

3730

2011-2012 Regular Sessions

I N   S E N A T E

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Introduced by Sens. OPPENHEIMER, DIAZ, DILAN, KRUEGER, SAMPSON -- 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

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

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

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

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

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

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

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

55 3. FOR PURPOSES OF THIS SECTION, A PERSONNEL FILE INCLUDES, BUT IS NOT  
56 LIMITED TO, ANY FORMAL OR INFORMAL EMPLOYEE EVALUATIONS AND REPORTS

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

8 4. RECORDS IN A PERSONNEL FILE MAY BE MAINTAINED IN ANY FORM INCLUD-  
9 ING, PAPER, MICROFICHE OR ELECTRONIC FORM. AN EMPLOYER MAINTAINING  
10 RECORDS IN A FORM OTHER THAN PAPER SHALL HAVE AVAILABLE TO THE EMPLOYEE,  
11 FORMER EMPLOYEE OR DULY AUTHORIZED REPRESENTATIVE THE EQUIPMENT NECES-  
12 SARY TO REVIEW AND COPY THE PERSONNEL FILE. THE EMPLOYER SHALL TAKE  
13 ADEQUATE STEPS TO ENSURE THE INTEGRITY AND CONFIDENTIALITY OF SUCH  
14 EMPLOYEE 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 OF LABOR MAY  
21 BRING AN ACTION IN A COURT OF COMPETENT JURISDICTION FOR EACH SUCH EQUI-  
22 TABLE RELIEF, INCLUDING AN INJUNCTION, AS THE COURT MAY CONSIDER NECES-  
23 SARY AND PROPER. THE EMPLOYER MAY ALSO BE REQUIRED TO REIMBURSE THE  
24 EMPLOYEE, FORMER EMPLOYEE SEPARATED FROM EMPLOYMENT WITH SUCH EMPLOYER  
25 WITHIN THE PREVIOUS THREE YEARS OR THE DEPARTMENT OF LABOR FOR COSTS  
26 REASONABLY RELATED TO THE LITIGATION INCLUDING REASONABLE ATTORNEY'S  
27 FEES, IF THE EMPLOYEE OR THE DEPARTMENT OF LABOR RECEIVES A JUDGEMENT IN  
28 THE EMPLOYEE'S OR SUCH DEPARTMENT'S FAVOR, 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 3. This act shall take effect immediately.