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**MEMORANDUM #08-17HR**

TO: Agency Administrators

FROM: Carolyn Horwich, J.D., Director of Human Resources

THROUGH: Rip Colvin, Executive Director

SUBJECT: Employee Personnel Files

DATE: February 10, 2017

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The Department of Management Services, Division of Human Resource Management, recently issued a document regarding the maintenance of Personnel Records.

I hope you will find the document useful.

Thank you.



## DIVISION OF HUMAN RESOURCE MANAGEMENT POLICY GUIDELINE

### STATE PERSONNEL SYSTEM

**SUBJECT:** *Personnel Records – Maintenance and Collection of Employment Documents in the Personnel File and Employee Data in the Human Resource Information System*

**POLICY GUIDELINE:** 2017-002

**EFFECTIVE DATE:** February 6, 2017

**SUPERSEDES:** *Program Guidelines, Personnel Records – Maintenance and Collection of Employment Documents in the Personnel File and Employee Data in the Human Resource Information System*

**STATUTES/RULES/REGULATIONS/LAWS:**

*45 C.F.R. Part 160, General Administrative Requirements and Part 164, Security and Privacy*

*42 U.S.C. § 12112(d), Medical examinations and inquiries*

*29 C.F.R. Part 825, The Family and Medical Leave Act of 1993*

*Section 668.004, Florida Statutes (F.S.), Force and effect of electronic signature*

*Section 668.50, F.S., Uniform Electronic Transaction Act*

*Section 876.05, F.S., Public employees; oath*

*Section 119.071, F.S., General exemptions from inspection or copying of public records*

*Section 435.09, F.S., Confidentiality of personnel background check information*

*Section 119.07, F.S., Inspection and copying of records; photographing public records; fees; exemptions*

*Rule 1B-26.003, Florida Administrative Code (F.A.C.), Electronic Recordkeeping*

*Rule 60L-30.002, F.A.C., Employee Records*

*General Records Schedule, GS1-SL for State and Local Government Agencies-Record Retention Schedules*

**FORMS:** N/A

**ADDITIONAL REFERENCE MATERIALS:**

*29 C.F.R. Part 516, Records to be kept by employers*

*29 C.F.R. Part 553, Section 7(o), Compensatory Time and Compensatory Time Off*

*E-Verify User Manual for Employers*

*Article 12, Personnel Records (various state collective bargaining agreements)*

*Volume V, section 3, Bureau of State Payroll Preparation Manual*

*Internal Revenue Service (IRS), General Instructions for Forms W-2 and W-3*

**SCOPE AND PURPOSE:**

This guideline lists useful authoritative sources related to personnel records management, addresses the maintenance of employee data in the human resource information system (HRIS), and answers frequently asked questions regarding the types of employment documents that agencies should collect and store as part of an employee personnel file. Personnel records are employee documents (including supporting documentation submitted by employees) and

data that agencies collect in the course of processing personnel and payroll actions or in compliance with federal or state employment laws and regulations.

It should be noted that the General Records Schedule, GS1-SL for state agencies stipulates the respective retention schedule for the personnel records of employees covered by the Florida Retirement System and employees paid from Other Personal Services (OPS) funds.

Additionally, Rule 1B-26.003, F.A.C., *Electronic Recordkeeping*, of the Florida Department of State (DOS) provides that the official record copy of a personnel file (i.e., the master copy) may be comprised of scanned images or records that were created or maintained in electronic format. Therefore, with either format, there are standards which must be met regarding retention period, maintenance, public record access, disposition, etc., and agencies should consult with DOS for guidance when needed.

### Documents

Rule 60L-30.002, F.A.C., *Employee Records*, does not specify document types or the location for maintaining such records. However, various state and federal laws dictate the sort of documentation that should be maintained, and a centralized approach to records management will best ensure that personnel records are complete, consistent, accessible and secure.<sup>1</sup> Additionally, agencies should maintain only one official personnel file (excluding a confidential/medical file) per employee, not only as a best business practice for legal compliance, but also in accordance with most of the state's collective bargaining agreements.

The afore-mentioned GS1-SL provides a sample (not exhaustive) list of the types of documents that reasonably comprise a personnel file. The Question and Answer section of this guideline has taken these examples into account in recommending a minimum standard for compilation of a personnel file.

