

Legal Update Article

Virginia Employers Required to Provide Copies of Employment Records Upon Written Request

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On July 1, 2019, a new amendment to Virginia Code Section 8.01-413.1 will take effect. For the first time, all Virginia employers will be required to provide copies of employment records to employees upon written request. Records reflecting dates of employment, wages or salary during employment, job description and job title and any injuries sustained by the employee during employment must now be provided within 30 days of receipt of a written request from the employee, current or former, or the employee's attorney.

If the employer keeps the records in paper or hard copy format, the employer may charge a reasonable fee per page for copying. Likewise, if the employer keeps the records in an electronic format, the employer may charge a reasonable fee for the electronic records.

If the 30-day obligation cannot be met, then the employer must provide written notice of the delay and produce the records requested within 30 days of the notice. Failure to comply can result in a subpoena being issued for the records and possible damages, including expenses such as court fees and attorney costs.

The statute provides for one very limited exception. Specifically, an employer will not be required to produce the personnel record if there is a written statement included in the employee's records by the employee's treating physician or clinical psychologist that in his or her professional opinion that furnishing the records or allowing the employee to review the records would reasonably endanger the life or physical safety of the employee or another person, or that the records reference another person and access to the records would reasonably cause substantial harm to the referenced person. However, the latter provision does not include a health care provider.

If an employee's records contain such statements and an employee requests the record, then the employer must produce the records within 30 days of the request, but only to the employee's attorney or authorized insurer. The employer may not furnish the records to the employee.

While the statute does not contain a specific reference to the length of time limitation such records must be kept by the employer, the amendment requires "all records or papers retained by the employer" shall be produced. As a result, employers should review their document retention policies when preparing to comply with this change.

Employers in Virginia should also review current handbooks and policies and revise provisions that refer to employment files and records as the property of the employer as well as language that deem requests for records or files by the employee being at the employer's sole discretion.

If you have any questions, please contact the authors of this article or the Jackson Lewis attorney with whom you regularly work.

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