

EMPLOYEE RECORDS

PURPOSE: To ensure appropriate storage, security and retention of employment-related records in compliance with Oregon Administrative Rules, Records Management Policy, the Americans with Disabilities Act, the Health Insurance Portability and Accountability Act and other laws, rules and regulations which govern employment records.

SCOPE: This policy applies to all County Offices and Employees.

POLICY STATEMENT: The Department of Employee Services is responsible for establishing and maintaining employee records for all regular and temporary employees. These employee records may include information related to personnel, benefits, worker's compensation, Family and Medical Leave, disability claims, pre-employment physical and psychological evaluations, fitness-for-duty reports, grievance and employment claim matters, and may be in the form of paper and/or electronic records. The intent of this policy is to outline the Department of Employee Services (DES) general guidelines and expectations for the necessary collection, use, disclosure and retention of personal and confidential information about employees in order to provide services and benefits while maintaining reasonable safeguards to protect the privacy of employees in conformance with applicable laws.

PUBLIC RECORDS

Oregon Law states in ORS 192.420, "every person has the right to inspect any public records of a public body in the State except as otherwise expressly provided by ORS 192.501 to 192.505." The law allows exemptions from public disclosure including items used in employment testing and certain items placed in employee personnel files. Specifically exempt are: test questions, scoring keys, and other testing data; personnel discipline actions; and supporting documents. In addition, information of a personal nature which may be kept in a personal, medical or similar file is exempt from disclosure if such disclosure would constitute an unreasonable invasion of privacy. The use of the term "personal file" does not specifically include employee personnel files.

In accordance with Oregon law, all records maintained by the County shall be public records except for the statutory exceptions, which include, but are not limited to:

- 1) internal advisory communications of a confidential nature;
- 2) confidential disclosures by citizens or previous employers;
- 3) information subject to ORS personal privacy exemption;
- 4) public records in litigation;
- 5) test questions;
- 7) criminal investigatory material.

PERSONNEL RECORDS

Individual employee personnel files shall be established and maintained by the Department of Employee Services, Personnel Division, for all employees. Maintenance of these central employee files by the Department of Employee Services is necessary for the proper management of human

resources and to allow proper access by employees. Employees' personnel files provide the basis for salary recommendations, promotional considerations, employee development and career planning, education and training considerations, and many other functions directly benefiting the individual employee as well as the department.

Supplemental departmental employee files may also be maintained for effective department management. A supervisor or manager may maintain an information file for employees. These files do not replace those required for the official personnel file. In addition, these files should not contain any medical records as described below. Medical records must be forwarded to DES for secure storage and appropriate retention.

MEDICAL RECORDS

Employee medical records shall not be retained in the official personnel file or a departmental working file, but in a confidential file which is physically separate from the official personnel file as prescribed by the Americans with Disabilities Act (ADA). Examples of medical records may include pre-employment physical and psychological evaluations, employment-related immunizations, work place accommodations under ADA, fitness-for-duty evaluations, worker's compensation or incident reports that disclose an employee's injuries or illness, and return to work releases that describe physical limitations (rather than work limitations). Departments should never retain any employee medical records.

HIPAA and PROTECTED HEALTH INFORMATION

In 1996, the Health Information Privacy and Accountability Act (HIPAA) was enacted to give patients new rights and protection against the misuse or disclosure of their health records. All individually identifiable health information held or disclosed by a covered entity in any form, whether communicated electronically, on paper, or orally, is covered by the final regulation.

Under HIPAA, DES is required to reasonably safeguard Protected Health Information (PHI) from any intentional or unintentional use or disclosure. Information to be safeguarded may be in any medium — paper, electronic, oral, and visual. Any County employee who has access to paper, electronic, oral, and/or visual records containing PHI will be required to sign a Confidentiality Agreement as a condition of employment.

ACCESS TO EMPLOYEE RECORDS

Employees have the right to review and know the location of their individual employee records as maintained by the Department of Employee Services and their department. The entire contents of the files shall be made available to the employee upon request, except for reference checks from previous employers and confidential background investigations. Personnel records are available for review by an employee's immediate supervisor and higher level supervisors. All other employee records are protected from access by persons other than the following:

- 1) employee;
- 2) employee's official representative with the employee's signed authorization;
- 4) staff required to handle employee files; or
- 5) other individuals as may be required by law.

DISCLOSURE/DISSENT

Employees shall be informed of all items being placed in their individual employee files and have the right to include dissenting information at the time information is being initially filed. On request, individual employees shall receive copies of these materials.

HIPAA's privacy rules give individuals the right to inspect, copy and request amendment of records that include PHI. Individuals have the right to request restrictions on the use and/or disclosure of their information. In addition, individuals have a right to submit a complaint if they believe that DES has improperly used or disclosed their protected information, or if they have concerns about the privacy policies of DES or concerns about DES compliance with such policies.

The Department of Employee Services may assess a reasonable charge for providing copies of employee files.

PUBLIC INFORMATION

Material and information within an employee's file that is considered public includes, but is not limited to:

- 1) employee's department/agency;
- 2) employee classification;
- 3) employee salary rate;
- 4) employee date of hire;
- 5) employee date of separation; and
- 6) rank on eligible register.

REMOVAL OF PERSONNEL RECORDS

Records may be removed from the employee files maintained by the Department of Employee Services, with the approval of the Director of Employee Services based upon a written request from the affected employee or his/her representative in two circumstances:

- 1) Any employee who has received a written reprimand, been suspended, reduced in pay, demoted or dismissed may have records of such disciplinary action, except as may be documented on a Personnel Action, removed after three years from the date of the action, unless there is evidence in the file of recurring or continuing problems in related areas. (See applicable collective bargaining agreement.)
- 2) Where the record has been the subject of an employee grievance settled by an agreement with the County and/or an employee's bargaining representative, by order of the Employment Relations Board, or by order of the court such records may be removed prior to the expiration of the retention period.

Additional time periods for removal of records may be specified as part of an employee's collective bargaining agreement but shall not be less than the retention periods specified in OAR 166-150-0160. Removal of records from employee files maintained by individual departments is subject to managerial discretion and negotiation with individual employees. A management decision to remove documents from an employee's department file does not apply to an employee's personnel file maintained by the Department of Employee Services. Requests for removal of records from a file maintained by the Department of Employee Services must conform to the procedures outlined above.