

TEXAS DEPARTMENT OF CRIMINAL JUSTICE
PD-55 (rev. 6), “HUMAN RESOURCES RECORDS AND FILES”
FEBRUARY 1, 2011
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TEXAS DEPARTMENT
OF
CRIMINAL JUSTICE

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EXECUTIVE DIRECTIVE

SUBJECT: HUMAN RESOURCES RECORDS AND FILES

AUTHORITY: Texas Government Code §§ 493.007, 552.001-.353; Texas Occupations Code § 159.002; *Family and Medical Leave Act of 1993* (FMLA), 29 U.S.C. §§ 2601-2654; 29 C.F.R. part 825; *Americans with Disabilities Act of 1990* (ADA), 42 U.S.C. §§ 12101-12213

APPLICABILITY: Texas Department of Criminal Justice (TDCJ)

Reference: American Correctional Association (ACA) Standards: 4-4040, 4-4067, and 4-4068

EMPLOYMENT AT WILL CLAUSE:

These guidelines **do not** constitute an employment contract or a guarantee of continued employment. The TDCJ reserves the right to change the provisions of these guidelines at any time.

Nothing in these guidelines and procedures limits the executive director's authority to establish or revise human resources policy. These guidelines and procedures are adopted to guide the internal operations of the TDCJ and **do not** create any legally enforceable interest or limit the executive director's, deputy executive director's, or division directors' authority to terminate an employee at will.

POLICY:

The TDCJ shall maintain human resources records and files in accordance with applicable federal and state statutes, to include protecting the confidentiality of an employee's medical records. Requirements relating to document identification and access to an employee's files shall be in accordance with the guidelines of this directive.

DEFINITIONS:

“Master Employee Medical File” is an electronic imaged file maintained by the Employee Services Section, Human Resources Division, which contains documents regarding an employee’s sick leave, workers’ compensation, insurance, survivor benefits, disability retirement, and miscellaneous medical information.

“Master Human Resources File” is an electronic imaged file maintained by the Employee Services Section, Human Resources Division, which contains documents regarding an employee’s payroll status, employment, performance evaluations, employment activity, retirement, deferred compensation, and miscellaneous information.

“Unit or Department Employee File” is a file maintained by the unit or department human resources representative. For purposes of defining a unit or department employee file, the following guidelines shall be used:

“Unit or Department Employee Disciplinary File” is a file containing a copy of any document related to a disciplinary issue regarding an employee. See Attachment A for examples of documents maintained in a unit or department employee disciplinary file.

“Unit or Department Employee Equal Employment Opportunity (EEO) Complaint File” is a file maintained by the unit or department human resources representative, which contains a copy of an employee’s PERS 497, EEO Complaint Form, submitted through unit or department staff and any documentation regarding the employee’s EEO complaint. See Attachment B for examples of documents maintained in a unit or department employee EEO complaint file.

“Unit or Department Employee Grievance File” is a file maintained by the unit or department human resources representative, which contains a copy of an employee’s PERS 155, Employee Grievance Form, and any documentation regarding the employee’s grievance. See Attachment C for examples of documents maintained in a unit or department employee grievance file.

“Unit or Department Employee Human Resources File” is a file containing a copy of any document submitted to the employee’s Master Human Resources File as well as the employee’s other human resources related documents that are not maintained in a unit or department employee disciplinary, EEO complaint, grievance, or medical file. See Attachment D for examples of documents maintained in a unit or department employee human resources file.

“Unit or Department Employee Medical File” is a confidential file that contains any medical information about an employee. See Attachment E for examples of documents maintained in a unit or department employee medical file.

PROCEDURES:

I. General Requirements

A. Document Requirements

1. A document filed in an employee's Master Human Resources File, Master Employee Medical File, or unit or department employee file shall be submitted by, provided to, or acknowledged by the employee.
2. If a document is placed in more than one employee's Master Human Resources File or Master Employee Medical File, a copy of the document shall be submitted for each file to the Employee Services Section, Human Resources Division.
3. If a document is to be placed in more than one unit or department employee file, a copy of the document shall be made for each file.

B. Records Retention Requirements

Human resources' records and files are considered official state records and shall be stored, managed, and disposed of in accordance with the TDCJ *Records Retention Schedule* and ED-02.29, "Records Management."

1. Records or Files Not Related to Pending Litigation

Once an employee record or file that is not related to pending litigation has been maintained for the minimum amount of time specified on the TDCJ *Records Retention Schedule*, the record or file shall be destroyed in accordance with ED-02.29, "Records Management." Documents containing confidential information as defined by the *Public Information Act* shall be shredded. The human resources representative shall document the destruction of records on a Records Disposition Log as set forth in ED-02.29.

