

# STATE OF NEW YORK

99

2023-2024 Regular Sessions

## IN SENATE

(Prefiled)

January 4, 2023

Introduced by Sens. GOUNARDES, ADDABBO, JACKSON, MYRIE, RAMOS, RIVERA, SALAZAR, THOMAS -- read twice and ordered printed, and when printed to be committed 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 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

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

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

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

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

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

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

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

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 his or her rights under this section. As used in  
14 this section, to threaten, penalize, or in any other manner discriminate  
15 or retaliate against an employee includes, but is not limited to,  
16 threatening to contact or contacting United States immigration authori-  
17 ties or otherwise reporting or threatening to report an employee's  
18 suspected citizenship or immigration status or the suspected citizenship  
19 or immigration status of an employee's family or household member, as  
20 defined in subdivision two of section four hundred fifty-nine-a of the  
21 social services law, to a federal, state or local agency.

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

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

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