

S T A T E O F N E W Y O R K

4350--A

2009-2010 Regular Sessions

I N A S S E M B L Y

February 3, 2009

Introduced by M. of A. HEASTIE, WRIGHT, GABRYSZAK, COLTON -- Multi-Sponsored by -- M. of A. BALL -- read once and referred to the Committee on Labor -- recommitted to the Committee on Labor in accordance with Assembly Rule 3, sec. 2 -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law and the civil service law, in relation to employees' right to review personnel records

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The labor law is amended by adding a new section 211-b to
2 read as follows:
3 S 211-B. EMPLOYEE RIGHT TO REVIEW PERSONNEL RECORDS. 1. THE EMPLOYER
4 SHALL, UPON WRITTEN REQUEST FROM AN EMPLOYEE OR FORMER EMPLOYEE, PROVIDE
5 SUCH EMPLOYEE, FORMER EMPLOYEE SEPARATED FROM EMPLOYMENT WITH SUCH
6 EMPLOYER WITHIN THE PREVIOUS THREE YEARS, REPRESENTATIVE OF A RECOGNIZED
7 OR CERTIFIED EMPLOYEE ORGANIZATION OR ATTORNEY OF SUCH EMPLOYEE WITH AN
8 OPPORTUNITY TO REVIEW AND COPY THE EMPLOYEE'S PERSONNEL FILE IF THE
9 EMPLOYER HAS A PERSONNEL FILE FOR THAT EMPLOYEE. THE REVIEW AND COPYING
10 MUST TAKE PLACE AT THE LOCATION WHERE THE PERSONNEL FILES ARE MAINTAINED
11 AND DURING NORMAL BUSINESS HOURS UNLESS, AT THE EMPLOYER'S DISCRETION, A
12 MORE CONVENIENT TIME AND LOCATION FOR THE EMPLOYEE ARE ARRANGED.
13 2. IN EACH CALENDAR YEAR, THE EMPLOYER SHALL PROVIDE, AT NO COST TO
14 THE EMPLOYEE, ONE COPY OF THE ENTIRE PERSONNEL FILE WHEN REQUESTED BY
15 THE EMPLOYEE OR FORMER EMPLOYEE SEPARATED FROM EMPLOYMENT WITH SUCH
16 EMPLOYER WITHIN THE LAST THREE YEARS AND, WHEN REQUESTED BY THE EMPLOYEE
17 OR FORMER EMPLOYEE SEPARATED FROM EMPLOYMENT WITHIN THE LAST THREE YEARS
18 WITH SUCH EMPLOYER, ONE COPY OF ALL THE MATERIAL ADDED TO THE PERSONNEL
19 FILE AFTER THE COPY OF THE ENTIRE FILE WAS PROVIDED. THE COST OF COPYING
20 ANY OTHER MATERIAL REQUESTED DURING THE CALENDAR YEAR SHALL BE PAID BY
21 THE EMPLOYEE REQUESTING THE COPY.

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 3. FOR PURPOSES OF THIS SECTION, A PERSONNEL FILE INCLUDES, BUT IS NOT
2 LIMITED TO, ANY FORMAL OR INFORMAL EMPLOYEE EVALUATIONS AND REPORTS
3 RELATING TO THE EMPLOYEE'S CHARACTER, CREDIT, WORK HABITS, COMPENSATION
4 AND BENEFITS, AND NONPRIVILEGED MEDICAL RECORDS OR NURSES' STATION NOTES
5 RELATING TO THE EMPLOYEE. FOR THE PURPOSES OF THIS SECTION, THE TERM
6 "NONPRIVILEGED MEDICAL RECORDS OR NURSES' STATION NOTES" MEANS ALL THOSE
7 MATERIALS THAT HAVE NOT BEEN FOUND TO BE PROTECTED FROM DISCOVERY OR
8 DISCLOSURE IN THE COURSE OF CIVIL LITIGATION OR SUBJECT TO THE HEALTH
9 INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA).

10 4. RECORDS IN A PERSONNEL FILE MAY BE MAINTAINED IN ANY FORM INCLUDING
11 PAPER, MICROFICHE OR ELECTRONIC FORM. AN EMPLOYER MAINTAINING RECORDS IN
12 A FORM OTHER THAN PAPER SHALL HAVE AVAILABLE TO THE EMPLOYEE, FORMER
13 EMPLOYEE SEPARATED FROM EMPLOYMENT WITH SUCH EMPLOYER WITHIN THE PREVI-
14 OUS THREE YEARS, REPRESENTATIVE OF A RECOGNIZED OR CERTIFIED EMPLOYEE
15 ORGANIZATION OR ATTORNEY OF SUCH EMPLOYEE THE EQUIPMENT NECESSARY TO
16 REVIEW AND COPY THE PERSONNEL FILE. THE EMPLOYER SHALL TAKE ADEQUATE
17 STEPS TO ENSURE THE INTEGRITY AND CONFIDENTIALITY OF SUCH EMPLOYEE
18 RECORDS.

