

# STATE OF NEW YORK

1959--B

2023-2024 Regular Sessions

## IN ASSEMBLY

January 23, 2023

Introduced by M. of A. GONZALEZ-ROJAS, JACKSON, DINOWITZ, EPSTEIN, MAMDANI, GOODELL, SILLITTI, GLICK, COLTON, ALVAREZ, McMAHON, BICHOTTE HERMELYN, LEVENBERG, REYES, ZINERMAN, BURGOS -- 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 -- 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

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

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

20 2. An employer shall notify an employee within ten days of the employ-  
21 er placing in the employee's personnel record any information to the  
22 extent that the information is, has been used or may be used, to nega-  
23 tively affect the employee's qualification for employment, promotion,  
24 transfer, additional compensation or the possibility that the employee  
25 will be subject to disciplinary action. An employer receiving a written  
26 request from an employee to access such employee's personnel record  
27 shall provide the employee with a copy of such personnel record, at no  
28 cost to the employee, within five business days of submission of a writ-  
29 ten request for such copy to the employer. An employer shall not be  
30 required to allow an employee to review the employee's personnel record  
31 on more than two separate occasions in a calendar year; provided, howev-  
32 er, that the notification and review caused by the placing of negative  
33 information in the personnel record shall not be deemed to be one of the  
34 two annually permitted reviews.

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

55 5. If an employer elects to have a written personnel policy regarding  
56 the terms and conditions of employment, such personnel policy, as the

1 same may be amended from time to time, shall be continuously maintained  
2 at the office of such employer where personnel matters are administered.

3 6. Nothing in this section shall be construed to supersede the terms  
4 of a collective bargaining agreement, provided, however, that such  
5 agreement provides at least substantially similar access by an employee  
6 to their personnel records as that provided by this section.

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

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

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