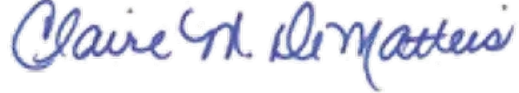




EMPLOYEE PERSONNEL RECORDS POLICY AND PROCEDURES	
DHR-STW-Policy #: To be assigned.	Authority: 19 Del. C. c. 7; 29 Del. C. c. 5; Merit Rules 16.1
Effective Date: January 25, 2023	Supersedes: State of Delaware Employee File Guidelines Rev. 10/2014; Guidelines for Reference Checks OMB/HRM 6/2007; Guidelines for Interagency Access to Personnel Records During the Hiring Process OMB/HRM 6/2007
Application: Executive Branch Agencies	Signature: 

**1. Policy Purpose Statement**

To establish employee personnel records’ requirements for review, maintenance, transfer, and access to employee personnel records during a hiring process.

**2. Scope**

This policy applies to personnel records of Executive Branch employees, including unpaid interns, joint employees, and apprentices, whether full-time, part-time, or casual/seasonal. Elected Offices and Judiciary Members may elect to adopt and administer the policy at their offices and with their employees. For the purposes of this Policy, the term Transfers includes promotions and demotions. The terms of this policy supersede any statewide or related Executive Branch Agency policy and procedure on this subject as of the effective date of this policy.

**3. Definitions and Acronym**

- **Candidate:** Current, previous, or future state employee applying for a position within a State Executive Branch Agency.
- **CSE:** Creditable Service of Employment Form.
- **Employing Agency:** The State Agency where the employee is currently working.
- **HIPAA:** The Acronym for the *Health Information Portability and Accountability Act*, which was enacted by Congress in 1996, established national regulations for the use and disclosure of an individual's health information. The purpose of HIPAA can be outlined in three main topics: (1) The Privacy Rule sets standards for the protection of health information; (2) The Security Rule sets standards for protecting health information that is held or transferred in electronic form; and (3) The Breach Notification Rule establishes the actions to be taken in the event a breach occurs.
- **Hiring Agency:** The State Agency where the candidate has applied for a position vacancy.
- **Master Personnel Record:** For this Policy, the Master Personnel Record includes the Personnel File and the Administrative File. Medical File(s) are to be kept separate from the Master Personnel Record.

- **PHRST:** The State of Delaware’s central payroll operation group for all state agencies, school districts, and charter schools. The Payroll Human Resources Statewide Technology (PHRST) system is an integrated software application and is the Human Capital Management (HCM) component of the State of Delaware's Enterprise Resource Planning (ERP) system. Within the ERP system, PHRST administers processes involving human resources, benefits, payroll, time reporting, and is the system of record.
- **Personnel File:** Any application, maintained by the employer, for employment, wage or salary information, notices of commendations, warning or discipline, authorization for a deduction or withholding of pay, fringe benefit information, leave records, employment history with the employer, including salary information, job title, dates of changes, retirement record, attendance records, performance evaluations, and medical records. The term “personnel file” shall not include records of an employee relating to the investigation of a possible criminal offense, letters of reference, documents which are being developed or prepared for use in civil, criminal or grievance procedures, or materials which are used by the employer to plan for future operations or information available to the employee under the Fair Credit Reporting Act [15 U.S.C. §§ 1681-1681t].<sup>1</sup>
- **Transfer:** Any movement between positions in the same paygrade as long as the employee meets the job requirements. For the purposes of this Policy only, the term Transfers also includes promotions and demotions.
- **VS1:** Verification of Service Form.

#### **4. Policy**

##### Employee Records Maintenance

- a. A Master Personnel record for each employee shall be established and maintained by the Department of Human Resources (DHR) by agency.
- b. Personnel records are confidential and shall be maintained by designated Human Resources (HR) staff as necessary to keep and maintain their confidentiality. Unauthorized disclosure of any portion of a State employee's records shall be grounds for dismissal.
  - HR staff who are not responsible for benefits administration shall not have access to an employee’s HIPAA file without the employee’s written authorization.
- c. The Master Personnel record and other employee records shall be readily available for review by the Secretary or the Secretary’s designee.
- d. At the discretion of the DHR Secretary, these records may be maintained in either physical (hard) copies or digitally.

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<sup>1</sup> 19 § 731(3) in part, The term “personnel file” shall not include records of an employee relating to the investigation of a possible criminal offense, letters of reference, documents which are being developed or prepared for use in civil, criminal or grievance procedures or materials which are used by the employer to plan for future operations or information available to the employee under the Fair Credit Reporting Act [15 U.S.C. §§ 1681-1681t].

