Negligent Retention & Supervision

Stacey D. Neumann, Esq.
Retention
Supervision
How do they fit together?
How do they fit together?

Document
How do they fit together?
How do they fit together?
But Be Careful How you Document
Personnel Files
Personnel Files

Employers must make personnel files available:

1) To a former worker within 15 days of a written request to inspect and copy a personnel file.

2) To current workers at least once per calendar year if the employee asks for a copy. (employee may be charged for the cost of copying)
Personnel Files

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Personnel Files

Any formal or informal employee evaluations and reports relating to the employee’s:

- character
- work habits
- compensation and benefits
Personnel Files

Personnel Files DO include
Personnel Files

- Personnel Files DO include
  - Investigative Materials
Personnel Files

- Personnel Files DO include
Personnel Files

- Personnel Files DO include
  - materials not necessarily kept in a file
Personnel Files

NO medical information in personnel files
Investigative Materials
Camera Video Recordings

- Any video recordings used to trigger disciplinary action should be included in a personnel file.
Camera Video Recordings

- Any video recordings used to trigger disciplinary action should be included in a personnel file.
- Whether the camera is outward or forward facing.
Your monitoring company must promptly save any “triggering” videos
Your monitoring company must promptly save any “triggering” videos in a format and location that can be accessed as part of the personnel file.
Camera Video Recordings

- Your monitoring company must *delete* any videos that are later unsubstantiated.
Driver Facing Cameras – 
*Who, What, When, Where, Why*

- Have a clear and specific policy on *who* reviews such videos, *when*, and *how often*
Driver Facing Cameras –
*Who, What, When, Where, Why*

- Policies must be clear and uniform
Driver Facing Cameras – *Who, What, When, Where, Why*

▶ **Who** - who is in charge of camera reviews?
Driver Facing Cameras –

*Who, What, When, Where, Why*

- **What** – are you reviewing for?
Driver Facing Cameras –
*Who, What, When, Where, Why*

- **What** – are you reviewing for?
- **What** – are the company policies that you are monitoring?
Driver Facing Cameras –

*Who, What, When, Where, Why*

- **What** – are you reviewing for?
- **What** – are the company policies that you are monitoring?
- **What** – is the violation this video portrays?
Driver Facing Cameras –

- **When** – did the violations occur?
Driver Facing Cameras – Who, What, **When**, Where, Why

- **When** – did the violations occur?
- **When** – are the videos being reviewed?
Driver Facing Cameras –
Who, What, When, Where, Why

▶ Where - did the violations occur?
Driver Facing Cameras –
*Who, What, When, Where, Why*

- **Where** - did the violations occur?
- **Where** - are the videos reviewed and kept?
Driver Facing Cameras – *Who, What, When, Where, Why*

- **Why** – are the videos being reviewed?
Driver Facing Cameras –
Who, What, When, Where, Why

- Review must be uniform review across fleet
- unless specifically stated need for greater frequency – such as a certain number of violations in a limited time period that triggers greater scrutiny
Driver Facing Cameras –
Delete and Destroy

Anything non-triggering should be deleted and destroyed.
Driver Facing Cameras –
Delete and Destroy

Anything non-triggering should be deleted and destroyed.

➢ don’t keep anything you don’t need (so don’t want) to have
Driver Facing Cameras –
*Delete and Destroy*

Anything non-triggering should be deleted and destroyed.

➢ don’t keep anything you don’t need (so don’t want) to have

➢ E.g. inadvertent medical or other personal information
Must Personnel Files Include Camera Video Recordings

- Any video recordings used to trigger disciplinary action must be included in a personnel file
Must Personnel Files Include Camera Video Recordings?

- Monitoring company must promptly save triggering videos and in a format that you can save to the employee’s personnel file
Retention of other Recordings

- Absent any video recordings that trigger disciplinary actions, you must not retain any other video recording.
How long do I have to keep the records?
How long do I have to keep the records?

- Keep personnel files for 6 years after separation of employment
How long do I have to keep the records?

- Keep personnel files for 6 years after separation of employment
- If that is impossible, keep the records for 3 years at a minimum
THANK YOU

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