2. Records and Files Related to Pending Litigation

- a. When an active or former TDCJ employee's records or files are required for litigation, the Office of the General Counsel (OGC) and the Employee Relations Department, Human Resources Division shall notify the applicable units or departments.

- b. A human resources representative shall not destroy an active or former TDCJ employee's records or files if the records or files relate to litigation, unless the OGC notifies the unit or department in writing that:
 - (1) The specific records or files may be destroyed; or
 - (2) The case is closed.
- c. The human resources representative shall access and review the Open Case Files List on the TDCJ's Intranet prior to destroying an active or former TDCJ employee's records or files. The records or files shall not be destroyed until the employee's name is removed from the list.

Periodically, human resources representatives may receive written instructions from the human resources director to temporarily discontinue the process of destroying or archiving employee records or files. When this occurs, the instructions shall remain in effect until further written notice is received from the human resources director. When such written instructions are not in effect, the preceding procedures shall be applicable.

II. Master Human Resources File and Master Employee Medical File

A. File Maintenance

- 1. The Employee Services Section maintains Master Human Resources Files and Master Employee Medical Files. Therefore, any document to be included in a Master Human Resources File or Master Employee Medical File shall be provided to the Employee Services Section. The Employee Services Section shall ensure the document meets the requirements set forth in Section I.A of this directive.
- 2. The Employee Services Section shall only place legible copies in a Master Human Resources File or Master Employee Medical File. If the Employee Services Section determines a document is of poor quality, the document shall be returned to the appropriate office for correction and resubmission.
- 3. The Employee Services Section shall not place letters of commendation, thank you letters, training certificates, and other related materials in the Master Human Resources File, unless the documents are part of an initial employment application packet. If this type of documentation is retained, the human resources representative shall place the document in the employee's unit or department human resources file.

B. File Access

If a human resources representative does not recognize an individual as a person who has access to a Master Human Resources File or Master Employee Medical File, the individual shall provide appropriate identification documents or credentials to the human resources representative prior to reviewing the files.

1. Active or Former TDCJ Employee

An active or former TDCJ employee shall have the right to view the Master Human Resources File and Master Employee Medical File relating to that employee.

a. An active or former TDCJ employee shall contact the Employee Services Section to schedule an appointment to view the employee's Master Human Resources File or Master Employee Medical File.

b. An active or former TDCJ employee shall review the files in the presence of a human resources staff member who shall be available to answer any questions.

2. Representative for an Active or Former TDCJ Employee

A representative for an active or former TDCJ employee has the right to view the employee's Master Human Resources File or Master Employee Medical File only if the representative submits a written authorization from the active or former TDCJ employee.

3. Individual with Assigned Security Access Code

These individuals, such as staff from Human Resources, Payroll, and the Office of the Inspector General (OIG), shall have access to selected portions of the Master Human Resources Files and Master Employee Medical Files as dictated by assigned security access codes.

4. Warden or Department Head, Human Resources Regional Coordinator, and OIG Investigative Staff

These individuals shall have unrestricted access to Master Human Resources Files or Master Employee Medical Files for active or former TDCJ employees whose last position was within the individual's respective area of responsibility.

5. Executive Staff

- a. Access to all OIG employees' Master Human Resources Files or Master Employee Medical Files shall be granted by the inspector general or the chairman of the Texas Board of Criminal Justice (TBCJ).
- b. The executive director, deputy executive director, division directors, deputy directors, and other executive staff or designees, shall have unrestricted access to all other employees' Master Human Resources Files or Master Employee Medical Files.
- c. Executive staff shall indicate in writing that a designee may inspect records on their behalf.

III. Unit or Department Employee Files

A. File Maintenance

1. Equal Employment Opportunity (EEO) Related Information

A human resources representative shall not place any documents in a unit or department employee file that indicates an employee's race, color, religion, gender, national origin, age, disability, or genetic information, for example pictures, Applicant EEO Data Form. General references to "he" or "she" do not need to be eliminated from documents placed in such files, nor do TDCJ-approved forms requiring indications of age or gender for insurance or other purposes need to be modified.

2. Unit or Department Human Resources Files

Generally, an employee's unit or department human resources file shall contain a copy of any document submitted to the employee's Master Human Resources File as well as the employee's other human resources-related documents that are not maintained in a unit or department disciplinary, EEO complaint, grievance, or medical file.

3. Unit or Department Employee Disciplinary Files

The human resources representative shall maintain a unit or department employee disciplinary file separately from the employee's unit or department human resources file.