- e. DHR offices shall be required to maintain all hard copy or electronic Master Personnel records and associated employee records of employees (full-time, part-time, casual/seasonal, etc.), hired as of the effective date of this policy<sup>2</sup> in the following files format:
  - i. Personnel File (Blue).
  - ii. Administrative File (Yellow) – documents related to the employee’s hiring at their current position at an employing agency.
- f. The Medical Files shall be maintained separately from the Personnel or Administrative files.
  - i. The HIPAA Medical File (Red) shall contain HIPAA<sup>3</sup>-regulated documents and materials.
  - ii. The non-HIPAA Medical File (Purple) shall contain non-HIPAA regulated documents and materials that are still confidential.
- g. The Employee & Labor Relations (ELR) File, which includes documents related to grievances, complaints, and investigations, shall be maintained separately from the Master Personnel Records.<sup>4</sup>
- h. All documents are filed in chronological order in each section with the most recent documents on top.
- i. With the exception of the employee’s application that should be placed in the personnel file, recruitment packets containing other applications and reference checks of unselected applicants, interview notes, and the referral list should be returned to the designated recruitment/applicant services representative for storage/reference.
- j. Employees shall have controlled access to their Personnel records, per Merit Rule 16.2.
- k. For employees leaving state employment, all files are to be stored at the former employee’s agency with other separated employee files and archived in accordance with the State’s retention schedule.
- l. The State’s learning management system, the Delaware Learning Center (DLC), is the system of record for employee training and policy acknowledgment. Any historical training records or training taken outside the DLC shall be kept in the assigned section of the Personnel file. The training file may include training completion certificates, training requests, tuition reimbursement requests, and other training-related documentation.
- m. DHR representatives assigned to Agencies shall provide verification of mandated statewide policy acknowledgment and/or statewide training attendance to the authorized State individual for any employee proceeding (i.e., grievance hearing, discrimination charge, etc.) as needed.

<sup>2</sup> Existing hard copy Personnel Records [for full-time and part-time employees] at the time of this Policy’s effective date need not be updated to this format.

<sup>3</sup> HIPAA applies to an employer’s group health plan. Generally, the privacy rule requires employers to obtain authorization from an employee when PHI received through the Group Health Plan is used for purposes other than treatment, payment, or health plan operations. [add link to SBO page] <https://dhr.delaware.gov/benefits/> or for SBO/HIPAA: <https://dhr.delaware.gov/benefits/hipaa/index.shtml>

<sup>4</sup> 19 § 731(3).

### Interagency Access to (Master) Personnel File for Hiring Process

- a. Only designated HR staff from the state Hiring Agency may review, or copy, specified and relevant information from the personnel records of candidates currently employed by another state agency and who are applying for a position with the Hiring Agency.
- b. Hiring agency requests shall be reasonable and not be unduly burdensome upon the employing agency in either scope or quantity.
- c. Upon request, the Personnel file shall be made available for review to the designated HR staff at the Hiring agency as allowed by this Policy.
- d. Employing Agencies shall accommodate such requests and respond in a time frame that facilitates the hiring agency's ability to expedite candidate assessment and the hiring process within 3 business days generally.
- e. To maintain the confidentiality of records in accordance with Merit Rule 16.1, all communications about the review and/or copying of records shall be made between authorized agency human resource staff, and only they shall be permitted to review and/or copy these records.
- f. Agencies shall only disclose accurate and factual information which has been documented in the employee's Master Personnel Records and is allowed per this Policy.
- g. The DHR Secretary or designee (designated HR staff) may summarize or otherwise convey applicable information from these records to hiring officials, such as job performance, attendance (only the number/duration of non-FMLA covered absences may be released), and discipline; while maintaining medical records confidentiality and applying the applicable selection standards set forth in the Merit Rules that govern the subject selection process.
- h. Agencies shall document the source of the information provided, to whom it is given, who gave it on their behalf, and the date provided.

### Master Personnel Records and Medical File(s) Transfer

- a. When an employee transfers from one State agency to another State agency, the Master Personnel Records files shall be provided to the hiring agency's DHR office securely, except for the Administrative File that is to be appropriately purged per the Public Archives Retention Schedule for State Agencies by HR staff prior to forwarding to the hiring agency.
  - No copies of the Personnel File are to be maintained at the employee's former DHR office.
- b. The Employee & Labor Relations (ELR) File shall be maintained by the employing agency if an employee transfers to another State agency in accordance with State's retention schedule.
- c. When an employee transfers, the employing agency must have the employee complete a new I-9 Form, provide supporting information, and verify in eVerify again.

