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How to Organize & Maintain Your Restaurant's Employee Files

by Emily Durham

Have you ever woken up in the morning and thought, "A new day; I cannot wait to get some paperwork done."? Of course you haven't. Paperwork is time-consuming, tedious and a diversion from things you would rather do, or things you need to do.

With that firmly established, there is some paperwork we simply must do to run our restaurants properly. There is no doubt that doing something correctly from the start, and not having to play catch-up later, is the preferable course with most things. Such is the case with employee files and records.

There are several reasons why you should have employee files with a specific set of documents in them. Not the least of which are legal in nature. There is documentation you must keep per IRS (Internal Revenue Service) rules, and other documents you will want to keep if you find yourself embroiled in litigation or the threat of litigation with a current or former employee. About one-third of legal actions against small businesses involve employment liability, such as sexual harassment, and wrongful termination claims.

Additionally, it's simply nice to have everything about each employee in one place so you know where to find it when you need it. If you start with a plan, a place to put your files, and a commitment to the short amount of time it will take to document what you should, you will be glad you did.

The following describes the fundamentals of a solid employee file system, and answers key questions about the compilation and storage of important documents, forms, reports and information.

Why Do You Need an Employee File System?

There are some very good reasons for creating and maintaining employee files, including but not limited to:

1. Being organized means you know where to find things when you need them — and you will need them.
2. Compiling the necessary personnel documentation will be your defense if and when an employee seeks legal action against you.
3. You will be prepared in the event of a government audit related to tax or immigration



issues.

4. Maintaining the applicable documents proves that you, as the employer and business owner, comply with federal and state regulations as they apply to your business and the restaurant industry where defined.
5. You will have the tools and information you need to make decisions and take action in accordance with your established employee policies.

On Whom Should You Keep Files?

You should keep a separate employee file for each person hired. It is also advisable to maintain a file with the applications of anyone who has applied for employment at your restaurant(s), whether hired or not. If the person raises a claim that he or she was not hired for some discriminatory reason, you'll have interview notes and a copy of questions asked to refute it.

When Should You Create the Files?

Job applications can be filed as they are received. Individual employee files should be created on the date of hire. The signed job application should be moved to the hired employee's file.

Where Should You Store the Files?

Employee files should be treated as confidential documents and access limited to the owners, managers, and immediate supervisors of the employees. The files should be secured in a locked file cabinet. Limit access to those who "need" to see the files. Kenneth Winkler, an employment law attorney with Atlanta-based Berman Fink & Van Horn P.C. says that "identity theft is a serious concern and employers have not been immune from lawsuits for failing to reasonably protect employee Social Security numbers." Please note that states can have different laws regarding employees' rights to inspect their employment files. You should check with your state to see who has the legal right to view employee files and which documents they are allowed to inspect.

What Should Be in the Files?

Employee files should contain all work-related documentation and forms. A standard checklist of documents listing the records to put in your files will help keep you organized and your files complete:

New-hire documents. These include:

- ▼ Job description for the position.
- ▼ Application.
- ▼ Resume, if one was given.
- ▼ References and notes.
- ▼ Hire date.
- ▼ Offer letter, if applicable.
- ▼ Employee information, including name, address, home and cell phone numbers, emergency contact person with phone numbers and name of spouse and dependents, if applicable.
- ▼ Copy of driver's license or other identification document.
- ▼ Schedule request form.

IRS documents. These include W-4 Form (employee withholding allowance certificate), and

payroll records.

Training records. Among these are copies of food safety and alcohol service safety training certificates (e.g., ServSafe™).

What Should Not be Kept in the File?

According to Winker, it is also important to note those things that should not be kept in employee files. As a general rule, only records that can lawfully be relied upon to make employment decisions should be maintained in personnel files. Thus, the following records should be kept in separate files:

Medical records. All medical records such as physical examinations, workers' compensation claims and alcohol testing should be kept in separate files.

I-9 forms. To avoid discrimination claims based on information contained on the forms about an employee's age or national origin, I-9 forms should be kept in separate files. Also, it will be easier to produce the I-9's in the event of an audit if they are maintained separately.

EEOC charges. Any charges filed by an employee with the EEOC (Equal Employment Opportunity Commission) or equivalent state agency should be maintained in a separate file. This will prevent any inferences that decisions were retaliatory.

How Long Should You Keep Records?

According to Winkler, federal and state laws require restaurants to retain various records for specified periods. These requirements can be confusing because the same or similar records are often required to be kept for different periods under more than one law. Under the Fair Labor Standards Act (FLSA), employers must keep various payroll and time records for each employee for at least three years. Yet Title VII of the Civil Rights Act requires that basic employee pay rates and weekly compensation records be maintained for only one year. Thus, you need to keep records to comply with the broadest requirement. But, says Winkler, don't stop there.

