

Under Texas law, do fired employees have a legal right to see their personnel files?

Q. I recently fired an employee for performance problems. At the end of the termination meeting, he asked for a copy of his personnel file. Do I have to give discharged employees copies of their personnel files?

A. No. Except for certain types of documents that are required to be provided upon request, in Texas it is up to each employer to decide whether to permit employees to have copies of their personnel files.

A common concern among employers is that employees may try to use items from their personnel files to initiate a lawsuit or discrimination charge. There is no law in Texas that requires employers to provide employees with copies of their personnel files. Rather, personnel files are the property of the employer.

When an employee asks for a copy of his or her personnel file, an employer may simply respond that personnel files are company property, for its use only, and that it is the company's policy not to provide copies to anyone including current and former employees.

What *must* you provide? However, by law, employers must provide employees with certain documents upon request, even if they're located in a personnel file. Under the Employee Retirement Income Security Act, for example, employers must provide upon request documents relating to employee benefits plans (such as summary plan descriptions). Similarly, the Occupational Health and Safety Act requires employers to provide copies of exposure and medical records to current and former employees upon request. (*Remember:* Employees' medical records must be kept separate from their personnel files.)

Prepare files for a lawsuit. Even though employers are not required to give employees copies of their personnel files, they should bear in mind that a former employee will likely be able to obtain a copy of that file if he or she brings a lawsuit. Thus, employers should make sure their personnel files are properly maintained and that personnel actions are accurately documented.

Of course, just because you can legally refuse to provide the file, that doesn't necessarily mean you should do so in every case. Some employers faced with a request will allow the employee to review the file, and some go further and let them copy specific documents in the file.