### Employee Personnel Records Retention

- a. All employee files shall be retained in accordance with the State's retention schedule for State Agencies prepared and published by Delaware Public Archives and in accordance with federal and/or state law and litigation requirements.
- b. The consent of the State Archivist is required prior to the disposal of any employee personnel records<sup>5</sup>.

### Master Personnel Records and Medical Files Review

- a. Upon request, employees shall have controlled access to the files in their Master Personnel Records. After obtaining written permission from their agency HR, employees shall be scheduled to examine their file under the supervision of their agency HR. An agency retains the right to protect the employer's file from loss, damage, or alteration to assure the integrity of the files. Medical file(s) may also be available for controlled employee access.
- b. An employee is not permitted to remove the employee's own Master Personnel Records, any part thereof, or a copy of the contents of such file, from the agency's premises where it is made available for inspection.
- c. If upon inspection an employee disagrees with any of the information contained in their Master Personnel Records, removal or correction of such information may be agreed upon by the employee and the agency. If the employee and agency cannot agree upon such removal or correction, then the employee may submit a written statement explaining the employee's position. Such statement shall be maintained as part of the employee's personnel file of the personnel records and shall accompany any transmittal or disclosure from such file or records made to a third party.
- d. An agency shall provide sufficient inspection time commensurate with the volume content of the personnel records.
- e. Except for special circumstances, the inspection of personnel records is limited to once every calendar year.

## **5. Procedures**

### Employee Records Maintenance

- a. The following contains lists of individual records, although not exhaustive, required to be maintained by DHR in the Master Personnel Records and related employee records in the following segmented format:

#### **1) Personnel File (blue)**

- **Section 1 - Data Changes**
  - Personnel Action Requests

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<sup>5</sup> 29 Del. C. §504

- PHRST Transactions (excluding benefits enrollment)
- New Hire Letter (Offer/Appointment Letters)
- Essential Employee Memo
- Promotion Packets (Career Ladder)
- Advanced Salary
- Transfer Forms
- Resignation Letter
- Retirement
- Data Changes (Pre-PHRST documents only)
- New Hire Packets (electronic AdobeSign documents)
  
- **Section 2 - Payroll information**
  - W-4 Records
  - P-1 Pension Actuarial Information
  - Union Dues info
  - Direct Deposit Information
  - SECC Pledge Form
  - Health Benefit Refund
  - General Deduction Summary
  - United Way Pledge Card
  - Deferred Compensation
  - Pension (Member's Annual Statement; Designation; etc.)
  - Credit Union
  - Savings Bonds
  - Payroll Information
  
- **Section 3 - Performance Review/Plan**
  - Active Discipline/Suspensions (Less than 2 years old)
  - Commendation Letters
  
- **Section 4 – Timekeeping Records**
  - Timecards/Leave Records
  - VS1/CSE Forms
  - Donated Leave
  - Adjusted Service Date Audit
  - Jury Duty Summons
  - Work Schedule (includes Alternate Working Arrangements (AWA) Agreements, Telecommuting Agreement, AWS Schedule)
  - Military Leave
  
- **Section 5 - Miscellaneous Documents**
  - Employee Information/Emergency Contact Forms
  - Request by an Employee to Review File
  - Employment/Wage Verification
  - EEO Reporting Form
  - Miscellaneous Documents

- **Section 6** – Onboarding, Training, etc.
  - Application/Resume
  - Professional License/Other Certifications
  - Authorized Driver Designation
  - Policy and Statement Acknowledgments (Signed Oath of Office, Agency policies acknowledgment, and related documents prior to the DLC becoming the system of record for policy and statement acknowledgment)
  - Training Related Materials – certificates, class attendance documentation prior to the DLC becoming the system of record for employee training
  - Education Reimbursements
  - Military Related Verification Documents (DD214, etc.)
  - Other Internal Agency Approval Forms
  - Onboarding Miscellaneous Information/Onboarding Checklists
  - Off-Duty Weapon

**2) Administrative File (yellow)**

- References
- Criminal background check (CBC); any expungement disposition not reflected on the CBC record
- Disciplinary Letters/Suspensions (Over 2 years old)
- I-9 Employment Eligibility Verification and eVerify confirmation
- Copy of Employee Driver's Licenses/ Photo ID
- Garnishment/Wage Attachments
- Non-resident Visa or related documents
- Employee Social Security Card

**3) Medical HIPAA File (red)** – This file may be combined with the non-HIPAA file and become one Medical HIPAA File.

- Group Health Plan
- Dental plan
- Employee Assistance Programs (EAP)
- Vision and Hearing programs
- Pharmacy Benefit
- Health Care Flexible Spending Account (FSA)
- Health Reimbursement Account (HRA)
- Consolidated Omnibus Budget Reconciliation Act (COBRA)
- Wellness Programs
- Employee's Written Authorization for access to HIPAA file
- Blood Bank
- Adoptions
- Medicare Enrollment
- Benefit Plan Verification (covered dependents' birth certificates and social security cards, marriage licenses, divorce decrees, court custody, and adult child disability, etc.)

