

# STATE OF NEW YORK

8008

2021-2022 Regular Sessions

## IN ASSEMBLY

June 4, 2021

Introduced by M. of A. GONZALEZ-ROJAS -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to employee access to 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 210-b to  
2 read as follows:

3 § 210-b. Access to personnel records. 1. As used in this section, the  
4 following terms shall, unless the context clearly requires otherwise,  
5 have the following meanings:

6 (a) "Employee" means a person currently employed or formerly employed  
7 by an employer.

8 (b) "Employer" means any individual, corporation, partnership, labor  
9 organization, unincorporated association or any other legal business,  
10 including any public or quasi-public entity, and any commercial entity,  
11 and including agents of such employer.

12 (c) "Personnel record" means a record kept by an employer that identi-  
13 fies an employee, to the extent that the record is used or has been  
14 used, or may affect or be used relative to that employee's qualifica-  
15 tions for employment, promotion, transfer, additional compensation or  
16 disciplinary action. A personnel record shall include a record in the  
17 possession of a person, corporation, partnership or other association  
18 that has a contractual agreement with the employer to keep or supply a  
19 personnel record as provided in this section. A personnel record shall  
20 not include information of a personal nature about a person other than  
21 the employee if disclosure of the information would constitute a clearly  
22 unwarranted invasion of such other person's privacy. Without limiting  
23 the applicability or generality of the foregoing, all of the following  
24 written information or documents to the extent prepared by an employer  
25 regarding an employee shall be included in the personnel record for that

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

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1 employee: the name, address, date of birth, job title and description;  
2 rate of pay and any other compensation paid to the employee; starting  
3 date of employment; the job application of the employee; resumes or  
4 other forms of employment inquiry submitted to the employer in response  
5 to his advertisement by the employee; all employee performance evalu-  
6 ations, including but not limited to, employee evaluation documents;  
7 written warnings of substandard performance; lists of probationary peri-  
8 ods; waivers signed by the employee; copies of dated termination  
9 notices; any other documents relating to disciplinary action regarding  
10 the employee. A personnel record shall be maintained in typewritten or  
11 printed form or may be handwritten in indelible ink.

12 2. An employer shall notify an employee within ten days of the employ-  
13 er placing in the employee's personnel record any information to the  
14 extent that the information is, has been used or may be used, to nega-  
15 tively affect the employee's qualification for employment, promotion,  
16 transfer, additional compensation or the possibility that the employee  
17 will be subject to disciplinary action. An employer receiving a written  
18 request from an employee to access such employee's personnel record  
19 shall provide the employee with a copy of such personnel record within  
20 five business days of submission of a written request for such copy to  
21 the employer. An employer shall not be required to allow an employee to  
22 review the employee's personnel record on more than two separate occa-  
23 sions in a calendar year; provided, however, that the notification and  
24 review caused by the placing of negative information in the personnel  
25 record shall not be deemed to be one of the two annually permitted  
26 reviews.

27 3. If there is a disagreement with any information contained in a  
28 personnel record, removal or correction of such information may be mutu-  
29 ally agreed upon by the employer and the employee. If an agreement is  
30 not reached, the employee may submit a written statement explaining the  
31 employee's position which shall be contained and become a part of such  
32 employee's personnel record. The statement shall be included when said  
33 information is transmitted to a third party as long as the original  
34 information is retained as part of the file. If an employer places any  
35 information in a personnel record which such employer knew or should  
36 have known to be false, the employee shall have remedy through the  
37 collective bargaining agreement, other personnel procedures or judicial  
38 process to have such information expunged. An employee may bring an  
39 action in a court of competent jurisdiction to have false information  
40 removed from his or her personnel record. The provisions of this section  
41 shall not prohibit the removal of information contained in a personnel  
42 record upon mutual agreement of the employer and employee for any  
43 reason.

44 4. An employer shall retain the complete personnel record of any  
45 employee as required to be kept under this section without deletions or  
46 expungement of information from the date of employment of such employ-  
47 ee to a date three years after the termination of employment of the employ-  
48 ee with such employer. In any cause of action brought by an employee  
49 against such employer in any administrative or judicial proceeding such  
50 employer shall retain any personnel record required to be kept under  
51 this section which is relevant to such action until the final disposi-  
52 tion thereof.

53 5. If an employer elects to have a written personnel policy regarding  
54 the terms and conditions of employment, such personnel policy, as the  
55 same may be amended from time to time, shall be continuously maintained  
56 at the office of such employer where personnel matters are administered.

1 6. Nothing in this section shall be construed to abrogate any  
2 conflicting provisions of any collective bargaining agreement.

3 7. Any violation of this section shall be punished by a fine of not  
4 less than five hundred nor more than twenty-five hundred dollars. This  
5 section shall be enforced by the attorney general.

6 § 2. This act shall take effect on the sixtieth day after it shall  
7 have become a law. Effective immediately, the addition, amendment,  
8 and/or repeal of any rule or regulation necessary for the implementation  
9 of this act on its effective date are authorized to be made and  
10 completed on or before such effective date.