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With Employment Record Requests, Understanding An Employer's Rights Is Key

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Almost all employers maintain employment records pertaining to each of their current and former employees. These employment records often include information such as the employee's name, address, social security number, birth date, job titles, payroll records, tax records, benefits information, disciplinary records, employee evaluations, letters of reference, and medical records.

Generally, information in personnel records is considered private, but an employee may waive the right to privacy by filing a lawsuit against the employer for some allegedly unlawful employment decision, like failure to promote or wrongful discharge, which would place their employment history in issue for purposes of the lawsuit.

Employers often encounter requests for an employee's personnel file, whether it's from the employee, a former employee, creditors, courts, attorneys, prospective employers, or some other source. The most frequent reasons for employment record requests include an investigation into the employer's compliance with the law, or an employee's spouse or former spouse seeking payroll and benefit-related information pursuant to domestic relations proceedings.

Depending on the type of business and where the employer is located, it may or may not be obligated to comply with an employment record request. The federal government and many state governments have enacted statutes permitting public and private-sector employees to access their personnel and medical record files. However, employers have a competing interest in protecting the confidential information that employment records may contain, and private-sector employers generally regard employment records as property of the employer.

While having an employment record policy may make sense, it is important for any company that decides to maintain such a policy to keep in mind that there may be state or federal laws that require the disclosure of certain records.

Understanding an employer's obligation to respond to a request for records, and the right to deny that request, is critical to being able to preserve the employer's interests and protect it against litigious fishing expeditions. Sound company policies can further protect an employer's interest in denying access to employment records.