



Q&A

Connecticut's Revised Personnel Files Act:

What Every Employer
Needs to Know Regarding
Employee Records,
Discipline and Termination

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Connecticut's Revised Personnel Files Act: What Every Employer Needs to Know Regarding Employee Records, Discipline and Termination

1. What is the purpose of the Connecticut Personnel Files Act?

The purpose of the Connecticut Personnel Files Act, Conn. Gen. Stat. § 31-128a *et seq.*, is to establish the legal requirements for employer maintenance, administration and disclosure of employee personnel and medical information. The Act identifies specific categories of documents which constitute employee personnel and medical files, provides for the circumstances and deadlines under which employers must permit inspection or produce copies of personnel and medical files, sets requirements for how long personnel and medical files must be maintained, specifies certain language which must be contained on disciplinary and termination documents, and identifies documents employers must place in a personnel file upon an employee's request. The Act further provides for civil penalties for failure to comply with its terms.

On June 21, 2013, Governor Malloy signed into law Public Act No. 13-176, which contains a number of significant revisions to the Act which effective October 1, 2013. This document points out specifically where those revisions have changed the requirements of the Act.

2. Which employers are subject to the requirements of the Act?

The Act broadly defines "employer" as "an individual, corporation, partnership or unincorporated association." There is no minimum number of employees for the law to apply. Thus, any business that employs at least one employee in Connecticut is subject to the requirements of the Act.

3. How is employee defined by the Act?

Under the Act, an "employee" is broadly defined as any individual currently employed or formerly employed by an employer. It includes individuals in managerial positions.

4. What constitutes "personnel file" information?

"Personnel file" is a specifically defined term and may not match what employers consider personnel file information. The Act defines "personnel file" to include "papers, documents and reports pertaining to a particular employee which are used or have been used by an employer to determine such employee's eligibility for employment, promotion, additional compensation, transfer, termination, disciplinary or other adverse personnel action including employee evaluations or reports relating to such employee's character, credit and work habits."

"Personnel file" under the Act does not include "stock option or management bonus plan records, medical records, letters of reference or recommendations from third parties including former employers, materials which are used by the employer to plan for future

operations, information contained in separately maintained security files, test information, the disclosure of which would invalidate the test, or documents which are being developed or prepared for use in civil, criminal or grievance procedures.”

5. What language must an employer include on personnel documents to comply with the Act?

The Act provides that employers must include a statement in “clear and conspicuous language” in any documented disciplinary action, notice of termination of employment or performance evaluation that the employee may, should the employee disagree with any information contained in that document, submit a written statement to the employer explaining the employee’s position. This “employee rebuttal” requirement was created as a result of the 2013 revisions to the Act effective October 1, 2013.

6. What is “clear and conspicuous” language regarding employee rebuttals?

The Act does not define what constitutes “clear and conspicuous” language. In general, “clear” language is language in plain, standard English. Employers should make the language “conspicuous” by using LARGE, **bolded font** and placing it in a prominent place on the document such as, for example, near the signature line where the employee is asked to acknowledge receipt of the document.

7. Is an employer required to keep an employee rebuttal in the employee’s personnel file?

Yes. An employer must keep such employee statements in the employee’s personnel file. Further, an employer must include any such document when the file is transmitted or disclosed to a third party.

8. May an employer set a time-limit within which an employee is allowed to submit a rebuttal?

The Act does not directly address whether employers are permitted to set a time-limit for an employee to submit a rebuttal with respect to a documented disciplinary action, notice of termination or performance evaluation. However, the Department of Labor has provided informal guidance that, while placing time-limits for the submission of such rebuttals is not expressly prohibited by the Act, an employer’s subsequent refusal to place an “untimely” submitted rebuttal in an employee’s personnel file would likely be viewed as a violation of the Act.

Thus, an employer may place a time-limit in which the employee “should” (instead of “must”) submit a rebuttal, but any rebuttal submitted, even after any such deadline has passed, must still be placed in the employee’s personnel file.

9. Must an employer create documentation relating to employee discipline, termination or performance evaluation under the Act?

No. While the Act mandates that employers provide employees with a copy of any documented disciplinary action, notice of termination, or performance evaluation, the Department of Labor has provided informal guidance that the Act does not affirmatively

require that documents be created in the first instance. Thus, if there is no documentation regarding an employee's discipline, termination or performance, the Act does not require an employer to create it.

