

STATE OF NEW YORK

8008--A

2021-2022 Regular Sessions

IN ASSEMBLY

June 4, 2021

Introduced by M. of A. GONZALEZ-ROJAS, JACKSON, FERNANDEZ, GOTTFRIED, DINOWITZ, LAWLER, EPSTEIN, MAMDANI, GOODELL, SILLITTI, GLICK -- read once and referred to the Committee on Labor -- recommitted to the Committee on Labor in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 governmental entity or public employer as defined in para-
11 graph (a) of subdivision six of section two hundred one of the civil
12 service law, and any commercial entity, including agents of such employ-
13 er.

14 (c) "Personnel record" means a record kept by an employer that identi-
15 fies an employee, to the extent that the record is used or has been
16 used, or may affect or be used relative to that employee's qualifica-
17 tions for employment, promotion, transfer, additional compensation or
18 disciplinary action. A personnel record shall include a record in the
19 possession of a person, corporation, partnership or other association
20 that has a contractual agreement with the employer to keep or supply a
21 personnel record as provided in this section. A personnel record shall

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

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1 not include information of a personal nature about a person other than
2 the employee if disclosure of the information would constitute a clearly
3 unwarranted invasion of such other person's privacy. Without limiting
4 the applicability or generality of the foregoing, all of the following
5 written information or documents to the extent prepared by an employer
6 regarding an employee shall be included in the personnel record for that
7 employee: the name, address, date of birth, job title and description;
8 rate of pay and any other compensation paid to the employee; starting
9 date of employment; the job application of the employee; resumes or
10 other forms of employment inquiry submitted to the employer in response
11 to his advertisement by the employee; all employee performance evalu-
12 ations, including but not limited to, employee evaluation documents;
13 written warnings of substandard performance; lists of probationary peri-
14 ods; waivers signed by the employee; copies of dated termination
15 notices; any other documents relating to disciplinary action regarding
16 the employee. A personnel record shall be maintained in typewritten or
17 printed form or may be handwritten in indelible ink.

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

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

50 4. An employer shall retain the complete personnel record of any
51 employee as required to be kept under this section without deletions or
52 expungement of information from the date of employment of such employee
53 to a date three years after the termination of employment of the employ-
54 ee with such employer. In any cause of action brought by an employee
55 against such employer in any administrative or judicial proceeding such
56 employer shall retain any personnel record required to be kept under

1 this section which is relevant to such action until the final disposi-
2 tion thereof.

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

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

9 7. Any violation of this section by an employer or any other person
10 shall be punished by a fine of not less than five hundred nor more than
11 twenty-five hundred dollars. This section shall be enforced by the
12 attorney general.

13 8. No employer or any other person shall discharge, threaten, penal-
14 ize, or in any other manner discriminate or retaliate against any
15 employee who exercises his or her rights under this section. As used in
16 this section, to threaten, penalize, or in any other manner discriminate
17 or retaliate against an employee includes, but is not limited to,
18 threatening to contact or contacting United States immigration authori-
19 ties or otherwise reporting or threatening to report an employee's
20 suspected citizenship or immigration status or the suspected citizenship
21 or immigration status of an employee's family or household member, as
22 defined in subdivision two of section four hundred fifty-nine-a of the
23 social services law, to a federal, state or local agency.

24 9. An employee may bring a civil action in a court of competent juris-
25 isdiction against any employer or persons alleged to have discriminated or
26 retaliated against him or her for the exercise of his or her rights
27 under this section. The court shall have jurisdiction to restrain
28 violations of this section, within two years of such violation, regard-
29 less of the dates of employment of the employee, and to order all appro-
30 priate relief, including: enjoining the conduct of any person or employ-
31 er; ordering payment of liquidated damages, costs, and reasonable
32 attorneys' fees to the employee by the person or entity in violation;
33 and, where the person or entity in violation is an employer, ordering
34 rehiring or reinstatement of the employee to his or her former position
35 with restoration of seniority or an award of front pay in lieu of rein-
36 statement, and an award of lost compensation and damages (including, but
37 not limited to, compensatory and punitive damages), costs and reasonable
38 attorneys' fees. Liquidated damages shall be calculated as an amount not
39 more than twenty thousand dollars. The court shall award liquidated
40 damages to every employee aggrieved under this section, in addition to
41 any other remedies permitted by this section.

42 10. At or before the commencement of any action under this section,
43 notice thereof shall be served upon the attorney general by the employ-
44 ee.

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