4. Unit or Department Employee Medical Files

The human resources representative shall:

- a. Maintain a separate medical file for each employee with a label containing the word “confidential”;
- b. Not place an employee’s medical information in any other unit or department file; and
- c. Maintain unit or department employee medical files, including medical files for former employees, in a separate file drawer or file cabinet from unit or department human resources or employee disciplinary files and limit access to the files as noted in Section III.B of this directive.

B. File Access

1. General Provisions

a. Required Identification

If a human resources representative does not recognize an individual as a person who has access to an employee’s unit or department files, the individual shall provide appropriate identification documents or credentials prior to reviewing the files.

b. Criminal Investigations

Any requests for information related to a criminal investigation shall be referred to the OIG. The OIG shall make arrangements through the appropriate human resources office to provide access to appropriate records.

c. Viewing Files

With the exception of a warden or department head, an individual shall only review unit or department employee files in the presence of a human resources staff member and shall not take the files from the human resources office.

2. Active or Former TDCJ Employee

An active or former TDCJ employee shall have the right to review all of the employee’s unit or department employee files.

3. Representative for an Active or Former TDCJ Employee

A representative has the right to view the employee's unit or department employee files only if the representative submits a written authorization from the active or former TDCJ employee.

4. Warden or Department Head

A warden or department head shall have access to all unit or department employee files for employees working within the warden or department head's area of responsibility.

5. Supervisor

When an employee's supervisor is completing the employee's performance evaluation as the rating supervisor in accordance with PD-52, "Performance Evaluations," the supervisor may contact the human resources representative to discuss or obtain a copy of documents in the employee's disciplinary file relating to a disciplinary action imposed during the evaluation period. Otherwise, an employee's supervisor may review the employee's unit or department files if the supervisor has obtained written approval from the warden or department head. The review shall be in accordance with the following guidelines.

a. Unit or Department Human Resources Files

An employee's supervisor may review all records maintained in the employee's unit or department human resources file with the exception of retirement and insurance beneficiary information. The human resources representative shall remove all retirement and insurance beneficiary information from the employee's unit or department human resources file before the file is provided to the supervisor for review.

b. Unit or Department Employee Medical Files

An employee's supervisor may review documentation relating to workers' compensation, the TDCJ's Return to Work Program, sick leave, insurance documents reflecting medical information, and other medical information only when the review of these records is necessary to make decisions regarding the employee's work restrictions and work availability.

c. Unit or Department Employee Disciplinary Files

An employee's supervisor may review all of the records maintained in the unit or department employee disciplinary file.

6. OIG Investigator

OIG investigators shall have unrestricted access to unit or department employee files while in the scope of their employment.

7. Primary Interviewer

a. Prior to the selection of a current TDCJ employee who is seeking promotion, lateral transfer, or voluntary demotion consideration for a posted position, the primary interviewer may contact the employee's current human resources representative to discuss or obtain a copy of the applicant's disciplinary file, if applicable, and previous performance evaluations.

b. Prior to the selection of an outside applicant who is a former TDCJ employee, the primary interviewer may contact the Employee Services Section to request copies of information concerning the former employee's disciplinary history and performance evaluations.

C. Employee Transfer

If an employee transfers to another unit or department, the human resources representative at the employee's current unit or department shall forward the employee's human resources, disciplinary, and medical files to the human resources representative at the gaining unit or department.

D. Copies of Files

Requests for copies of files shall be governed by PD-56, "Request for and Release of Employment Information."

E. Correcting Discrepancies

1. The human resources representative may administratively remove documents that have been placed in an incorrect employee's unit or department employee file and place the documents in the appropriate file.

2. If an employee believes a document in any of the employee's unit or department employee files should be corrected, the employee may follow the procedures in PD-30, "Employee Grievance Procedures."
3. The human resources representative shall conduct an annual review of unit or department employee files to verify changes requested by the employee have been processed and to ensure employee information is current, for example addresses or telephone numbers.

IV. Grievance Files and EEO Complaint Files

- A. The employee designated by the warden or department head to coordinate the grievance process at the unit or department level (unit or department grievance contact) shall:
 1. Maintain employee grievance files and EEO complaint files separately from employee human resources, disciplinary, and medical files;
 2. Maintain a separate grievance file for each grievance and a separate EEO complaint file for each EEO complaint; and
 3. File any documentation regarding a grievance in the appropriate grievance file and any documentation relating to an EEO complaint in the appropriate EEO complaint file.
- B. Filing requirements and file access shall be in accordance with the procedures in Sections III.A and B of this directive.
- C. When an employee is assigned to another unit or department, an employee grievance or EEO complaint file relating to the employee shall not be forwarded to the new unit or department of assignment.