Additionally, as more employee transactions have become automated and integrated through the state's HRIS (the People First system), many human resource processes are now paperless; the master copy is now an electronic record. Examples of documentation that used to exist in paper form and now resides electronically within the HRIS are an employee's tax withholding information and Equal Employment Opportunity (EEO) reporting information (the latter of which is used for various purposes including the state's required submission of the federal State and Local Government EEO-4 Report, the Annual Workforce Report and other data requests). Other examples of documentation that are now paperless include timesheets, Personnel Action Requests (PARs) and performance evaluations.

Since some of these processes also require the signature of employees, supervisors, etc., it should be noted that provisions within Florida's Electronic Signature Act of 1996 and the Uniform Electronic Transaction Act, both provide that digital signatures or attestations may be substituted unless otherwise provided by law (see section 668.004, F.S. and subsection 668.50(7), F.S.). Consequently, paperless HRIS processes do not need to be printed and placed in the personnel file, since the master copy and/or attested copy is maintained electronically. However, supporting documentation (e.g., paperwork that justifies a PAR, a performance corrective action plan, etc.) is appropriate to keep in the personnel file.

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<sup>1</sup>See "Additional Reference Material" above

Note: The ability to print out a completed “form” or a screen shot from the HRIS is merely an administrative convenience. It would be redundant and inefficient to also maintain hard copies of these electronically produced records. However, should it become necessary to produce a hard copy of a form or a screen in order to comply with a public record request, a request arising from a grievance or legal discovery specific to an employee, the agency would then be responsible for printing and providing a copy to the requesting party. In such cases, the agency should also retain a photocopy of what was printed for their litigation files.

Documents required for employees will vary based on the nature of work being performed, on-going changes in the legal environment, the facilitation of agency processes and other business needs. Each agency’s human resources officer or designated representative must determine the need for any additional personnel records and the employees to which such records apply. Furthermore, the officer or designee must determine the appropriate centralized location to maintain personnel records.

### Data

A major distinction between the employee records maintained in a paper or imaged personnel file and those maintained in the HRIS is that the former tends to contain primarily historical information, whereas the latter (in addition to storing transactional history) always includes real time employee data that must be periodically updated as circumstances warrant (e.g., physical and email addresses, eligibility status for certain forms of pay, legal name, etc.).

Because employee data is often used for reporting purposes and discrepancies between information systems can disrupt processes, it is imperative that employee data be kept up to date and that, when changes are made, appropriate supporting documentation is collected. For example, the employee’s name must be consistent with other record systems such as the database for the Social Security Administration (SSA). Keeping state employee records consistent with the SSA also avoids conflicts with other information systems utilizing Social Security data (e.g., E-Verify). In an effort to avoid mismatches with the SSA and these other systems, agencies should follow consistent documentation standards when entering or updating an employee’s name in the HRIS and the corresponding agency file.

### **QUESTION AND ANSWER:**

#### **Question 1:**

What documents are recommended for maintenance in an individual employee’s paper or electronic personnel file that complements the personnel information captured in the HRIS?

#### **Answer:**

The list below is recommended as best practice but is not intended to be exhaustive or limiting. In general, the official personnel file should include, but is not limited to, the following documents:

- The employee’s completed employment application (the HRIS version is part of the vacancy recruitment package, which is purged after four years pursuant to DOS retention standards);
- Reference checks and relevant documents obtained during the review of another agency’s personnel file related to discipline, performance, etc. (Relevant documents copied from another agency’s personnel file should be attached to the reference check.);

- Any PARs or authorizations not maintained in the HRIS;
- Any record that reflects a change in pay, appointment status and any other action pertaining to the employee's employment (unless maintained in the HRIS);
- Any documentation required to substantiate licensures and certifications as required by law to perform a position's job functions;
- The notarized Public Employees Oath (Oath of Loyalty) signed by the employee as a condition of employment as required by subsection 876.05(2), F.S. (because the statute continues to require physical signatures and notarization, the master copy remains a paper document);
- All employee performance plans and evaluations not maintained in the HRIS;
- Any acknowledgements, agreements or other official documentation directly related to the employee; and
- All formal disciplinary actions.

