

# Livingston County Michigan Human Resources Policy Manual

<b>Section:</b> <b>Subject:</b>	<b>Personnel Record Keeping Policy</b>
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## A. POLICY

### 1. PURPOSE:

To provide consistent procedures in accordance with existing laws regarding the maintenance, access, security and retention of employees' records or files and general files.

### 2. POLICY STATEMENT:

It is the policy of Livingston County to construct and maintain a record or file on each employee. All information collected, assembled, or maintained by governmental bodies pursuant to law or ordinance or in connection with the transaction of official business is public information, unless otherwise excluded by law.

### 3. APPLICABILITY:

Applies to all county employees including union members, interns, and temporary employees.

### 4. DEFINITIONS:

**Personnel File** – The “official” or master personnel file that includes documents with original authorization signatures relating to an individual’s employment with Livingston County. Only includes job-related documents used to make decisions in determining an employee’s qualifications for employment, promotion, transfer, compensation, or disciplinary action. Should only contain information pertaining to the individual employee. No information on other employees or other individuals including the employee’s family members may be placed in the personnel file.

**Employee** means an individual who as a volunteer or for compensation provides an employer with his or her labor.

**Employer** means a person who employs an individual for compensation or who supervises an individual providing labor as a volunteer.

### 5. REFERENCE AND LEGAL AUTHORITY:

Bullard-Plawecki Right-to-Know Act, Public Act No. 397 of 1978

Freedom of Information Act

United States Department of Transportation - Federal Transit Administration – Drug & Alcohol Record Keeping

Michigan Department of Transportation Drug & Alcohol Consortium – National Diagnostics Incorporated

### 6. SEE ALSO:

### 7. SUPERSEDES:

### 8. APPROVED BY:

Personnel Committee 4/6/05

### 9. RESOLUTION: No. 405-157 04/12/05

10. REVIEW HISTORY:

**B. PROCEDURE**

The Human Resources Department (Personnel Department) shall be the official keeper of all employee records. The official personnel files of all employees shall be maintained in a centralized location that is securely locked. The purpose of a personnel file is to maintain in one record keeping area any and all information needed to make an employment decision. This includes records such as the employment application, resume, job description, performance ratings, rates of pay or other terms of compensation, selection for training or apprenticeship, promotions, demotions, transfers, acknowledgements for outstanding work, counseling and disciplinary notices, and layoff status or termination of employment information.

It is essential that only documents which have a direct bearing on personnel decisions are maintained in the personnel file. This excludes medical records, including Requests for Reasonable Accommodations under the Americans with Disabilities Act (ADA), EEO records (except under certain occupations which require a minimum age to perform the essential job functions), or garnishment orders, which cannot, by law, be used to make an employment decision.

Although personnel files are considered property of the employer, state law gives employees the right to inspect, copy, correct, or insert additional explanatory materials into their personnel file. "Reasonable access" is granted under Michigan law, with restrictions as to time and place of inspection and includes the right to charge nominal costs for reproduction. The County will charge employees the cost for reproducing their records which is consistent with charges collected under Freedom of Information requests.

Whenever possible, the personnel file shall contain the original copy. All data such as disciplinary actions, initial and final warnings, suspensions and all personnel actions shall be maintained in the employee's record located in the Human Resources Department.

Departments may have certain file materials on each employee so long as they comply with the provisions contained in this policy regarding access, security and controls.

Upon termination of an employee, all files or a copy of all files held by the individual department shall be submitted to the Human Resources Department. Any employee seen removing original documents for his/her file or that of another employee's file without proper authorization shall be subject to strict disciplinary action, up to and including discharge.

An employee's file may be reviewed, by written request only, consistent with The Bullard-Plawecki Employee Right-to-Know Act, Public Act No 397 of 1978.

Human Resources shall maintain medical records in a separate file which shall not be included in an employee's personnel file.

Complete 1-9 forms shall be kept in a separate file.

**ACCESS TO PERSONNEL FILES:**

A. Access to personnel files shall be limited to the following:

1. Employees responsible for maintaining such files.
2. A county employee accessing his/her own file. (Subject to the Bullard-Plawecki Act.)
3. Any former employee may review his/her file, if the file is still maintained, subject to presentation of proper identification and written request consistent with the Bullard-Plawecki Act.

4. By subpoena or order of any state or federal court or administrative agency having jurisdiction over such records and only to the extent permitted by law.
  5. Supervisors in the employee's direct chain of command.
  6. The County Attorney or designee.
  7. Requests authorized by the Human Resource Director or Freedom of Information Act (FOIA) Coordinator.
  8. No access shall be provided to personnel files or records which contain disciplinary action by non-employees without providing notice required by The Bullard-Plawecki Act.
  9. A department head considering the hire of a former employee or transfer of a current employee may be granted access to the file.
- B. All files or records may be reviewed in accordance with The Bullard-Plawecki Employee Right-to-Know Act and the Freedom of Information Act. Employees, upon written request to the Human Resources Director may periodically review their file, generally not more than two (2) times per year as provided.
- C. The Human Resource Staff shall maintain a log, any notations, and authorizations in the employee personnel file indicating date, time, and name of any non-employee examining an employee's file(s).
- D. A representative of Human Resources shall be present during on-the-spot review of an employee's personnel file (by any one other than the records clerk or a personnel representative. Personnel files are to be reviewed in the Human Resources Department. Personnel files may not be taken outside of the department.

**What should be INCLUDED in an Employee Personnel File?**

Employment Application

Resume

Job Description

Signed receipt forms – handbook, conflict of interest, etc.

