makes the request to review his or her personnel file at termination or shortly thereafter. The Commonwealth Court decision in *Beitman* held that a former employee who requested her personnel file *more than two years after her termination* was barred from obtaining it because she was no longer an "employee" as defined by the Act. However, the Court noted that the phrase "currently employee" should not be interpreted in every case to prohibit a person from obtaining his or her personnel file when the request to do so is made contemporaneously with termination or within a reasonable time immediately following termination. *Beitman*, 675 A.2d at 1302.

Additionally, not every piece of paper contained in the employee's personnel file is subject to inspection. The Act sets forth that "personnel file" means information, if maintained by the employer, any application for employment, wage or salary information, notices of commendations, warning or discipline, authorization for a deduction or withholding of pay, fringe benefit information, leave records, employment history with the employer, including salary information, job title, dates of changes retirement record, attendance record and performance evaluations. However, the term "personnel file" does not include records of an employee relating to the investigation of a possible criminal offense, letters of reference, documents which are being developed or prepared for use in civil, criminal or grievance procedures, medical records or materials which are used by the employer to plan for future operations or information available to the employee under the Fair Credit Reporting Act.

Finally, although the employee has the right to inspect his or her personnel file, the employee is not permitted to remove it or photocopy any part of the file. The employee may take notes concerning the file. The employee may look at his or her personnel file once a year at a convenient time, however there is no time limit for the amount of time an employee may take to review the file. The employer may not require a meeting prior to the employee's inspection of the file or create any unreasonable or undue burden on the employer in connection with the employer's request to review the file. For example, the employer cannot require the employee to sign a release that says the employee will not use the information contained in the file against the

employer in a future legal case. If an employer denies the employee access to his or her personnel file, the employee can file a petition with the Bureau of Labor Standards of the Department of Labor and Industry to request enforcement of the Act.

If you have any questions about regarding an individual's right to review employment records, contact the employment attorneys at Scaringi & Scaringi, P.C. If you would like to discuss this or any employment law matter, please do not hesitate to contact me at 1-877-LAW-2555.

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