

Must we honor an attorney's request for our employee's personnel records?

Q. We recently received a letter from an attorney representing one of our employees. It requested “all personnel files and records, including all medical records” that we have on this employee. The letter contained an “authorization” that the employee had signed, but which did not specifically name our company. Do we have to provide this information? What if we don’t? And is there any risk to the company if we do provide it?

A. Minnesota law does not require you to provide personnel information to the attorney. Only an employee has the right to receive a copy of his or her “personnel record.” The request from the employee’s attorney, even accompanied by the authorization you received, does not fall under Minnesota’s Personnel Record statute; and it wouldn’t even if the authorization named your company specifically.

Respond with a letter to the attorney saying your policy is to comply with requests properly made by an employee under Minnesota’s Personnel Record statute, or in accordance with a legal subpoena.

If the employee makes such a request, the law spells out what you must provide. For example, a personnel record does not include medical records, which are required by law to be kept in a separate, secured file. A subpoena may require you to produce records beyond those qualifying as personnel record in the statute.

There is some risk to your company in providing the records directly to the attorney. This would include the risk of liability for providing confidential personal data to a third party without proper authorization. It would also include the risk of setting a precedent for providing personnel data to third parties under other circumstances in the future, when it might be problematic to do so, even if this particular case does not present such problems.

The situation would potentially be different, by the way, if your company were party to a workers’ compensation proceeding and the request for the records came from the employee’s attorney in connection with that case. If that occurs, your company may be obligated to provide certain records. You would want to consult with your own workers’ compensation attorney, however, before doing so.