



An “Employee’s” Right to Inspect His or Her Personnel File in Pennsylvania

Insights

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Employers commonly find themselves answering the following question: What right does a former employee have to access his or her personnel file? Often, after an employer terminates an employee, that employee and/or the employee’s attorney demands access to the employee’s personnel file. Up until a recent decision out of the Supreme Court of Pennsylvania on this issue, employers found themselves in a precarious position of whether they granted the former employee’s request. The Thomas Jefferson University Hospitals, Inc. v. Pennsylvania Department of Labor and Industry case now equips employers with the clear right to say no to the former employee’s request. 162 A.3d 384 (Pa. 2017).

By way of background, Pennsylvania maintains a statute entitled “Inspection of Employment Records Law” (“Statute”). The Statute provides that “[a]n employer shall, at reasonable times, upon request of an employee, permit that employee or an agent designated by the employee to inspect his or her own personnel files used to determine his or her own qualifications for employment, promotion, additional compensation, termination of disciplinary action” Further, the Statute defines “employee” as “[a]ny person currently employed, laid off with reemployment rights or on leave of absence.”

Elizabeth Haubrich, a nurse anesthetist, submitted a request to access her personnel file within one week of Thomas Jefferson University Hospitals, Inc. (“Thomas Jefferson”) terminating her employment. Based on a lower court decision, Plaintiff would be entitled to inspect her personnel file as long as she requested that inspection within a reasonable period of time after the termination. Beitman v. Dep’t of Labor and Indus., 675 A.2d 1300 (Pa. Cmwlth. 1996). Moreover, Haubrich’s request certainly met The Pennsylvania Department of Labor and Industry’s (“Department”) guidance that a “reasonable period of time” means within thirty (30) days.

After Thomas Jefferson denied Haubrich’s request, Haubrich filed a complaint with the Department seeking access to her personnel file. Based on Beitman and the Department’s further guidance about the thirty-day limitation, the Department ruled that Haubrich was entitled to inspect her personnel file. Thomas Jefferson appealed to the Pennsylvania Commonwealth Court and the Commonwealth Court affirmed the Department’s ruling.

The Supreme Court of Pennsylvania overruled the Commonwealth Court’s decision and held that former employees who were not laid off with reemployment rights and who were not on a leave of

former employees, who were not laid off with reemployment rights and who were not on a leave of absence, have no right to inspect their personnel file. Justice David N. Wecht relied, in part, on the dictionary definition of employee and found that someone has to be employed to be an employee within the meaning of the statute. In a footnote, Justice Wecht indicated that if a former employee believes he or she has been wrongfully terminated, he or she can access the personnel file by suing the employer.

As a result of the foregoing, Pennsylvania employers can now safely deny a former employee's request to access his or her personnel file, which is a large victory for Pennsylvania employers who are regularly faced with such requests. Because the employer's obligations vis-à-vis the statute have changed, this is a good time for Pennsylvania employers to reevaluate any policies regarding personnel files generally and access to personnel files specifically.

Please contact your Fisher Phillips attorney to discuss further.