



NEW MEXICO JUDICIAL BRANCH

GENERAL PERSONNEL POLICY AND PROCEDURE

Reference NMJBPR Part 1, Section 8.03
NMJBPR Part 2, Section 21.03

Inquiries: AOC HR (505) 827-4937 or 827-4810
Dev.: 10/6/11

EMPLOYEE RECORDS MANAGEMENT, INSPECTION AND RETENTION POLICY

1. PURPOSE

To establish guidelines regarding the management, inspection and retention of *employee personnel records* and to insure confidentiality, uniformity, and accuracy of personnel record keeping.

2. DEFINITIONS

- A. **Administrative Authority** – Individual or designee with the primary responsibility to supervise and coordinate the administration of a *Judicial Entity*, or as designated by the Chief Judge and approved by the Supreme Court order.
- B. **Employee** - A person (including an at-will employee for purposes of this policy) who holds a permanent, term or temporary position within the Judicial Branch including a justice or judge.
- C. **Confidential Records** - Contain personal identifying information and other materials excepted from disclosure under the inspection of public records (NMSA 1978, Section 14.21. 2005) .
- D. **Judicial Entity** - Any court or administrative group within the Judicial Branch.
- E. **Non-Confidential Records** - Contain documents related to that *employee's* employment status and history and are subject to inspection by the general public as provided by the Public Records Act.
- F. **Personnel Records** - Records contained in an *employee's* personnel folders including *confidential* and *non-confidential records*.
- G. **Health Insurance Portability and Accountability Act (HIPAA) - Privacy Rule** - Establishes federal protection for the privacy of protected health information, effective August 14, 2002. The Rule does not replace Federal, State or other laws that grant individuals greater privacy protections.



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3. RECORDS MANAGEMENT PROGRAM

Each Court shall establish an *employee* records management program and implement appropriate administrative, technical and physical safeguards to protect *employee* records.

All employment and other human resources records shall be managed according to the records management schedule provided by the New Mexico Commission of Public Records - State Records Center and Archives through the Public Records Act. (Title 1, Chapter 15, Part 6 General Personnel Records).

4. EMPLOYEE RECORDS

A. The *Administrative Authority* or designee shall maintain the following separate records for each employee:

(1) **File 1 - *Employee Non-Confidential records*** are those which contain documents related to that *employee's* employment status and history. Examples include: Personnel Action Forms (since SHARE 7/1/06), acknowledgment forms, reclassification documents, Fair Labor Standards Act designation, leave records, wage and pay documents, and training certificates (without a letter grade).

(2) **File 2 - *Employee Confidential records*** are those documents related to that *employee's*:

a. Biographical information or personal identification information. Examples include: biographical information such as date of birth, age, ethnicity, race or national origin, political or religious affiliation, disability, sex, social security number, home physical or e-mail address, home telephone or personal cellular number, driver's license number, photograph, fingerprints, alien registration number, government passport number, or right-to-work documents.

b. Work Performance - Examples include: most matters of opinion including: *employee* performance plans and evaluations, performance improvement plans, discipline, commendations.

c. Financial Information - Examples include: credit investigations or inquiries, mortgage verification or loan documents, payment disposition forms/direct deposit information, savings bond forms, vendor registration, or W-2 & W-4 forms.



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- d. Employment Information - Examples include: employment application, resumes, education including diplomas and transcripts, letters of recommendation, employment reference letters or right to work documents.
 - e. Insurance/Medical/Military Information - Examples include: Employee Assistance Program referral documents, doctor excuses, sick leave records and related physician statements or notes, dependent information, all insurance documents, birth certificates, marriage licenses, Affidavit of Domestic Partnership, Divorce Decree, Adoption/Guardianship, Court Orders, PERA or POP forms, military discharge papers military orders, and documents containing military identification number.
- (3) **File 3** - Documents related to Family Medical Leave Act must be maintained in separate confidential file.
 - (4) **File 4** - Documents related to Americans with Disability Act must be maintained in separate confidential file.
 - (5) **File 5** - Documents related Workers' Compensation must be maintained in separate confidential file.
- B. Employee's I-9 Confidential Records for a *Judicial Entity* must be held in a separate central/group confidential file.
 - C. An employee will be notified or copied at the time any material is placed in that employee's personnel file, except when an employee initiates the placement of the material. The employee may request a copy of such material.
5. **Authority to inspect personnel folders and request copies of *personnel records*.**

Inspection of public records is controlled by the Inspection of Public Records Act [NMSA 1978 14-3A-1 to 14-38-2]; and the Confidential Materials Act [NMSA 1978]. Any person has the right to inspect public records and may submit an oral or written request to the records custodian. Disclosure is limited by the confidentiality of the materials contained within the requested documents. Such matters may be excised prior to inspection.



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6. Review of *Non-Confidential Records*

An *employee's* non-confidential personnel file shall be available for review during regular business hours.

7. Review of *Confidential Records*

A. An *employee's* confidential personnel files shall be available for review by the *employee* during regular business hours, or:

- (1) may be reviewed by anyone to whom the *employee* has given access by written permission; or
- (2) may be reviewed without the *employee's* written permission as required by subpoena or court order.

B. Matters of opinion (e.g. performance evaluations and disciplinary actions) within a confidential file may be reviewed by any *supervisor* within the *employee's* chain of command, the *Administrative Authority* and the Human Resources representative.

C. Medical information shall be restricted to the human resources representative. With respect to health and medical information, an *employee's* written release is required for obtaining copies as limited by federal or state law, or per the *HIPAA* Privacy Rule.

8. Distribution of copies of Judicial Branch *employee's* personnel folders, upon *employee* termination or transfer to another State agency.

A. Upon termination from the Judicial Branch an *employee's* confidential and non-confidential personnel files will be sent to Records and Archives for storage. An *employee* may request a copy of the *employee's* entire employment record. Such record must be picked up by the *employee* and signed for upon receipt; or sent to the *employee* at the *employee's* last known address, via Certified Mail, Return Receipt Requested.

B. Upon transfer, to another state agency, that agency shall receive the entire original confidential and non-confidential employee files.



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9. **Employee Records Retention**

The retention of all employment related files, including *employee* personnel files shall comply with the records retention schedule in NMAC 1.15.7.

Effective Date;



Arthur W. Pepin, Director
Administrative Office of the Courts

OCTOBER 9, 2011

Date