However, where such documentation is created, employers should be certain to provide any such copies to employees within the time-period provided in the Act, and described below. This requirement was added as part of the October 1, 2013 revisions to the Act.

10. How soon after imposing disciplinary action must an employer provide any documents to the employee?

Employers must provide an employee with a copy of any "documented" disciplinary action "not more than one business day after the date of imposing such action."

However, the new law does not define what constitutes the imposition of a disciplinary action nor address whether internal memoranda, email correspondence, supervisor notes, or other deliberative internal documentation regarding disciplinary action must be provided to employees. The Department of Labor has provided informal guidance that these types of administrative or deliberative documents do not need to be given to an employee as they do not constitute disciplinary notice. Rather, while these types of internal documents may lead to the eventual notification of an employee of their discipline, the documentation to be provided to an employee must actually be documentation intended to **notify** that employee of the disciplinary action.

11. Must an employer create a notice of termination and how soon after termination must an employer provide a copy of such notice to the employee?

No. The Department of Labor has provided guidance that if a termination has not been reduced to writing, an employer does not need to create a document.

However, if an employer creates a documented notice of termination, the October 1, 2013 revisions to the Act require that employer must *immediately* provide an employee with a copy of that documented notice of the employee's termination.

12. Who can request to inspect and/or copy a personnel file under the Act?

Both current and former employees may request access to their personnel files. Any such request must be made *in writing* to trigger the requirements of the Act.

13. How quickly must an employer make a personnel file available to an employee for inspection or copying?

It differs depending on whether the requestor is a current or former employee. Employers must allow current employees to inspect and/or copy their personnel files within seven business days of a request. With respect to former employees, employers must allow inspection and/or copying of a personnel file within 10 business days of a request. These are

new requirements as of October 1, 2013. Employers previously were permitted a “reasonable time” in which to allow inspection.

While the Act states that an employee may “copy” the personnel file, as a best practice, employers should copy the file for the employee (rather than requiring the employee to make a copy) to ensure that the file remains complete and intact.

14. When, where and how often must an employer make a requested personnel file available for inspection or copying?

The Act provides that any inspection of an employee or former employee’s personnel file shall take place during regular business hours. Where the inspection must take place depends on whether the requestor is a current or former employee.

In the case of a current employee, inspection must take place at a location “at or reasonably near the employee’s place of employment.” This requirement also applies to the inspection of employee medical records. Prior to the October 1, 2013 revisions to the Act, this was also the location provided for inspections by former employees.

As of October 1, 2013, inspection by a former employee may take place at a location mutually agreed upon by the employer and the former employee.

Employers are not required to permit inspection of an employee’s personnel file or medical records on more than two occasions in any calendar year.

15. Can an employer mail a copy of an employee’s personnel file to a former employee?

Yes. An employer can comply with the Act by mailing a copy of the personnel file within the same 10 business day period if the employer and former employee cannot agree “upon a location to conduct such inspection.”

In general, employers should mail personnel files to former employees, especially those who were terminated or did not leave on good terms. The Connecticut Department of Labor has provided informal guidance that this language does not require the employee to receive the requested personnel file within business 10 days, only that it be post-marked within 10 business days after such request.

16. Can employers require that the inspection of a personnel file take place in the presence of a company representative?

Yes. The Act expressly provides that the employer may require that any inspection of employee personnel file or medical records take place in the presence of an official designated by the employer.

17. What if an employee requests that documents in the employee's personnel file be changed or removed?

If an employee disagrees with information contained in the employee's personnel file or medical records, the employee may request that the employer remove or correct the information. Any such removal or correction must be agreed upon by the employer and employee. Thus, an employer is not required to remove or correct information that it believes to be accurate.

However, the Act provides that if the parties cannot agree, the employee "may submit a written statement explaining" the employee's position. Any such statement must be maintained as part of the employee's personnel file or medical records and must be transmitted to any third parties in response to a request for an employee's files.

18. What rights do employers have with respect to retaining and maintaining employee personnel or medical files?

The Act provides that employers retain the right to protect their files and records from loss, damage or alteration. To that end, the Act states that an employer is not required to permit an employee (or an employee's physician in the case of medical records) to remove a personnel file or medical records from the employer's premises where the records are made available for inspection. In the event that an employee wishes to retain or remove documents contained in the personnel file, the employee is permitted to make copies of those documents.

