

2314

2011-2012 Regular Sessions

I N A S S E M B L Y

January 18, 2011

Introduced by M. of A. HEASTIE, WRIGHT, GABRYSZAK, COLTON -- read once
and referred 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.

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

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

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

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

54 3. FOR PURPOSES OF THIS SECTION, A PERSONNEL FILE INCLUDES, BUT IS NOT
55 LIMITED TO, ANY FORMAL OR INFORMAL EMPLOYEE EVALUATIONS AND REPORTS
56 RELATING TO THE EMPLOYEE'S CHARACTER, CREDIT, WORK HABITS, COMPENSATION

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

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

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

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

30 S 3. This act shall take effect immediately.