

Does an Employee Have a Right to Their Personnel File? Maybe.

Employers are frequently faced with requests from employees for access to their personnel file. Employers question whether they are legally obligated to comply with such a request, or if they may refuse on the basis that the personnel file is the property of the organization. The answer to this common dilemma will more often than not depend on the applicable privacy legislation, the type of workplace (union vs. non-union), and existing workplace policies.

Similar privacy legislation (related to employee information) applies to federally regulated employers/employees and employers/employees in Alberta, British Columbia, and Quebec. Employers in the 4 jurisdictions are required to implement and distribute a privacy policy detailing how employee information is used and stored and are responsible for identifying a privacy officer who is available to respond to employee inquiries and requests for access to information.

As a result of the privacy legislation, employees in the 4 jurisdictions have the right to review their personal information, challenge the accuracy and comprehensiveness of the information in their personnel file and to ask to amend their contents. Compliance with the applicable privacy legislation does not necessarily require an employer to hand over an employee's personnel file in its entirety. Employers should consider, when dealing with access to personnel file requests, which types of information is covered by the applicable privacy legislation and must be disclosed to the employee and whether the file will simply be made available for review or if copies will be provided to the employee directly.

There are some exceptions to the employee's general right to access personal information including but not limited to (i) information that would reveal personal information about a third party; (ii) information that is subject to solicitor-client or litigation privilege; and (iii) information that could reasonably be expected to threaten the life or security of an individual.

In Ontario, and in other jurisdictions where privacy legislation does not exist, an employee's right to access personal information may be addressed by a workplace policy or employment agreement (or the collective agreement in unionized settings). In the absence of a workplace policy or agreement

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granting an employee's right to his or her personnel file, an employee's request for information may be refused.

If you have any questions regarding privacy and employee requests for their personnel file, please schedule a call with an e2r® Advisor.

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