Under the Act, an employer is required to keep an employee's personnel file for at least one year after the termination of the employee's employment.

19. How long does a former employee have to request a copy of the employee's personnel file?

A former employee has one year from the date of separation from the employer in which to request to inspect and/or copy the employee's personnel file. This time-frame corresponds with the Act's requirement that employers are required to keep any personnel files pertaining to a particular employee for at least one year after the termination of such employee's employment. Thus, an employer has no duty to retain or transmit a former employee's personnel file after one year has passed. However, medical records of former employees are subject to a longer time-period, as discussed below.

Employers should be aware of a discrepancy between the revisions to the Act and a particular section that was not repealed as part of the 2013 revisions to the Act with regard to the ability of former employees to request a copy of their personnel file. Conn. Gen. Stat. § 31-128g, which was not changed by the legislature's 2013 amendments to the Act, still provides that employers must, within a "reasonable time" after receipt of a written request from an employee, provide such employee with a copy of all or part of that employee's personnel file. (Note that the definition of employee provided by the Act includes individuals formerly employed by the employer, as well as current employees). However, the Department of Labor has indicated that it interprets the legislative revisions of the Act to also apply both the one

year limitation within which a former employee must request a personnel file, as well as the 10 day time period within which an employer must produce a personnel file, to requests made under § 31-128g.

20. What are the requirements of the Act with respect to employee medical records?

The Act specifically defines “medical records” to mean “all papers, documents and reports prepared by a physician, psychiatrist or psychologist that are in the possession of an employer and are work-related or upon which such employer relies to make any employment-related decision.”

There are key differences between an employer’s obligations for personnel files versus medical records. As opposed to the significant revisions to the Act regarding personnel files, employer requirements regarding employee medical records are largely unchanged. Thus, there is no definite time limit in which to provide employees access to their medical records. The statute merely requires that an employer “shall within a reasonable time after receipt of a written request from an employee” permit inspection by the employee or physician of the employee’s choice.

21. Under what circumstances is an employer permitted to disclose information contained in a personnel or medical file to third parties?

Employers may disclose information in employee personnel or medical files to third parties where the employee has provided written authorization for doing so. In the absence of written authorization, disclosure of such information is limited to verification of dates of employment, the employee’s title or position, and wage or salary.

The Act also provides certain exceptions where disclosure is permitted if it is made: (1) To a third party that maintains or prepares employment records or performs other employment-related services for the employer; (2) pursuant to a lawfully issued administrative summons or judicial order, including a search warrant or subpoena, or in response to a government audit or the investigation or defense of personnel-related complaints against the employer; (3) pursuant to a request by a law enforcement agency for an employee's home address and dates of his attendance at work; (4) in response to an apparent medical emergency or to apprise the employee's physician of a medical condition of which the employee may not be aware; (5) to comply with federal, state or local laws or regulations; or (6) where the information is disseminated pursuant to the terms of a collective bargaining agreement.

In any case where a disclosure involves medical records, the employer shall inform the concerned employee of the employee’s physician's right of inspection and correction, the employee’s right to withhold authorization, and the effect of any withholding of such authorization upon such employee.

22. What are the penalties for failing to comply with the requirements of the Act?

As of October 1, 2013, the Connecticut Department of Labor is authorized to establish an appropriate fine for violations of the Act of up to \$500 for a first violation and up to \$1,000

for any subsequent violations. The actual amount of any fine is within the discretion of the Department of Labor, so long as it is within the statutory caps. These penalties are provided for in Conn. Gen. Stat. § 31-69a. Prior to the 2013 revisions to the Act, these penalties were mandatory.

In exercising its discretion, the Department of Labor is permitted to consider all factors that the Labor Commissioner deems relevant, including, but not limited to: (1) the level of assessment necessary to insure immediate and continued compliance with the provisions of the Act; (2) the character and degree of impact of the violation; and (3) any prior violations of such employer of the Act.

Jackson Lewis attorneys are available to assist employers with the Connecticut Personnel Files Act and other workplace requirements. We will, of course, continue to provide timely updates as additional guidance becomes available.

Appendix A

CONNECTICUT PERSONNEL FILES ACT (INCLUDING THE 2013 AMENDMENTS)

New language as a result of the 2013 amendments is underlined. Words deleted as a result of the 2013 amendments are bracketed.

