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

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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:

Section 1. The labor law is amended by adding a new section 211-b to read as follows:

S 211-B. EMPLOYEE RIGHT TO REVIEW PERSONNEL RECORDS. 1. THE EMPLOYER SHALL, UPON WRITTEN REQUEST FROM AN EMPLOYEE OR FORMER EMPLOYEE, PROVIDE SUCH EMPLOYEE, FORMER EMPLOYEE SEPARATED FROM EMPLOYMENT WITH SUCH EMPLOYER WITHIN THE PREVIOUS THREE YEARS, REPRESENTATIVE OF A RECOGNIZED OR CERTIFIED EMPLOYEE ORGANIZATION OR ATTORNEY OF SUCH EMPLOYEE WITH AN OPPORTUNITY TO REVIEW AND COPY THE EMPLOYEE'S PERSONNEL FILE IF THE EMPLOYER HAS A PERSONNEL FILE FOR THAT EMPLOYEE. THE REVIEW AND COPYING MUST TAKE PLACE AT THE LOCATION WHERE THE PERSONNEL FILES ARE MAINTAINED AND DURING NORMAL BUSINESS HOURS UNLESS, AT THE EMPLOYER'S DISCRETION, A MORE CONVENIENT TIME AND LOCATION FOR THE EMPLOYEE ARE ARRANGED.

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

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

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

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

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

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

S 153. EMPLOYEE RIGHT TO REVIEW PERSONNEL RECORDS. 1. THE EMPLOYER SHALL, UPON WRITTEN REQUEST FROM AN EMPLOYEE OR FORMER EMPLOYEE SEPARATED FROM EMPLOYMENT WITH SUCH EMPLOYER WITHIN THE PREVIOUS THREE YEARS, PROVIDE SUCH EMPLOYEE, FORMER EMPLOYEE SEPARATED FROM EMPLOYMENT WITH SUCH EMPLOYER WITHIN THE PREVIOUS THREE YEARS, REPRESENTATIVE OF A RECOGNIZED OR CERTIFIED EMPLOYEE ORGANIZATION OR ATTORNEY OF SUCH EMPLOYEE WITH AN OPPORTUNITY TO REVIEW AND COPY THE EMPLOYEE'S PERSONNEL FILE IF THE EMPLOYER HAS A PERSONNEL FILE FOR THAT EMPLOYEE. THE REVIEW AND COPYING MUST TAKE PLACE AT THE LOCATION WHERE THE PERSONNEL FILES ARE MAINTAINED AND DURING NORMAL BUSINESS HOURS UNLESS, AT THE EMPLOYER'S DISCRETION, A MORE CONVENIENT TIME AND LOCATION FOR THE EMPLOYEE ARE ARRANGED.

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

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

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

4. RECORDS IN A PERSONNEL FILE MAY BE MAINTAINED IN ANY FORM INCLUDING, PAPER, MICROFICHE OR ELECTRONIC FORM. AN EMPLOYER MAINTAINING RECORDS IN A FORM OTHER THAN PAPER SHALL HAVE AVAILABLE TO THE EMPLOYEE, FORMER EMPLOYEE OR DULY AUTHORIZED REPRESENTATIVE THE EQUIPMENT NECESSARY TO REVIEW AND COPY THE PERSONNEL FILE. THE EMPLOYER SHALL TAKE ADEQUATE STEPS TO ENSURE THE INTEGRITY AND CONFIDENTIALITY OF SUCH EMPLOYEE RECORDS.

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

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

S 3. This act shall take effect immediately.