V. Supervisory Files

Supervisory files maintained by a supervisor on subordinate employees are considered to be working files and are subject to the following guidelines.

- A. Supervisory files shall only contain documents associated with an employee's performance. A supervisory file shall not include any documents maintained in the employee's unit or department human resources files. The only exception is when a copy of the original PERS 401, Employee Performance Log maintained in a supervisory file is also included in an employee's employee disciplinary file because the PERS 401 was used to support a disciplinary action taken in accordance with PD-22, "General Rules of Conduct and Disciplinary Action Guidelines for Employees."

- B. It is not necessary for an employee to sign or acknowledge documents placed in a supervisory file.
- C. Any documents maintained in a supervisory file may be viewed by the employee concerned.
- D. Documents maintained in supervisory files are subject to subpoena and other actions involving the employee.
- E. Unit supervisors may elect to maintain the PERS 401, Employee Performance Log forms for all of the employees on a particular shift in a notebook instead of maintaining a separate supervisory file for each shift employee. This will allow all of the shift supervisors to have access to an employee's PERS 401 for the purpose of documenting observation dates and notes.
- F. A supervisor shall maintain supervisory notes relating to an employee's performance in accordance with the provisions in the TDCJ *Records Retention Schedule* relating to employee counseling records. This includes supervisory notes relating to a performance evaluation, a PERS 401, Employee Performance Log or notes to support a disciplinary action based on substandard duty performance.
- G. If an employee or supervisor moves to another unit or department or separates employment, the supervisory file shall remain at the unit or department where the file was established.

Brad Livingston
Executive Director

**EXAMPLES OF DOCUMENTS FILED IN
UNIT OR DEPARTMENT EMPLOYEE DISCIPLINARY FILE**

Form Number	Description
PERS 325	Employee Offense and Prehearing Investigation Report and supporting documentation
PERS 325-EEO	EEO Prehearing Investigation Report and supporting documentation
PERS 184	Notification of Employee Hearing
PERS 560	Guidelines for Employee Hearings
PERS 185	Reprimand Form
PERS 186	Dismissal Recommendation/Action
PERS 327	Rehire Review Required
PERS 401	Employee Counseling Records that are used to support an employee disciplinary action taken in accordance with PD-22, "General Rules of Conduct and Disciplinary Action Guidelines for Employees"
PERS 502	Trainee Dismissal Recommendation/Action
N/A	Explanation for any policy deviations

**EXAMPLES OF DOCUMENTS FILED IN
 UNIT OR DEPARTMENT EMPLOYEE EEO COMPLAINT FILE**

Form Number	Description
PERS 497	EEO Complaint Form submitted to unit or department staff ⁽¹⁾
N/A	Any other written EEO complaint submitted to unit or department staff. ⁽¹⁾ This includes any document the unit or department submits to Employee Relations Intake as a possible EEO complaint, even when Employee Relations Intake determines the complaint does not rise to the level of an “EEO complaint.”
N/A	Correspondence advising of EEO investigation results
<p>⁽¹⁾ If an employee submitted a PERS 497, EEO Complaint Form or other written EEO complaint directly to Employee Relations Intake or other TDCJ staff, the unit or department may not have a copy of the complaint.</p> <p>A copy of the PERS 408 may be filed in the appropriate EEO Complaint File.</p>	

**EXAMPLES OF DOCUMENTS FILED IN
UNIT OR DEPARTMENT EMPLOYEE GRIEVANCE FILE**

Form Number	Description
PERS 155	Employee Grievance Form
PERS 329	Grievance Referral Form
PERS 328	Time Limit Extension
PERS 326	Request for Independent Dismissal Mediation

**EXAMPLES OF DOCUMENTS FILED IN
UNIT OR DEPARTMENT EMPLOYEE HUMAN RESOURCES FILE**

PAYROLL SECTION	
Form Number	Description
N/A	Copy of Electronic Payroll Transaction
PERS 60	Employee Address Change Form
SO278	Social Security Leveling
W4	Employee Withholding Allowance
PERS 59	U.S. Savings Bond Authorization
PERS 302	Expiration of Leave without Pay Notification
PERS 443	Recommendation for Administrative Separation
PERS 460	Notification of Administrative Separation Recommendation

