

STATE OF NEW YORK

9834

IN SENATE

June 3, 2024

Introduced by Sen. GOUNARDES -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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
22 not include information of a personal nature about a person other than
23 the employee if disclosure of the information would constitute a clearly
24 unwarranted invasion of such other person's privacy. Without limiting
25 the applicability or generality of the foregoing, all of the following
26 written information or documents to the extent prepared by an employer
27 regarding an employee shall be included in the personnel record for that
28 employee: the name, address, date of birth, job title and description;

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

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1 rate of pay and any other compensation paid to the employee; starting
2 date of employment; the job application of the employee; resumes or
3 other forms of employment inquiry submitted to the employer in response
4 to the employer's advertisement by the employee; all employee perform-
5 ance evaluations, including but not limited to, employee evaluation
6 documents; written warnings of substandard performance; lists of proba-
7 tionary periods; waivers signed by the employee; copies of dated termi-
8 nation notices; any other documents relating to disciplinary action
9 regarding the employee. A personnel record shall be maintained in type-
10 written or printed form or may be handwritten in indelible ink.

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

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

41 4. An employer shall retain the complete personnel record of any
42 employee as required to be kept under this section without deletions or
43 expungement of information from the date of employment of such employee
44 to a date three years after the termination of employment of the employ-
45 ee with such employer.

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

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

54 7. Any violation of this section by an employer or any other person
55 shall be punished by a fine of not less than five hundred nor more than

1 twenty-five hundred dollars. This section shall be enforced by the
2 attorney general.

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

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