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Labor and Employment Alert: Pennsylvania Supreme Court Clarifies Employee Access To Personnel Files

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The Pennsylvania Files Act (PFA) requires an employer to permit an employee to inspect his or her personnel files used to determine the employee's qualifications for employment, promotion, additional compensation, termination, or disciplinary action. The PFA defines "employee" as a person who is "currently employed" (which includes those who are laid off with reemployment rights and those on a leave of absence). That definition would appear to foreclose a terminated or former employee from reviewing his or her personnel. The Pennsylvania Supreme Court recently confirmed that a "current" employee means an employee who is employed at the time.

The case, *Thomas Jefferson University Hospital, Inc. v. Pennsylvania Department of Labor and Industry*, involved a recently terminated employee who sought to review her personnel file after her employment had ended. Last year, the lower court interpreted the PFA to permit "recently terminated" employees to review their personnel files. The court opined that, because the PFA permits "currently employed" employees to review their personnel file to determine the basis for their termination, it makes sense to include "recently terminated" employees who otherwise would be unable to review the file. In June 2017, the Supreme Court rejected this interpretation and reversed the decision.

Turning to the dictionary, the Supreme Court explained that "the commonly accepted understanding of being currently employed requires that a person be maintained in another's service now, at the present time." Thus, "the term 'currently employed' cannot mean both presently employed and formerly employed." In short, "former employees are not employees, and, therefore, are not covered" by the PFA. Regardless of how quickly following their termination they request to review their personnel files, former employees "do not have the right to access their personnel files."

In Pennsylvania, it is now clear that only current employees may review their personnel files. Other states, however, may give both current and former employees that right of access. Contact your Vorys lawyer if you

have questions about current or former employees' access to their personnel files.