19 5. ANY EMPLOYER WHO, FOLLOWING A REQUEST PURSUANT TO THIS SECTION,
20 FAILS WITHOUT GOOD CAUSE TO PROVIDE AN OPPORTUNITY FOR REVIEW AND COPY-
21 ING OF A PERSONNEL FILE, WITHIN TEN DAYS OF RECEIPT OF SUCH REQUEST, IS
22 SUBJECT TO A CIVIL FINE OF TWENTY-FIVE DOLLARS FOR EACH DAY SUCH FAILURE
23 CONTINUES, EXCEPT THAT SUCH FINE SHALL NOT EXCEED FIVE HUNDRED DOLLARS
24 PER REQUEST. AN EMPLOYEE, FORMER EMPLOYEE OR THE DEPARTMENT MAY BRING AN
25 ACTION IN A COURT OF COMPETENT JURISDICTION FOR SUCH EQUITABLE RELIEF,
26 INCLUDING AN INJUNCTION, AS THE COURT MAY CONSIDER NECESSARY AND PROPER.
27 THE EMPLOYER MAY ALSO BE REQUIRED TO REIMBURSE THE EMPLOYEE, FORMER
28 EMPLOYEE SEPARATED FROM EMPLOYMENT WITH SUCH EMPLOYER WITHIN THE PREVI-
29 OUS THREE YEARS OR THE DEPARTMENT FOR COSTS REASONABLY RELATED TO THE
30 LITIGATION INCLUDING REASONABLE ATTORNEY'S FEES, IF THE EMPLOYEE OR THE
31 DEPARTMENT RECEIVES A JUDGMENT IN THE EMPLOYEE'S OR DEPARTMENT'S FAVOR,
32 RESPECTIVELY.

33 6. THIS SECTION SHALL NOT BE DEEMED TO DIMINISH THE RIGHTS OF ANY
34 EMPLOYEE PURSUANT TO A COLLECTIVE BARGAINING AGREEMENT.

35 S 2. The civil service law is amended by adding a new section 153 to
36 read as follows:

37 S 153. EMPLOYEE RIGHT TO REVIEW PERSONNEL RECORDS. 1. THE EMPLOYER
38 SHALL, UPON WRITTEN REQUEST FROM AN EMPLOYEE OR FORMER EMPLOYEE SEPA-
39 RATED FROM EMPLOYMENT WITH SUCH EMPLOYER WITHIN THE PREVIOUS THREE
40 YEARS, PROVIDE SUCH EMPLOYEE, FORMER EMPLOYEE SEPARATED FROM EMPLOYMENT
41 WITH SUCH EMPLOYER WITHIN THE PREVIOUS THREE YEARS, REPRESENTATIVE OF A
42 RECOGNIZED OR CERTIFIED EMPLOYEE ORGANIZATION OR ATTORNEY OF SUCH
43 EMPLOYEE WITH AN OPPORTUNITY TO REVIEW AND COPY THE EMPLOYEE'S PERSONNEL
44 FILE IF THE EMPLOYER HAS A PERSONNEL FILE FOR THAT EMPLOYEE. THE REVIEW
45 AND COPYING MUST TAKE PLACE AT THE LOCATION WHERE THE PERSONNEL FILES
46 ARE MAINTAINED AND DURING NORMAL BUSINESS HOURS UNLESS, AT THE EMPLOY-
47 ER'S DISCRETION, A MORE CONVENIENT TIME AND LOCATION FOR THE EMPLOYEE
48 ARE ARRANGED.