Sec. 31-128a. Definitions. As used in this chapter:

- (1) "Employee" means any individual currently employed or formerly employed by an employer and includes individuals in managerial positions;
- (2) "Employer" means an individual, corporation, partnership or unincorporated association;
- (3) "Personnel file" means papers, documents and reports pertaining to a particular employee which are used or have been used by an employer to determine such employee's eligibility for employment, promotion, additional compensation, transfer, termination, disciplinary or other adverse personnel action including employee evaluations or reports relating to such employee's character, credit and work habits. "Personnel file" does not mean stock option or management bonus plan records, medical records, letters of reference or recommendations from third parties including former employers, materials which are used by the employer to plan for future operations, information contained in separately maintained security files, test information, the disclosure of which would invalidate the test, or documents which are being developed or prepared for use in civil, criminal or grievance procedures;
- (4) "Medical records" means all papers, documents and reports prepared by a physician, psychiatrist or psychologist that are in the possession of an employer and are work- related or upon which such employer relies to make any employment-related decision;
- (5) "Security files" means memoranda, documents or collections of information relating to investigations of losses, misconduct or suspected crimes, and investigative information maintained pursuant to government requirements, provided such memoranda, documents, or information are maintained separately and not used to determine an employee's eligibility for employment, promotion, additional compensation, transfer, termination, disciplinary or other adverse personnel action.

Sec. 31-128b. Employee access to personnel files.

- (a) Each employer shall, [within a reasonable time] not more than seven business days after receipt of a written request from an employee, permit such employee to inspect, and if requested, copy his or her personnel file if such a file exists. Such inspection shall take place during regular business hours at a location at or reasonably near the employee's place of employment. Each employer who has personnel files shall be required to keep any personnel file pertaining to a particular employee for at least one year after the termination of such employee's employment.

(b) Each employer shall, not more than ten business days after receipt of a written request from a former employee, permit such former employee to inspect, and if requested, copy his or her personnel file if such a file exists, provided the employer receives such written request not later than one year after the termination of such former employee's employment with the employer. Such inspection shall take place during regular business hours at a location mutually agreed upon by the employer and former employee. If the employer and former employee cannot agree upon a location to conduct such inspection, the employer may satisfy the requirements of this subsection by mailing a copy of the former employee's personnel file to the former employee not more than ten business days after receipt of the written request from the former employee.

(c) Each employer shall provide an employee with a copy of any documentation of any disciplinary action imposed on that employee not more than one business day after the date of imposing such action. Each employer shall immediately provide an employee with a copy of any documented notice of that employee's termination of employment.

Sec. 31-128c. Employee access to medical records. Employer's duties re maintaining medical records.

Each employer shall, within a reasonable time after receipt of a written request from an employee, permit an inspection of medical records pertaining to such employee which may be in such employer's possession. Such inspection shall take place during regular business hours at a location at or reasonably near the employee's place of employment and shall be made by a physician chosen by such employee or by a physician chosen by the employer with such employee's consent. Each employer who has medical records shall be required to keep any medical records pertaining to a particular employee for at least one year after the termination of such employee's employment. Medical records, if kept by an employer, shall be kept separately and not as part of any personnel file.

Sec. 31-128d. Employer's right to retain files on premises.

Nothing in this chapter shall be construed as a requirement that an employee or his physician be permitted to remove his personnel file or medical records or any part of such file or records from the place on the employer's premises where it is made available for inspection. Each employer shall retain the right to protect his files and records from loss, damage or alteration to insure their integrity. Each employer may require that inspection of any personnel file or medical records take place in the presence of a designated official.

Sec. 31-128e. Removal or correction of information. Employee's explanatory statement.

(a) If, upon inspection of his or her personnel file or medical records, an employee disagrees with any of the information contained in such file or records, removal or correction of such information may be agreed upon by such employee and his or her employer. If such employee and employer cannot agree upon such removal or correction then such employee may submit a written statement explaining his or her position. Such statement shall be maintained as part of such employee's personnel file or medical records and shall accompany any transmittal or disclosure from such file or records made to a third party.

