

# Personnel records versus investigation records

**Q One of our employees has just filed a complaint with the company claiming that she has been sexually harassed. We are concerned that if we discipline the alleged harasser based on our findings and note this incident in his personnel file, he may demand to inspect our investigation records. May we avoid this by maintaining a separate investigation file?**

**A** Under Section 1198.5 of the California Labor Code, an employee is entitled to inspect personnel files that relate to “the employee’s performance or to any grievance concerning the employee.” Employers are not, however, required to provide records relating to the investigation of a criminal offense.

Employers seek to maintain the confidentiality of their harassment investigations for various reasons. For instance, an employer may wish to protect from retaliation the individuals who provided information.

Since harassment generally does not constitute a criminal offense, an employee likely would be entitled to inspect an investigation file that you included in his or her personnel file. It would not be proper to exclude all references to the investigation from the personnel file, since the disciplinary action imposed ostensibly would be based on the investigation.

The best course of action for employers may be to maintain a separate investigation file. The employer should draft a report on the findings and actions taken against the employee. Include that report in the personnel file. This should satisfy the legal requirements, given that the disciplinary action will be based on the investigation’s findings and not the statements of any particular individual.