STATE OF NEW YORK

99--A

Cal. No. 699

2023-2024 Regular Sessions

IN SENATE

(Prefiled)

January 4, 2023

Introduced by Sens. GOUNARDES, ADDABBO, HOYLMAN-SIGAL, JACKSON, MYRIE, RAMOS, RIVERA, SALAZAR, THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- recommitted to the Committee on Labor in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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:

Section 1. The labor law is amended by adding a new section 210-b to read as follows:

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

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

(b) "Employer" means any individual, corporation, partnership, labor organization, unincorporated association or any other legal business, including any governmental entity or public employer as defined in paragraph (a) of subdivision six of section two hundred one of the civil service law, and any commercial entity, including agents of such employer.

(c) "Personnel record" means a record kept by an employer that identifies an employee, to the extent that the record is used or has been used, or may affect or be used relative to that employee's qualifications for employment, promotion, transfer, additional compensation or disciplinary action. A personnel record shall include a record in the 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.

LBD01556-06-4

that has a contractual agreement with the employer to keep or supply a personnel record as provided in this section. A personnel record shall not include information of a personal nature about a person other than the employee if disclosure of the information would constitute a clearly unwarranted invasion of such other person's privacy. Without limiting the applicability or generality of the foregoing, all of the following written information or documents to the extent prepared by an employer regarding an employee shall be included in the personnel record for that employee: the name, address, date of birth, job title and description; rate of pay and any other compensation paid to the employee; starting date of employment; the job application of the employee; resumes or other forms of employment inquiry submitted to the employer in response to his advertisement by the employee; all employee performance evaluations, including but not limited to, employee evaluation documents; written warnings of substandard performance; lists of probationary periods; waivers signed by the employee; copies of dated termination notices; any other documents relating to disciplinary action regarding the employee. A personnel record shall be maintained in typewritten or printed form or may be handwritten in indelible ink.

2. An employer shall notify an employee within ten days of the employer placing in the employee's personnel record any information to the extent that the information is, has been used or may be used, to negatively affect the employee's qualification for employment, promotion, transfer, additional compensation or the possibility that the employee will be subject to disciplinary action. An employer receiving a written request from an employee to access such employee's personnel record shall provide the employee with a copy of such personnel record, at no cost to the employee, within five business days of submission of a written request for such copy to the employer. An employer shall not be required to allow an employee to review the employee's personnel record on more than two separate occasions in a calendar year; provided, however, that the notification and review caused by the placing of negative information in the personnel record shall not be deemed to be one of the two annually permitted reviews.

3. If there is a disagreement with any information contained in a personnel record, removal or correction of such information may be mutually agreed upon by the employer and the employee. If an agreement is not reached, the employee may submit a written statement explaining the employee's position which shall be contained and become a part of such employee's personnel record. The statement shall be included when said information is transmitted to a third party as long as the original information is retained as part of the file. If an employer places any information in a personnel record which such employer knew or should have known to be false, the employee shall have remedy through the collective bargaining agreement, other personnel procedures or judicial process to have such information expunged. An employee may bring an action in a court of competent jurisdiction to have false information removed from such employee's personnel record. The provisions of this section shall not prohibit the removal of information contained in a personnel record upon mutual agreement of the employer and employee for any reason.

4. An employer shall retain the complete personnel record of any employee as required to be kept under this section without deletions or expungement of information from the date of employment of such employee to a date three years after the termination of employment of the employee with such employer. In any cause of action brought by an employee

against such employer in any administrative or judicial proceeding such employer shall retain any personnel record required to be kept under this section which is relevant to such action until the final disposition thereof.

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

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

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

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

9. An employee may bring a civil action in a court of competent jurisdiction against any employer or persons alleged to have discriminated or retaliated against such employee for the exercise of such employee's rights under this section. The court shall have jurisdiction to restrain violations of this section, within two years of such violation, regardless of the dates of employment of the employee, and to order all appropriate relief, including: enjoining the conduct of any person or employer; ordering payment of liquidated damages, costs, and reasonable attorneys' fees to the employee by the person or entity in violation; and, where the person or entity in violation is an employer, ordering rehiring or reinstatement of the employee to his or her former position with restoration of seniority or an award of front pay in lieu of reinstatement, and an award of lost compensation and damages (including, but not limited to, compensatory and punitive damages), costs and reasonable attorneys' fees. Liquidated damages shall be calculated as an amount not more than twenty thousand dollars. The court shall award liquidated damages to every employee aggrieved under this section, in addition to any other remedies permitted by this section.

10. At or before the commencement of any action under this section, notice thereof shall be served upon the attorney general by the employee.

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