

Publications

Labor and Employment Alert: Virginia Now Requires Disclosure of Certain Personnel Records Upon Request

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State laws vary on whether employers must provide current and former employees with access to their personnel records and, if so, what information is included within those records. Virginia has not previously required that employers grant such access to their employees. However, beginning July 1, 2019, Virginia employers must provide employees with copies of certain information contained within their personnel files.

Upon written request from a current or former employee (or his or her attorney), an employer must furnish a copy of all records or papers in any format reflecting: (1) the employee's dates of employment; (2) the employee's wages or salary during the employment; (3) the employee's job description and job title; and (4) any injuries sustained by the employee during the course of the employment.

The employer must provide these records within 30 days after receiving the written request. If unable to do so within 30 days, the employer must notify the requester in writing of the reason for the delay and then has 30 additional days in which to comply. The employer may charge a reasonable fee per page for copying if the records are kept in paper format. If the records are kept electronically, the employer may charge a reasonable fee for the electronic records.

If the employer fails to comply, the employee or the employee's attorney may cause a subpoena duces tecum to be issued. If the court issuing the subpoena finds the employer willfully refused to comply, the court may award damages for all expenses incurred by the employee to obtain such copies, including a refund of any fees paid for such copies, court costs, and reasonable attorney fees. A court can find an employer "willfully" refused to comply with the employer failed to respond to a second or subsequent written request without good cause or by imposed a charge in excess of the reasonable expense of making the copies and processing the request for records.

The law provides a narrow exception to disclosure. An employer is not required to disclose the records to the employee if (1) the employee's treating physician or clinical psychologist, in the exercise of professional judgment, has made a part of the employee's records a written statement that the furnishing to or review by the employee of the records would be reasonably likely to endanger the life or physical safety of the employee or another person, or (2) the records refer to a person, other than a health care provider, and the access requested would be reasonably likely to cause substantial harm to that person. In either case, the employer must provide the information to the employee's attorney or authorized insurer rather than the employee as noted above.

Employers should review their policies and practices concerning employee access to employment records. Contact your Vorys lawyer if you have questions about employee access to personnel records.