(b) Each employer shall include a statement in clear and conspicuous language in any documented disciplinary action, notice of termination of such employee's employment or performance evaluation that the employee may, should the employee disagree with any of the information contained in such documented disciplinary action, notice of termination or performance evaluation, submit a written statement explaining his or her position. Such employee statement shall be maintained as part of such employee's personnel file and shall accompany any transmittal or disclosure from such file or records made to a third party.

Sec. 31-128f. Employee's consent required for disclosure.

No individually identifiable information contained in the personnel file or medical records of any employee shall be disclosed by an employer to any person or entity not employed by or affiliated with the employer without the written authorization of such employee except where the information is limited to the verification of dates of employment and the employee's title or position and wage or salary or where the disclosure is made: (1) To a third party that maintains or prepares employment records or performs other employment-related services for the employer; (2) pursuant to a lawfully issued administrative summons or judicial order, including a search warrant or subpoena, or in response to a government audit or the investigation or defense of personnel-related complaints against the employer; (3) pursuant to a request by a law enforcement agency for an employee's home address and dates of his attendance at work; (4) in response to an apparent medical emergency or to apprise the employee's physician of a medical condition of which the employee may not be aware; (5) to comply with federal, state or local laws or regulations; or (6) where the information is disseminated pursuant to the terms of a collective bargaining agreement. Where such authorization involves medical records the employer shall inform the concerned employee of his or his physician's right of inspection and correction, his right to withhold authorization, and the effect of any withholding of such authorization upon such employee.

Sec. 31-128g. Employee's right to obtain copies.

Each employer shall, within a reasonable time after receipt of a written request from an employee, provide such employee with a copy of all or part of his personnel file or provide such employee's physician with a copy of such employee's medical records, provided such request reasonably identifies the materials to be copied. Such employer may charge a fee for copying such file or records or any part of such file or records. Such fee shall be reasonably related to the cost of supplying the requested documents.

Sec. 31-128h. Frequency of inspection.

No employer shall be required to permit an inspection of any employee's personnel file or medical records on more than two occasions in any calendar year.

The penalty for violation of the Personnel Files Statute is in a different part of the Connecticut General Statutes.

Sec. 3. Subsection (b) of section 31-69a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2013*):

(b) Any employer, officer, agent or other person who violates any provision of chapter 563a [shall] may be liable to the Labor Department for a civil penalty of not greater than five hundred dollars for the first violation of chapter 563a related to an individual employee or former employee, and for each subsequent violation of said chapter related to such individual employee or former employee, [shall] may be liable to the Labor Department for a civil penalty of not greater than one thousand dollars. In setting a civil penalty for any violation in a particular case, the Labor Commissioner shall consider all factors which the commissioner deems relevant, including, but not limited to, (1) the level of assessment necessary to insure immediate and continued compliance with the provisions of chapter 563a; (2) the character and degree of impact of the violation; and (3) any prior violations of such employer of chapter 563a.

Approved June 21, 2013

Appendix B

CT Personnel Files Act - 2013 Legislative Update

	Previous	New (as of Oct. 1, 2013)
Current Employee Access to Personnel Files	Right to “inspect” personnel file.	Right to copy of personnel file if requested.
Timing for Inspection/Copying for Current Employees	Employers had “reasonable time” to comply with a request to inspect.	Employers have seven (7) business days to allow employee to inspect and/or to copy.
Former Employee Access to Personnel Files	Did not differentiate between current and former employees.	<p>Upon receipt of written request, employer has ten (10) business days to allow inspection and/or to copy personnel file.</p> <p>If parties cannot agree on a reasonable location for inspection/copying, employer may comply by mailing the file within the 10 day period.</p> <p>One (1) year from date of separation to request.</p>
Disciplinary Documents		Employers must provide employees with “a copy of any documentation of any disciplinary action” within one (1) business day of imposing the action.
Termination Documents		Employers must “immediately” provide any terminated employee with a copy of “any documented notice of that employee’s termination.”

<p>Employee Written Statements</p>		<p>Employers must include “a statement in clear and conspicuous language” in all written disciplinary documents, performance evaluations, and notices of termination that if the employee disagrees with anything contained in those written documents, the employee may “submit a written statement explaining his or her position.”</p> <p>Employee statement must be maintained as part of their personnel file.</p>
<p>Fines</p>	<p>DOL “shall” impose fine of \$500 for violation.</p>	<p>DOL “may” establish appropriate fines up to \$500 for any first violation of the Act and \$1,000 for any subsequent violation.</p>

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