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Labor and Employment Alert: Colorado Requires That Employees Be Allowed to Review Their Personnel File

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Effective January 1, 2017, Colorado's private employers must allow current and former employees to inspect and copy their personnel files. The new law does not apply to a financial institution, bank, trust company, savings institution, or credit union. Nor does it apply to public employees, who already have access to their personnel records under the Colorado Open Records Act.

The new law requires employers, at least annually, to permit a current employee to inspect and copy his or her own personnel file. This inspection must be at the employer's office and at a "convenient" time for the employer and employee. A former employee is permitted to make one inspection of his or her personnel file after termination. The employer may require that any inspection of personnel files take place in the presence of a person designated by the employer (such as one managing the personnel data or human resources). The employer may charge the employee or former employee for the reasonable cost of copying the documents.

A "personnel file" is defined as the employee's personnel records that are used or that have been used to determine the employee's qualifications for employment, promotion, additional compensation, discipline, or termination. "Personnel file" does not include documents that are required to be placed or maintained in a separate file under state or federal law (such as health records); confidential reports from prior employers; active criminal investigations, disciplinary investigations, or regulatory agency investigations; or documents that identify a person who made a confidential accusation, as determined by the employer, against the employee.

The law's intent is "to foster an environment of open communications between employers and employees regarding the employment status of employees and to deter frivolous lawsuits against employers." Consistent with that intent, the law specifies that it does not create or authorize a private cause of action for violations. Nor does the law require an employer to create, maintain, or retain a personnel file or retain any particular documents for any specified period of time.

Contact your Vorys lawyer if you have questions about employee access to personnel and payroll records.

