

## **Q&A: EMPLOYEE RIGHT OF ACCESS TO PERSONNEL FILES**

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Employees in Colorado now have the statutory right to review and copy portions of their personnel file. Under a law enacted in 2016, which took effect on January 1, 2017, employers must permit employees to inspect and obtain a copy of their personnel files at least once a year. Terminated employees have a one-time right of access within one year after termination.

### **Q. What is the purpose of the law?**

According to the legislature, the overall purpose is to help avoid litigation by making it easier for employees to more fully assess their claims before they sue.

### **Q. Does the law apply to all employers?**

No. Generally speaking, governmental agencies are excluded from the requirement.

### **Q. Does the law grant an employee access to everything in the file?**

No. Documents or records required by state or federal law to be placed in a separate file (such as medical records), confidential reports from previous employers, or an active criminal, disciplinary, or regulatory investigation do not need to be provided for inspection under this statute.

### **Q. Can an employee sue an employer for not providing the access required?**

No. The statute specifically prohibits such a lawsuit.

### **Q. If an employee can't sue the employer for failure to provide access as required by the statute, what is the employer's legal risk if the employer denies access?**

Conceivably, the rules of evidence would permit an employee to use the employer's refusal to comply with the law as evidence against the employer in a lawsuit for unlawful discrimination, wrongful discharge or other violation of rights. Under Rule 404(b), the employee could argue that the employer's noncompliance is relevant to show a plan or intent to ignore the employee's legal rights.

### **Q. Is an employer obligated to maintain personnel files?**

Not under this statute. Other state and federal regulations do require retention of certain personnel records.