In addition, although the following items have their own separate records series and shorter retention schedule under GSL-S1, they may be included in the same official personnel file:

- Any payroll deduction authorization form completed by the employee;
- Any attendance and leave supporting documentation (for example, a copy of jury summons, military orders, etc.).

**NOTES:**

- Documents pertaining to disciplinary actions that have been invalidated are still part of the public record. Although, in conformance with a settlement agreement, agencies may wish to bundle such documents or even place them in a separate envelope and clearly mark them "invalid" or "void", such documents should not be permanently sealed, redacted or kept separate from the personnel file.
- Unless a particular document type or form of supporting documentation has been specifically exempted from the public record by state or federal law, the fact that it contains a mix of public record information and protected information will not necessarily justify the maintenance of such documents in a separate confidential file. Examples are emergency contact information forms, paper versions of the Employee's Withholding Allowance Certificate (W-4) and paper versions of direct deposit information (in cases where the agency is in possession of a copy; generally it is **not** recommended that agencies handle this data). The public record law authorizes the redaction of the information that is specifically protected and not necessarily the whole document. Therefore, it is incumbent on agencies to ensure they delete or excise only what is required when complying with a request to inspect the personnel file.

**Question 2:**

What employee documents should be kept **separately**?

**Answer:**

Inasmuch as agencies have responsibility under various laws to safeguard the privacy and security of certain protected health information, it is recommended that one general purpose confidential/medical file be maintained (and organized as needed) in cases where the entire document and/or supporting documentation should be protected. Specifically, any health or medical information, the disclosure of which would violate the privacy provisions of federal laws such as the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Americans with Disabilities Act of 1990 (ADA) and the Family and Medical Leave Act (FMLA), should be maintained separately from the personnel file. This includes request forms for FMLA leave and/or family medical/parental leave under the Family Supportive Work Program, medical or excused absence statements from physicians, medical histories (disclosure is required by applicants for certain positions), etc.

Additionally, it is advisable to separate personal documents provided by employees to verify their identity and employment eligibility, to the extent that it helps the agency comply with federal requirements as to the maintenance of such records. Specifically, because federal provisions require that an individual's I-9 Form be accessible within three business days, the Department of Homeland Security recommends that employers keep such records separate to ensure access. If this is not feasible, agencies should ensure that the I-9 is maintained in a manner that ensures that they are easily retrievable for a potential federal audit. Likewise, the photocopies of any original/certified document presented by the employee for the express purpose of validating their identity and employment eligibility in conjunction with the I-9 Form and the E-Verify process should be maintained in the same location/file as the I-9 file form.

Additionally, the E-Verify User Manual for Employers compels employers to protect the privacy of employees' personally identifiable information via storage methods that are safe and secure and to which only authorized users have access. Therefore, it may be more practical for the agency to separately maintain the I-9 and the supporting documentation used in the E-Verify process.

Also, regardless of whether it was needed for payroll, benefits or employment verification purposes, social security numbers are protected by state laws such as subsection 119.071(4), F.S.; any copy of the employee's Social Security card that has been collected should also be maintained separately within the confidential/medical file.

Other documents recommended for confidential/medical files are employees' criminal records. In accordance with section 435.09, F.S., criminal records may only be used to determine if employees meet the minimum standards for employment. Additionally, the statute exempts criminal records from being considered public records under subsection 119.07(1), F.S.

Any time the HR office is in possession of an employee document for which it is unclear whether the entire record is protected, it is recommended that they consult with the agency's public record officer.

**Question 3:**

If an employee changes their name, what documentation is appropriate to update their name in agency personnel records and the HRIS?

**Answer:**

The only documentation that agencies should accept is a re-issued Social Security card from the SSA that reflects the new name. In Volume V, section 3, "Bureau of State Payrolls Payroll Preparation Manual," Federal Tax Forms, "An agency should not enter or update an employment record with a name other than the name on the employee's Social Security card. Entering a different name would cause a discrepancy between the Social Security Administration records and the State of Florida payroll records, would result in the employee's earnings being recorded incorrectly, and could result in penalties." However, even if the employee's middle name is spelled out on the Social Security card, the SSA and the IRS do allow the reporting of a middle initial in place of an employee's full middle name. For this reason, it is acceptable for agencies to use either a middle initial or middle name in the HRIS as long as the employee's first and last names are completely spelled out, as presented on the Social Security card.

