

ASSEMBLY, No. 2150

STATE OF NEW JERSEY

INTRODUCED JUNE 17, 1996

By Assemblyman GUSCIORA

1 AN ACT providing for employee access to personnel files and
2 supplementing Title 34 of the Revised Statutes.

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4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

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7 1. As used in this act:

8 "Commissioner" means the Commissioner of Labor.

9 "Employee" means an individual who performs services for, and
10 under the control and direction of, an employer for wages or other
11 remuneration.

12 "Employer" means: an individual, partnership, association,
13 corporation or other person who engages the services of an employee
14 and who pays the employee wages or other compensation; an agent of
15 the employer; or a person or business entity having a contractual
16 agreement with the employer to obtain, maintain or otherwise manage
17 personal data concerning the employer's employees. The term
18 "employer" shall apply to private employers and to the State, its
19 political subdivisions and any boards, commissions, schools,
20 institutions or authorities created by the State or its political
21 subdivisions.

22 "Personnel file" means the information regarding an employee kept
23 by or for an employer, including, but not limited to, formal
24 evaluations, reports regarding the employee's character, work and
25 credit history, and documents or other information relevant to the
26 employee's pay, benefits, work qualifications, hiring, promotion,
27 changes in compensation, transfer, termination or other discipline, but
28 excluding personal information regarding the planning of future
29 employer operations referring to more than one employee, letters of
30 reference for which the employee has given written consent to be kept
31 confidential, and information regarding a criminal investigation which
32 the employer elects to keep in a separate file pursuant to the
33 provisions of section 3 of this act.

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35 2. a. An employer shall permit an employee or authorized agent of
36 the employee to review all information in the employee's personnel file.
37 The employer shall, not more than seven business days following a

1 written request by the employee, make the information available to the
2 employee or authorized agent during work hours at or near the
3 employee's work location and provide the employee with copies of any
4 of the information requested by the employee.

5 b. The employer shall maintain the personnel file of an employee
6 for a period of not less than 12 months following any termination of
7 the employment of that employee. During that period, the employer
8 shall, not more than seven business days following a written request
9 by the former employee, make the information available to the former
10 employee during the business hours at or near the former work location
11 and provide the former employee with copies of any of the information
12 requested by the employee.

13 The employer may charge the employee or former employee for the
14 cost of copying information required pursuant to this section.
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16 3. An employer may maintain a separate file for information related
17 to any criminal investigation of the employee, if the following
18 conditions are met:

19 a. Upon the conclusion of the investigation, the employee is
20 notified of the existence of the file and all information in the file is
21 made available to the employee; and

22 b. The file is destroyed if no criminal or disciplinary action is taken
23 upon the conclusion of the investigation.
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25 4. If an employee believes that any information in the employee's
26 personnel file is inaccurate or misleading, the employee may:

27 a. Submit a written statement explaining the employee's position
28 regarding the disputed information; or

29 b. Request that the employer remove or correct the information
30 and, if the employer does not remove the information or correct it to
31 the satisfaction of the employee, submit a written statement explaining
32 the employee's position regarding the disputed information.

33 The written statement submitted by the employee shall be included
34 in any disclosure by the employer of the disputed information. The
35 inclusion of the employee statement with the information without any
36 additional statement by the employer shall not imply or create any
37 presumption of agreement by the employer with the statement's
38 contents.
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40 5. Information which is not relevant to an employee's pay, benefits,
41 qualification for work or work performance may be placed in the
42 employee's personnel file only upon written authorization of the
43 employee. No employer shall require an employee to authorize the
44 placing of such information in a personnel file.
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46 6. a. An employer shall not disclose information, other than

1 information which is permitted to be disclosed pursuant to subsection
2 b. of this section, from an employee's personnel file to any person
3 without prior written authorization from the employee, unless the
4 disclosure is made:

5 (1) To officers or employees of the employer who have a legitimate
6 need for the information in the performance of their duties;

7 (2) To a law enforcement agency in connection with a criminal
8 investigation or prosecution;

9 (3) To any other government agency to which the employer is
10 required by law to disclose the information; or

11 (4) Pursuant to any order of a court of competent jurisdiction.

12 The employer shall notify the employee whenever information
13 regarding the employee is disclosed, including information disclosed
14 with the prior written authorization of the employee but not including
15 information which is permitted to be disclosed pursuant to subsection
16 b. of this section, and the notification shall include the identity of the
17 person to whom the information is disclosed.

18 b. The restrictions on the disclosure of information provided for in
19 subsection a. of this section shall not apply to the following
20 information about an employee:

21 (1) The name, title, compensation, period of employment and
22 reason for separation of the employee from employment;

23 (2) Information regarding the qualifications or job description of
24 the position which the employee holds; and

25 (3) Any records which are required by law to be made public.

26 c. No employer shall require an employee or prospective employee
27 to authorize the disclosure of information from a personnel file.

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29 7. An employer who violates a provision of this act shall be guilty
30 of a crime of the fourth degree.

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32 8. This act shall take effect immediately.

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35 STATEMENT

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37 The purpose of this bill is to provide workers with reasonable
38 access to their personnel files and limit disclosures of information from
39 those files.

40 The bill requires an employer to permit employee review of the
41 employee's personnel file and provide copies of information from the
42 files requested by the employee. The bill requires that the file be made
43 available during work hours at or near the work site not more than
44 seven business days following a written request by the employee. The
45 employer is also required to maintain the personnel file for employee
46 review for at least 12 months after any termination of the employee.

1 The bill requires that if the employee submits a statement that the
2 information in the file is inaccurate or misleading, the statement must
3 be included in any disclosure of the disputed information.

4 Employers are prohibited from disclosing information from an
5 employee's personnel file without prior written authorization from the
6 employee, with certain exceptions such as disclosures to law
7 enforcement agencies and other governmental agencies as required by
8 law. An employer is also required to notify the employee when the
9 information is disclosed.

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14 Concerns employee personnel files.