



Human Resources

by Donald R. Lee

Personnel records: What you need to know to avoid possible liability

*Another great article from The Rooms Chronicle, the #1 journal for hotel rooms management! ***Important notice: This article may not be reproduced without permission of the publisher or the author.*** College of Hospitality and Tourism Management, Niagara University, P.O. Box 2036, Niagara University, NY 14109-2036. Phone: 866-Read TRC. E-mail: editor@roomschronicle.com*

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In this day and age, hoteliers and other employers are obligated to comply with a number of rules concerning personnel records and other employment-related documents. This article provides an overview of the “who, what, when and where” of employment recordkeeping that a hotel manager must know to help shield himself from possible liability.

Documentation: It is the key to effectively managing workforce-related issues. Of course, creating the written record is the first part of documentation. The second essential part of effective documentation that is often overlooked but just as important concerns the retention of personnel documents. Proper retention of personnel documents is more than just good management; it is often mandated by federal, state and local governments. Hoteliers who do not comply could be forced to pay significant sums of money to the government and/or afflicted individuals. Set forth below is a primer on specific recordkeeping requirements for important federal workplace laws.

Anti-discrimination laws

Over the years, Congress has enacted a number of laws that prohibit discrimination based on a variety of “protected categories,” including an individual’s race, color, religion, sex, national origin, age and disability. These laws generally require hoteliers and other employers to maintain records documenting personnel action for at least one year from the date of the action. Examples of such documents include employment applications and records relating to an employee’s promotion, transfer or discharge. Federal anti-discrimination laws also require hoteliers to maintain payroll records documenting information such as employees’ names, addresses, dates of birth, rates of pay and compensation for a minimum of three years.

What happens if an employee or applicant files a charge of discrimination or a lawsuit in response to a personnel decision management has made? At that point, all relevant records must, at a minimum, be kept until the charge or suit is resolved with no chance of being resurrected.

Wage-hour laws

Federal wage hour laws require hoteliers to meet certain recordkeeping requirements with respect to their non-exempt employees (defined as those employees who are exempt from the law’s recordkeeping, overtime and minimum wage requirements). Hoteliers are obligated to maintain for three years any records related to non-exempt employees’ occupations, rates of pay, hours worked, weekly straight-time earnings, overtime earnings, and total wages for each pay period. In addition, basic earning records, such as time sheets completed by employees, should be kept for a minimum of two years.

As discussed previously, anti-discrimination laws also speak to recordkeeping re-quirements for payroll records. Thus, although federal wage-hour laws typically only obligate hoteliers to meet these recordkeeping requirements for their non-exempt employees, management should maintain payroll records for all employees, both exempt and non-exempt, for a minimum of three years in order to ensure compliance with anti-discrimination laws.

Immigration and workplace safety laws

Hoteliers are required to keep I-9s – documents which must be completed by all newly hired employees stating they are a U.S. citizen or otherwise authorized to work in the U.S. – for a minimum of three years from the employee’s hire date or one year after termination, whichever



period is longer. In our post 9-11 world, the federal government is becoming increasingly vigilant in investigating whether hoteliers are properly retaining I-9s. This is especially true for hoteliers and other employers in the Niagara area because of concerns that possible terrorists are entering the U.S. from Canada.

OSHA forms documenting workplace injuries must be kept for a minimum of five years from the end of the calendar year. Records of medical exams used to monitor an employee's exposure to hazardous materials must be kept for the duration of employment plus 30 years.

More recordkeeping tips

- *Medical Records Are Confidential*

With certain limited exceptions, employees' medical records are confidential and should not be shared with anybody. Thus, as a general rule, hoteliers should keep all medical records, including insurance benefit claims forms, drug testing results and physical examination results, separate from the employee's personnel records. These medical records should be kept under lock and key and accessible only to an extremely limited number of personnel.

- *Do Not Remove Disciplinary Records If You Don't Have To*

Some hoteliers utilize a progressive disciplinary policy that states that prior discipline will not be used as the basis for implementing discipline in the future after a certain amount of time has passed. However, when that time comes, it is recommended that employers not remove documentation of the prior discipline from the employee's file. The rationale is quite simple. The employee may challenge the current disciplinary decision by filing a charge or a lawsuit. In an effort to make the employee appear more sympathetic – and a manager's employment decision appear to be unjust – the employee may falsely claim that he was a model worker until that point. At this point, assuming management has kept the prior disciplinary records, it can successfully attack the employee's credibility and increase management's chance of prevailing in the dispute. However, if the prior disciplinary documentation has been discarded, management likely will not be able to show the employee is being deceitful, thus exposing the hotel and its management staff to a greater possibility of liability.

Conclusion

Employees, plaintiffs' lawyers, and gov-ernmental agencies are focusing more attention than ever before on hoteliers' retention of documents. Thus, in this day and age, a well-thought-out and thorough re-cordkeeping policy should be a "must have" for all hoteliers. This article provides a general overview on some federal recordkeeping requirements, but does not discuss all such requirements. In order to effectively shield oneself from possible liability, hotel managers must take steps to ensure that they have a thorough policy in place that complies with all relevant federal, state and local recordkeeping requirements. ✧

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