



# HR Examiner

*Examining practical HR issues business owners  
and managers encounter every day*

## Protective Personnel Practices

March 2009

Thank God It's  
Monday™

I don't usually do this but I like the concept of creating a **Thank God It's Monday™** work environment where your employees come to work as motivated as they did their first day of work.

A colleague of mine, Roxanne Emmerich, is offering a **free teleseminar** on How to

### Personnel File Patterns

It's funny how over a short period I'll be asked the same question over and over again. Well, my most recent pattern of calls has been regarding former employees requesting copies of their Personnel Files.

I'll venture a guess that as employees are being terminated, whether for poor performance, cause (policy violation) or position elimination, they are trying to figure out whether they have a valid claim for legal action against their former employer.

So I thought I'd present you with some of the information I've been providing these callers.

MN state law actually defines what is considered to be a Personnel Record. Here's the link to the detail of the statute: [MN Statute 181 960](#)



transform your workplace from an adult daycare filled with energy vampires to a “bring- it-on” place you and your customers love.

The teleseminar is **Tuesday, April 7, 2009 from 2-3 p.m.** central time.

If you're interested in attending this session or signing up for her ezine, just click the link below (or cut and paste the link into your browser's address bar):

[Click Here](#)

Of course, if you're enjoying **HRxaminer**, please forward this ezine to others who you think would benefit from the information!

And if you have an idea for a future topic, don't hesitate to respond to this email with your idea!

I look forward from hearing from you.

Here is the link to the detail of the statute: [MN Statute 181.999](#)

Before you send any Personnel File information to an employee, make sure you review what is and is not included in the file from the State's perspective. Then only provide to the former employee what the state defines. Of course, if you think there really is a serious problem, contact your expert Employment Lawyer.

According to the statute: “Personnel record means: any application for employment; wage or salary history; notices of commendation, warning, discipline, or termination; authorization for a deduction or withholding of pay; fringe benefit information; leave records; and employment history with the employer, including salary and compensation history, job titles, dates of promotions, transfers, and other changes, attendance records, performance evaluations, and retirement record.”

This does NOT include the general supervisory file notes you've written about the employee, unless they were truly notices of warning or discipline. It also doesn't include any notes from investigations that this employee was a participant or object of.

In a seminar I conducted this past week for an Association, an attendee discussed that their organization doesn't have a separate person in charge of the employee files. The supervisors retained these files. This is not a practice I recommend. You want to separate the formal, legally-bound Personnel File from the note-based supervisor file. If the two are merged, then your random notes could be considered part of the file, which depending on the notes could have legal ramifications. I advised this attendee to have someone create formal personnel files on each employee to minimize the risk.

FYI: MN employers with 20 or more employees are required to inform their employees of their rights under this statute either at hire or in their employee

Happy Spring!

**Arlene Vernon**

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[Arlene@ArleneVernon.com](mailto:Arlene@ArleneVernon.com)

handbook.

If you want a free sample Personnel File policy or you'd like me to audit your personnel files or processes, email me at [Arlene@ArleneVernon.com](mailto:Arlene@ArleneVernon.com).

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## Better To Be Safe Than Sorry

The day the problem employee left, she filed a wild, fictitious discrimination claim with the EEOC that one might read about in the newspaper or in a movie. It should never have happened to this wonderful employer.

But it did! Unfortunately, after \$1,000s in legal expenses, the employer regrets not having purchased EPLI – Employment Practice Liability Insurance – at a fraction of the cost that the employer has already spent on defending this outrageous claim.

The cost of this insurance correlates with the size of your organization, your industry, and whether you've had previous claims. But if you have employees, it's one of the core insurance products you should have in your arsenal of liability coverage.

Check with your liability provider (or call me if you need references to insurance sources) to see whether they include this coverage as part of your business liability plan or if they offer it as a stand-alone coverage.

Such policies typically reimburse an organization for the costs of defending a lawsuit in court and for judgments and settlements. The policy covers legal costs, whether your company wins or loses the suit. Of course, there are deductibles, coverage periods, maximums, etc. that you want to research when selecting the best plan for you. But this is a protection that no employer can afford to ignore.

The litigious employee is also a good reason to really research as much about an employee before hiring them. This isn't easy to do, but if you're figuring that reference and background checks are a waste of time, think again. You never know what important information you might uncover. Just because the person has listed someone as a reference, doesn't mean that the reference isn't open about the person's weaknesses or liabilities.

I've often thought that it would be great to create a website listing all the employees that should never be hired again – by anyone! But then I'd need to insure myself for all the lawsuits that would follow. It's a nice fantasy though – imagine being able to protect other employers from “worst nightmare” employees. They are a very small minority, but as in my initial example, this costly employee had a long-standing practice of false claims and lawsuits against all of her previous employers. Suing employers was her second source of income! If only there was a way to discover this before the expensive hire....

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## About Arlene Vernon

Arlene Vernon, PHR, partners with small businesses as their Human Resource Xpert to create their HR systems and solve their HR problems.

If you have gaps in your HR operation, have an employee problem to solve, or want to enhance your managers' skills, call Arlene today. Learn how HRx can save you time and help you avoid costly HR mistakes. HRx, Inc., Eden Prairie, MN 55344, 952-996-0975, [www.HRxcellence.com](http://www.HRxcellence.com). [Arlene@ArleneVernon.com](mailto:Arlene@ArleneVernon.com)

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