EMPLOYMENT SECTION	
Form Number	Description
N/A	Information Questionnaire
N/A	Emergency Data Information
N/A	“Quick Reference” Information
N/A	Voluntary Demotion Acknowledgement
PERS 195	Request for Transfer Correctional Officer to Correctional Officer
PERS 379	Request for Reassignment Non-Correctional to Correctional Officer Position
PERS 398	Request for Outside Employment (Salary Groups A20/B21/C7 and Below)
PERS 407	Request for Multiple Employment
PERS 427	Request to Transfer from Part-Time to Full-Time Correctional Officer Status

PERFORMANCE EVALUATIONS SECTION	
Form Number	Description
PERS 11	Performance Evaluation

ACTIVITY SECTION	
Form Number	Description
PERS 24	Leave Request (Leave requests relating to use of sick leave shall be filed in the employee's medical file.)
PR1	Manual Time Adjustments
N/A	Arrest/Warrant Background, excluding TCIC/NCIC reports
PERS 205	Sick Leave Pool Contribution Form
PERS 420	Notification of an Employee Arrest, Criminal Charge or Indictment
PERS 462	Notification of a Protective Order
PERS 501	Crime Victim's Election to Allow Public Access to Information
PERS 510	Request for ALOP – Continuing Education
PERS 548	Notification of Outstanding Warrant for Arrest
PERS 571	The TexaSaver 401(k) and 457 Plans Lump Sum Deferral Enrollment Form
PERS 596	Condition of Employment as Related to Emergency Responses

INSURANCE AND RETIREMENT SECTION	
Form Number	Description
ERS FB-9.20	TexFlex Enrollment Account Form
ERS GI-1.081	Dependent Child Certification
ADJ (applicable year)	Insurance Adjustment
ERS GI-1.180	Employee Insurance Multipurpose Form
FLXRA01	Reimbursement Account Adjustment
PERS 428	Retiree Options Regarding State Compensatory and Holiday Leave Accruals
PERS 429	Insurance Coverage Reinstatement
ERS GI-1.222	Summer Enrollment Form
STA1	EOI Approval Letter (if provided)
SKIPAPPR	Skip Approval Letter (if provided)
MEDSUP	Medical Support Order (if provided)

MISCELLANEOUS SECTION	
Form Number	Description
MC1	Meal Card Authorization
MC2	Meal Card Authorization
N/A	Job-Related Certification
TNG44	Certificate
TNG99	In Service Training Record
TNG100	OJT Training Record
N/A	Commendation IOCs
N/A	Thank You Letters
N/A	Course Completion Certificates
N/A	Certificates of Achievement/Commendation
PERS 260	ID Card Issue Request
PERS 261	Lost or Stolen ID Card Report
PERS 430	Retiree ID Card Request

Instructions for PERS 534, Record of Hours Worked beyond Regular Schedule forms:

Due to the bulk of the PERS 534 forms and the time it would take to file the forms in the unit or department employee human resources files, these forms shall be maintained in a separate file by month. The files shall be sorted within the month by the beginning letter of the employees' last name. No alphabetization beyond the first letter is required. These records shall be maintained for two years and then discarded in compliance with the TDCJ *Record Retention Schedule*.

**EXAMPLES OF DOCUMENTS FILED IN
UNIT OR DEPARTMENT EMPLOYEE MEDICAL FILE**

SICK LEAVE RELATED	
Form Number	Description
PERS 24	Leave Request
PERS 206	Sick Leave Pool Application for Withdrawal
N/A	FMLA Medical Documentation
N/A	Physician's Statement
PERS 301	Notification of Medical and Family Leave
PERS 377	Substance Abuse Treatment Agreement
PERS 499	Notification of Unscheduled Use of Leave Pattern
PERS 592	Request for Additional Information/Recertification
PERS 594	Designation Notice

WORKERS' COMPENSATION RELATED	
Form Number	Description
PERS 298-2	Notice of Employee's Work-Related Injury/Illness
PERS 298-3	Employee Sick Leave Election (C-80)
PERS 299-2	Witness Statement
PERS 299-3	Supplemental Worksheet
N/A	Attending Physician's Statement
WORK_COMP E-form	Primary First Report of Injury/Illness and Supplemental Changes
PERS 298-4	Authorization for Release of Information
PERS 305	Possible Work-Related Exposure to a Communicable Disease
PERS 506	Employee's Acknowledgement of Responsibilities Relating to Work-Related Injury/Illness

RETURN TO WORK PROGRAM RELATED	
Form Number	Description
PERS 376	Offer of Temporary Alternate/Modified Duty Assignment

INSURANCE RELATED	
Form Number	Description
N/A	Claim for Extended Life Benefits (if provided)