New Hire Information

Personnel Action Requests (status change forms)

Documents indication compensation changes, payments and reasons

Documents supporting any type of employment decision (job change, job evaluation results, location changes, compensation changes, disciplinary action, and separation information)

Leave of Absence Information

Requests to examine Personnel File

Performance Evaluations

Letters of Commendation

Disciplinary Notices

Training Documentation

Correspondence regarding employee's performance

Resignation Letter

**What must be EXCLUDED From a Personnel File?**

Employee references supplied to an employer if the identify of the person making the reference would be disclosed.

Materials relating to the employer's staff planning with respect to more than one employee, including salary increases, management bonus plans, promotions and job assignments.

Medical reports and records made or obtained by the employer if the records or reports are available to the employee from the doctor or medical facility involved.

Information of a personal nature about a person other than the employee if disclosure of the information would constitute a clearly unwarranted invasion of the other person's privacy.

Information that is kept separately from other records and that relates to an investigation by the employer pursuant to section 9 of the Bullard-Plawecki Employee Right to Know Act.

Records maintained by an educational institution which are directly related to a student and are considered to be educational records under section 513(a) of title 5 of the Family Educational Rights to Privacy Act of 1974, 20 USC 1232g (transcripts)

Records kept by an executive, administrative, or professional employee that are kept in the sole possession of the maker of the record, and are not accessible or shared with other persons. However, a record concerning an occurrence or fact about an employee kept pursuant to this subparagraph may be entered into a personnel record if entered not more than six months after the date of the occurrence or the date the fact becomes known.

Investigation records during the investigation or afterwards resulting in an acquittal.

Grievance forms and decisions

Form I-9 and backup documents

Data regarding age, race, sex, religion or disabilities

    National identification

    Racial identification

    Ethnic identification

    Political affiliation

    Religious affiliation

Background check reports

Dependent/Family information

Financial disclosure information

Tax information

Benefits records – may contain medical information

EEOC complaints

Workers compensation information – contains medical records

Arrest records if led to an acquittal or charges were dropped

Written criticisms which the employee does not know about.

### **What Can Be Included in a Supervisory/Manager File on An Employee**

Same personal information Human Resources keeps only if kept in a secured, confidential area.

Documents supporting any type of employment decision (job change, job evaluation results, location changes, compensation changes, disciplinary action, separation information).

Leave of absence information

Performance Reviews

Correspondence regarding Employee's performance

Coaching and Personal Development Plans

Current Job Description

Attendance Records

The records identified within this policy are not all-inclusive. When in doubt about removing of out-dated documents, it is generally recommended to retain documentation on employees for a period of seven (7) years beyond the date of termination. The statute of limitations in most jurisdictions for filing lawsuits is generally less than six (6) years.

Employees have the right to inspect copy and dispute information contained in the personnel file. If the employee disputes information contained in the personnel file and an agreement cannot be reached between the employer and employee, the employee may submit a written statement not to exceed five pages explaining the employee's position. This statement will be maintained in the personnel file until the disputed information is removed.

Under Bullard-Plawewski Section 6(1), an employer or former employer shall not divulge a disciplinary report, letter of reprimand, or other disciplinary action to a third party, to a party who is not part of the employer's organization, or to a party who is not part of a labor organization representing the employee, without written notice.

Hence, before any disciplinary report, letter of reprimand or other disciplinary action is disclosed to a third party, the following will occur:

- A written notice to the employee by first class mail to the employee's last known address and the same will be mailed on or before the day the information is divulged from the personnel record.

However, this requirement is not necessary if any of the following occurs:

- The employee specifically waives written notice as part of a written signed employment application with another employer.
- The disclosure is ordered in a legal action or arbitration to a party to that legal action or arbitration.
- Information that is requested by a government agency as result of a claim or complaint by an employee.

A representative from Human Resources will review a personnel record before releasing information to a third party, except when the release is ordered in a legal action or arbitration to a party to that legal action or arbitration, delete discipline reports, letters of reprimand, or other records of disciplinary action which are more than four (4) years old.

Livingston County will not gather or keep a record of the following:

- Employees Association
- Political Activities
- Publications, communications or non-employment activities.

Except if the information is submitted in writing by or authorized to be kept or gathered in writing by the employer to the employee. However, this prohibition does not apply to activities that occur on the employer's premises or during the employee's working hours with the employer that interferes with the performance of the employee's duty or duties of other employees.

#### **Disagreement with Information Contained in the Personnel Record**

If there is disagreement with the information contained in the personnel record, removal or correction of that information may be mutually agreed upon by the employee and the employer. If agreement cannot be reached, the employee is entitled to submit a written statement explaining the employee's position. This statement shall be included when the information is divulged to a third party as long as the original information is part of the file. If either the employer or the employee places information in the personal record information which is false, then appropriate remedy through legal action will occur to have that information expunged.

#### **Personnel File/Record Organization:**

Personnel records/personnel files will be broken down into categories. Separate sections will include the following categories:

- A. Bullard-Plawecki Personnel Records
  - Position Descriptions
  - Training & Acknowledgement Records
  - Performance Reviews and Appraisals
  - Compensation
  - Correspondence
  - Initial Hiring Information
- B. Medical Records
- C. Benefit Information
- D. I-9 Forms
- E. Workers Compensation
- F. Drug and Alcohol Testing Results

Court orders and/or subpoenas will be carefully reviewed before they are honored regarding employment records. For example, unless proper waivers are given certain medical records, attorney-client records, etc.,

which are given privilege protection under Michigan laws, will be carefully reviewed before the court order or subpoena is honored.

Under no circumstances should employee Social Security numbers be disclosed under FOIA. The same are exempt pursuant to Section 13(1) (x). Further, law enforcement personnel records should not be disclosed pursuant to Section 13 (t) (ix).