

1629

2009-2010 Regular Sessions

I N S E N A T E

February 3, 2009

Introduced by Sen. OPPENHEIMER -- read twice and ordered printed, and
when printed to be committed to the Committee on Labor

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.
22 3. FOR PURPOSES OF THIS SECTION, A PERSONNEL FILE INCLUDES, BUT IS NOT
23 LIMITED TO, ANY FORMAL OR INFORMAL EMPLOYEE EVALUATIONS AND REPORTS
24 RELATING TO THE EMPLOYEE'S CHARACTER, CREDIT, WORK HABITS, COMPENSATION
25 AND BENEFITS, AND NONPRIVILEGED MEDICAL RECORDS OR NURSES' STATION NOTES

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

LBD06723-01-9

1 RELATING TO THE EMPLOYEE. FOR THE PURPOSES OF THIS SECTION, THE TERM
2 "NONPRIVILEGED MEDICAL RECORDS OR NURSES' STATION NOTES" MEANS ALL THOSE
3 MATERIALS THAT HAVE NOT BEEN FOUND TO BE PROTECTED FROM DISCOVERY OR
4 DISCLOSURE IN THE COURSE OF CIVIL LITIGATION OR SUBJECT TO THE HEALTH
5 INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA).

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

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

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

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

43 2. IN EACH CALENDAR YEAR, THE EMPLOYER SHALL PROVIDE, AT NO COST TO
44 THE EMPLOYEE, ONE COPY OF THE ENTIRE PERSONNEL FILE WHEN REQUESTED BY
45 THE EMPLOYEE OR FORMER EMPLOYEE SEPARATED FROM EMPLOYMENT WITH SUCH
46 EMPLOYER WITHIN THE PREVIOUS THREE YEARS AND, WHEN REQUESTED BY THE
47 EMPLOYEE OR FORMER EMPLOYEE SEPARATED FROM EMPLOYMENT WITH SUCH EMPLOYER
48 WITHIN THE PREVIOUS THREE YEARS, ONE COPY OF ALL THE MATERIAL ADDED TO
49 THE PERSONNEL FILE AFTER THE COPY OF THE ENTIRE FILE WAS PROVIDED. THE
50 COST OF COPYING ANY OTHER MATERIAL REQUESTED DURING THE CALENDAR YEAR
51 SHALL BE PAID BY THE EMPLOYEE REQUESTING THE COPY.

52 3. FOR PURPOSES OF THIS SECTION, A PERSONNEL FILE INCLUDES, BUT IS NOT
53 LIMITED TO, ANY FORMAL OR INFORMAL EMPLOYEE EVALUATIONS AND REPORTS
54 RELATING TO THE EMPLOYEE'S CHARACTER, CREDIT, WORK HABITS, COMPENSATION
55 AND BENEFITS, AND NONPRIVILEGED MEDICAL RECORDS OR NURSES' STATION NOTES
56 RELATING TO THE EMPLOYEE. FOR THE PURPOSES OF THIS SECTION, THE TERM

1 "NONPRIVILEGED MEDICAL RECORDS OR NURSES' STATION NOTES" MEANS ALL THOSE
2 MATERIALS THAT HAVE NOT BEEN FOUND TO BE PROTECTED FROM DISCOVERY OR
3 DISCLOSURE IN THE COURSE OF CIVIL LITIGATION OR SUBJECT TO THE HEALTH
4 INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA).

5 4. RECORDS IN A PERSONNEL FILE MAY BE MAINTAINED IN ANY FORM INCLUD-
6 ING, PAPER, MICROFICHE OR ELECTRONIC FORM. AN EMPLOYER MAINTAINING
7 RECORDS IN A FORM OTHER THAN PAPER SHALL HAVE AVAILABLE TO THE EMPLOYEE,
8 FORMER EMPLOYEE OR DULY AUTHORIZED REPRESENTATIVE THE EQUIPMENT NECES-
9 SARY TO REVIEW AND COPY THE PERSONNEL FILE. THE EMPLOYER SHALL TAKE
10 ADEQUATE STEPS TO ENSURE THE INTEGRITY AND CONFIDENTIALITY OF SUCH
11 EMPLOYEE RECORDS.

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

26 S 3. This act shall take effect immediately.