A restaurant should look beyond the minimum requirements and keep records that may be important to its defense in employment litigation. For example, harassment lawsuits often involve allegations that a manager cut a server's schedule in retaliation for her refusing the manager's advances. It would be important for the restaurant to maintain schedules and employee schedule requests to establish that the server actually received all the shifts she requested during the disputed period.

Note: If an employee or former employee threatens litigation, or if a charge of discrimination has been filed with the EEOC, you should retain all personnel records relating to the charge or litigation until the matter is resolved.

“ . . . These documents ensure that you have what you need for decisions about compensation increases, disciplinary action, termination, training, etc. That is always advised for both legal reasons and for practicing good management. ”

What Documents Should be in Your Arsenal?

So far we've talked about documents and records — and how and where to keep them — you need to maintain per legal requirements and to use in your defense should legal action arise. Following are documents we recommend you keep in your employees' files as a matter of running your business efficiently and effectively, in addition to the legal implications that could arise later. These documents ensure that you have what you need for decisions about compensation

increases, disciplinary action, termination, training, etc. They will keep you organized and keep your playing field level in that you will have standard documentation and even measurement for everyone. That is always advised for both legal reasons and for practicing good management.

Company policy documents. Having formal policies that your employees sign to acknowledge that they have read, understood and agreed to comply with is critical if you need to defend yourself against employee lawsuits and in maintaining a safe and professional workplace for everyone.

- ▼ Sexual harassment policy.
- ▼ Drug and alcohol policy.
- ▼ Safety and security policies.
- ▼ Benefits policies.

Evaluations and disciplinary action. These may be invaluable in defending wrongful termination claims. For more information, see "[Defensive Documentation of Employee Performance](#)".

- ▼ Performance evaluations. (It is a good idea to do these regularly; e.g., after the first 60 days and then every six months or annually. All raises and promotions should be recorded here.)
- ▼ Disciplinary notes to record incidents, warnings, and management action.
- ▼ All customer and co-worker complaints and compliments (documented and dated).
- ▼ Termination records.
 - Date.
 - Voluntary or involuntary.
 - Circumstances if known.
 - Pay at separation.

Receipts, acknowledgements, and written agreements. If you do not have an employee handbook, you should strongly consider creating one or seeking the assistance of a professional who can help you develop one. The more you have standardized and documented, the easier it will be to train your employees and the faster they will advance in your organization. Everyone will do their jobs better and more efficiently with operating policies and procedures. Additionally, if you entrust employees with security access, company property, or information you consider proprietary, it is wise to get written agreement of the conditions and rules surrounding those things. (For more information on creating an employee handbook, see "[Employee Handbook Basics for Startup Restaurateurs](#)".)

- ▼ Signed acknowledgement of employee handbook or operating manual.
- ▼ Signed receipt of any keys.
- ▼ Signed acknowledgement of alarm codes.
- ▼ Signed receipt of parking permit or pass.
- ▼ Nondisclosure agreements; example recipes.
- ▼ Signed agreement for the rules regarding the use of a company vehicle.

Completion of training material. It is a good policy to test your employees on the key things you think they must know to do their job best. You should test all new employees as they learn about your restaurant and then periodically test longer-term employees on new menu items and simply as "refreshers" on your procedures.

- ▼ Completion of alcohol management program test.

- ▼ Menu test.
- ▼ Position responsibilities test.
- ▼ General policies test.

A Mountain of Paperwork, but Loads of Peace of Mind

This probably seems like a mountain of paperwork and documentation to keep up with but it does not have to be an insurmountable task. There are good resources available to go to for standard forms and documents. We recommend, however, that you take the time to create, or tailor the policies specific to your restaurant so that you can train your employees on the way you want them to work. Once you have compiled your packet of employee forms and documents, you will be well-positioned for the preparedness and organization you need to prevent potential troubles later on. And you will know where to find employee information when you need it.

[Restaurant Startup & Growth](#)

v Checklist

Employee Files

Below is a list of the documents, forms, reports and information you would like to have readily on hand in your employee files.

- ▼ Job description for position.
- ▼ Signed application and resume.
- ▼ References.
- ▼ Interview rating sheet.
- ▼ Offer letter and hire date.
- ▼ Employee information sheet.
- ▼ Copy of identification documents.
- ▼ Schedule request form.
- ▼ W-4.
- ▼ Payroll records.
- ▼ All required permits and licenses.
- ▼ Signed company policy documents.
- ▼ Performance evaluations.
- ▼ Disciplinary action forms and notes.
- ▼ Complaints and compliments.
- ▼ Termination information.
- ▼ Signed receipts and acknowledgements of handbooks and manuals, keys and codes, etc.
- ▼ Records of training and testing completion.

