Opting For Transparency Regarding Employee Review Of Personnel Files Is Generally Good Policy For Employers

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Transparency has become a familiar buzzword no matter whether we're talking about employee policies or presidential campaigns. When it comes to tax returns of presidential candidates, it's not hard to argue that transparency is the best strategy. This proposition has been vividly illustrated during this presidential election when one candidate's failure to release his tax returns caused mountains of suspicion and speculation, no matter your political leaning or whether or not you believe it was warranted. But if you're an employer—and not a United States presidential candidate—is transparency the best policy when an employee comes to you as an employer and asks to see his or her personnel file?

First, let's consider the law. In New Jersey, under most circumstances, there is no legal requirement giving an employee the right to inspect his or her personnel file, and generally, an employer can refuse that type of request. However, although to the decision to show an employee his or her file is not legally mandated, a more nuanced inquiry may be preferable—perhaps indeed a sound business policy—when making the decision whether to allow review. For example, when an employee asks to review a personnel file, it is often a signal that he or she is disgruntled. Preventing the employee from looking at the personnel file may add fuel to the fire of the employee's discontent and feed a suspicion, however unwarranted, that the employer is attempting to hide something. Allowing an employee to see his or her personnel records may prove to the employee that the employer has nothing to hide and may even defuse the employee from proceeding further against the employer.

In addition, employers must be aware of the exception to the rule that turns the request into a requirement to show an employee his or her personnel file. This exception occurs when the employee's stated purpose in reviewing the file is to support a charge of discrimination. In the 1988 case of Valantzas v. Colgate/Palmolive Company, Inc., an employee brought two claims against her employer: 1) that she was passed over for a promotion in favor of less qualified male candidates; and 2) that she was wrongfully terminated in retaliation for asking her employer to allow her to examine her personnel file so that she could try to find evidence of gender discrimination. The New Jersey Supreme Court decided that if the employee could show she was terminated, through evidence, because she asked to review her personnel file, the employer would be liable for wrongful termination.

In determining whether to grant a request to look at a personnel file, employers should consider that employee motivation for file review matters. An employer must recognize that to deny a request to review a file could enable a terminated employee to claim unlawful retaliation down the road, even if the employee is terminated for reasons having nothing to do with the personnel file. Moreover, even though it can be difficult to determine why an employee wants to look at a file--for alleged evidence against the employer or for a harmless reason, such as to determine dates of employment for a loan application—an employer should not say no just because it generally can under New Jersey law. So even if you're not Donald Trump, transparency, whether in politics or personnel files, may be the best course of action.

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