**4) Medical – Confidential Non-HIPAA File (purple)**

- FMLA requests
- Parental Leave Requests
- Sick Leave requests or justifications
- ADA records
- Workers' Compensation records
- OSHA reports
- Short Term Disability (STD) records
- Long Term Disability (LTD) records
- Dependent Care Flexible Spending Account (FSA) Forms
- Deferred Compensation
- Group Universal Life and Accidental Death & Dismemberment (AD&D) records
- Return-To-Work information
- Drug and alcohol workplace screening results required by the state as part of initial employment screening and periodic testing to insure the employee is capable of performing safety sensitive functions.
- Fitness for Duty Exams
- Disability pension applications
- Life insurance enrollment and beneficiary designations (if applicable)
- Line of Duty Death Benefits documentation (if applicable)
- COVID-19 PEL records
- Qualifying Events
- Medical Release(s)
- Miscellaneous Medical, Non-HIPAA Documents

**5) ELR File (green)**

- Complaint(s)
- Grievance(s)
- Investigation Documentation

Interagency Access

- a. For interagency access to employee records, the Hiring Agency's Human Resources office may request from the Employing Agency HR a reference check of current employees with specific requests such as: Current/Former Job Title; Dates of employment; Job performance (Performance Evaluations; recognition awards; or other documentation addressing performance); Attendance (Recent Personal Leave history records); Discipline (Active discipline within the past two calendar years).
- b. If a current or former employee has filed a grievance, complaint, charge, or lawsuit, no information about this should be disclosed to any outside employer or State agency.
- c. Employing Agencies shall accommodate such requests and respond in a time period that facilitates the hiring agency's ability to expedite candidate assessment and the hiring process (generally, within 3 business days).



### Master Personnel Records and Medical File(s) Transfer

- a. To transfer a file of an employee who is moving from one State agency to another State agency, files shall be appropriately sealed and clearly marked as confidential if hard copy and sent through an encrypted program if electronic.
- b. The Medical files and related information shall be forwarded separately from the Master Personnel Records files. Electronic versions of the Medical files shall only be provided as encrypted files to the appropriate and authorized DHR staff member.
- c. Any complaint or grievance in process that cannot be completed shall have documentation as to the reason it is incomplete.

### Employee Personnel Records Retention

- a. All employee files shall be retained in accordance with the [State's retention schedule](#) for State Agencies prepared and published by Delaware Public Archives and in accordance with federal and/or state law and litigation requirements.
- b. The Public Archives Destruction Notice shall be used for the disposal of employee personnel records.

### Master Personnel Records Review

- a. Upon request, HR shall schedule an appointment for an employee to review their Master Personnel Records including their Administrative file and their separate Medical file(s) under the supervision of HR staff.
- b. An employee is permitted to take notes during the review of their Employee Personnel Records.

## **6. Exclusions or Exceptions**

- This Policy does not apply to Non-Executive Branch Agencies or the Judiciary, unless this policy has been affirmatively adopted by Non-Executive Branch Agencies or the Judiciary.

## **7. Dissemination And Training**

- a. This policy will be distributed to new employees at the commencement of employment by the Delaware Learning Center or their HR representative with 30-day time frame to acknowledge.
- b. Employees and individuals with access to HR, benefits and/or payroll data as part of their job-related tasks, as well as supervisors and managers, must take the required HIPAA training on the first day of employment or prior to their first day, if possible, and annually after that.

## **8. Data Reporting**

N/A

**9. Associated Policy/Regulations/Information**

- [State Agency General Records Retention Schedule \(delaware.gov\)](#)
- [HIPAA Act](#)
- [I-9 Retention and Storage](#)

**10. Appendices and Forms Associated with this Policy**

- [DE Public Archives Destruction Notice Form](#)

**11. Policy Owner**

- Division Name: Division of Talent Management
- Policy Administrator: Employee Engagement Section
- Website: [DHR – Division of Talent Management](#)

*This policy is not intended to create any individual right or cause of action not already existing and recognized under State and Federal law.*