**Question 4:**

How should agencies ensure that certain employee data is kept current in the HRIS?

**Answer:**

Agencies should adopt and have in place procedures for employees to report any status changes that need to be updated in the HRIS. In some cases, the state has adopted procedures to ensure that certain employee data is periodically updated. For example, once a year, employees are prompted to certify dependents and verify or update their home address, mailing address and notification email address in People First which is critical for benefits administration in preparation for the following year's insurance open enrollment.

However, in order to ensure that the employee's privacy indicators (Sworn/Certified; Restricted Employee; Restricted Relative; or Protected Identity), "Voluntary Self-Identification of Disability" indicators (I choose not to answer; I do not have a disability; or I have a disability) and "Military Status" indicators (Not Applicable; Current Member of the National Guard; Current Member of the Reserves; or Veteran/Retired Military) are kept current, agencies may wish to institute an annual notification process to prompt employees to provide updated information.

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**APPLICABLE STATUTORY AND RULE CITATIONS:**

**Code of Federal Regulations on Public Welfare (HIPPA)**

[45 C.F.R. Part 160, General Administrative Requirements and Part 164, Security and Privacy](#)

**Americans with Disabilities Act**

[42 U.S.C. § 12112\(d\), Medical examinations and inquiries](#)

## **The Family and Medical Leave Act of 1993**

### [29 C.F.R. Part 825, The Family and Medical Leave Act of 1993](#)

#### **Section 668.004, F.S., Force and effect of electronic signature.—**

Unless otherwise provided by law, an electronic signature may be used to sign a writing and shall have the same force and effect as a written signature.

#### **Subsection 668.50(7), F.S., LEGAL RECOGNITION OF ELECTRONIC RECORDS, ELECTRONIC SIGNATURES, AND ELECTRONIC CONTRACTS.—**

- (a) A record or signature may not be denied legal effect or enforceability solely because the record or signature is in electronic form.
- (b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in the formation of the contract.
- (c) If a provision of law requires a record to be in writing, an electronic record satisfies such provision.
- (d) If a provision of law requires a signature, an electronic signature satisfies such provision.

#### **Subsection 876.05(2), F.S., -- Public employees; oath**

Said oath shall be filed with the records of the governing official or employing governmental agency prior to the approval of any voucher for the payment of salary, expenses, or other compensation.

#### **Subsection 119.071(4), F.S., General exemptions from inspection or copying of public records.**

##### [s. 119.071\(4\), F.S., Agency Personnel Information.--](#)

#### **Section 435.09, F.S., Confidentiality of personnel background check information**

No criminal or juvenile information obtained under this section may be used for any purpose other than determining whether persons meet the minimum standards for employment or for an owner or director of a covered service provider. The criminal records and juvenile records obtained by the department or by an employer are exempt from s. [119.07](#)(1).

#### **Subsection 119.07(1), F.S., Inspection and copying of records; photographing public records; fees; exemptions (relevant excerpt)**

- (a) Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

#### **Rule 1B-26.003, F.A.C., Electronic Recordkeeping (Department of State).**

<https://www.flrules.org/gateway/ChapterHome.asp?Chapter=1B-26>

**Rule 60L-30.002, F.A.C., Employee Records**

The records that are to be made a part of the employee's individual personnel file shall be reviewed and approved by the agency personnel officer or representative for entry into the personnel file.

**General Records Schedule, GS1-SL for State and Local Government Agencies-  
Record Retention Schedules**

Personnel Records: Florida Retirement System Item #19  
Personnel Records: OPS/Volunteer/Intern Temporary Employment Item #66  
Attendance and Leave Records Item #116  
Payroll Records: Deduction Authorizations Item #129  
Payroll Records: Court-Ordered Garnishment Item #385

[http://dis.dos.state.fl.us/recordsmgmt/gen\\_records\\_schedules.cfm](http://dis.dos.state.fl.us/recordsmgmt/gen_records_schedules.cfm)

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