49 2. IN EACH CALENDAR YEAR, THE EMPLOYER SHALL PROVIDE, AT NO COST TO
50 THE EMPLOYEE, ONE COPY OF THE ENTIRE PERSONNEL FILE WHEN REQUESTED BY
51 THE EMPLOYEE OR FORMER EMPLOYEE SEPARATED FROM EMPLOYMENT WITH SUCH
52 EMPLOYER WITHIN THE PREVIOUS THREE YEARS AND, WHEN REQUESTED BY THE
53 EMPLOYEE OR FORMER EMPLOYEE SEPARATED FROM EMPLOYMENT WITH SUCH EMPLOYER
54 WITHIN THE PREVIOUS THREE YEARS, ONE COPY OF ALL THE MATERIAL ADDED TO
55 THE PERSONNEL FILE AFTER THE COPY OF THE ENTIRE FILE WAS PROVIDED. THE

1 COST OF COPYING ANY OTHER MATERIAL REQUESTED DURING THE CALENDAR YEAR
2 SHALL BE PAID BY THE EMPLOYEE REQUESTING THE COPY.

3 3. FOR PURPOSES OF THIS SECTION, A PERSONNEL FILE INCLUDES, BUT IS NOT
4 LIMITED TO, ANY FORMAL OR INFORMAL EMPLOYEE EVALUATIONS AND REPORTS
5 RELATING TO THE EMPLOYEE'S CHARACTER, CREDIT, WORK HABITS, COMPENSATION
6 AND BENEFITS, AND NONPRIVILEGED MEDICAL RECORDS OR NURSES' STATION NOTES
7 RELATING TO THE EMPLOYEE. FOR THE PURPOSES OF THIS SECTION, THE TERM
8 "NONPRIVILEGED MEDICAL RECORDS OR NURSES' STATION NOTES" MEANS ALL THOSE
9 MATERIALS THAT HAVE NOT BEEN FOUND TO BE PROTECTED FROM DISCOVERY OR
10 DISCLOSURE IN THE COURSE OF CIVIL LITIGATION OR SUBJECT TO THE HEALTH
11 INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA).

12 4. RECORDS IN A PERSONNEL FILE MAY BE MAINTAINED IN ANY FORM INCLUD-
13 ING, PAPER, MICROFICHE OR ELECTRONIC FORM. AN EMPLOYER MAINTAINING
14 RECORDS IN A FORM OTHER THAN PAPER SHALL HAVE AVAILABLE TO THE EMPLOYEE,
15 FORMER EMPLOYEE OR DULY AUTHORIZED REPRESENTATIVE THE EQUIPMENT NECES-
16 SARY TO REVIEW AND COPY THE PERSONNEL FILE. THE EMPLOYER SHALL TAKE
17 ADEQUATE STEPS TO ENSURE THE INTEGRITY AND CONFIDENTIALITY OF SUCH
18 EMPLOYEE RECORDS.

19 5. ANY EMPLOYER WHO, FOLLOWING A REQUEST PURSUANT TO THIS SECTION,
20 FAILS WITHOUT GOOD CAUSE TO PROVIDE AN OPPORTUNITY FOR REVIEW AND COPY-
21 ING OF A PERSONNEL FILE, WITHIN TEN DAYS OF RECEIPT OF SUCH REQUEST, IS
22 SUBJECT TO A CIVIL FINE OF TWENTY-FIVE DOLLARS FOR EACH DAY SUCH FAILURE
23 CONTINUES, EXCEPT THAT SUCH FINE SHALL NOT EXCEED FIVE HUNDRED DOLLARS
24 PER REQUEST. AN EMPLOYEE, FORMER EMPLOYEE OR THE DEPARTMENT OF LABOR MAY
25 BRING AN ACTION IN A COURT OF COMPETENT JURISDICTION FOR EACH SUCH EQUI-
26 TABLE RELIEF, INCLUDING AN INJUNCTION, AS THE COURT MAY CONSIDER NECES-
27 SARY AND PROPER. THE EMPLOYER MAY ALSO BE REQUIRED TO REIMBURSE THE
28 EMPLOYEE, FORMER EMPLOYEE SEPARATED FROM EMPLOYMENT WITH SUCH EMPLOYER
29 WITHIN THE PREVIOUS THREE YEARS OR THE DEPARTMENT OF LABOR FOR COSTS
30 REASONABLY RELATED TO THE LITIGATION INCLUDING REASONABLE ATTORNEY'S
31 FEES, IF THE EMPLOYEE OR THE DEPARTMENT OF LABOR RECEIVES A JUDGEMENT IN
32 THE EMPLOYEE'S OR SUCH DEPARTMENT'S FAVOR, RESPECTIVELY.

33 6. THIS SECTION SHALL NOT BE DEEMED TO DIMINISH THE RIGHTS OF ANY
34 EMPLOYEE PURSUANT TO A COLLECTIVE BARGAINING AGREEMENT.

35 S 3. This act shall take effect immediately.