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What's In A File: Navigating Personnel Records Requests

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One of the biggest warning signs of employment litigation on the horizon is the dreaded personnel records request. In the states that have enacted personnel records access rights for employees, personnel records maintenance can be its own compliance headache. Employers should keep in mind that a document may be subject to disclosure even if it is not included in the employee's formal personnel file. For example, in California, Labor Code section 1198.5 defines a personnel record as any document "relating to the employee's performance or to any grievance concerning the employee." In the modern workplace, employers

must remember that employees receive feedback in multiple informal ways, including through emails and messages on platforms like Slack or Microsoft Teams. It is smart then, as this article recommends, to adopt policies for how written feedback should be documented, communicated, and maintained, so if and when the time comes to respond to a personnel record request, the employer can be confident that all relevant information is produced.

Responding to personnel records requests can involve some nuance where it makes sense to get counsel involved, particularly where the law exempts some types of documents from production or imposes obligations on the employee. For example, California allows employers to exclude personnel records such as letters of reference, records obtained prior to the employee's employment, and records "obtained in connection with a promotional examination." Consider consulting your Akerman Labor & Employment attorney prior to responding to personnel records requests to make sure your approach provides your company with the best protection.

... employers must be vigilant about employment-related documents that they create and save, as they may contain information that employers will not want employees to review.

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