



New York Enacts Law Granting Employees Right to Access Personnel Records: What Employers Need to Know

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New York Personnel Records Law

On September 9, 2026, Governor Hochul signed S.3460/A.2107, effective November 8, 2026

- Adds Section 210-b to Labor Law to provide current and former employees the right to access their personnel records. (Previously, employees in New York State had no statutory entitlement to receive or review a copy of their personnel record.)
- Requires employers to notify employees when negative information is placed in the personnel record.
- Grants employees the right to submit a response.
- NOTE: Governor Hochul reached an agreement with the State Legislature to address “ambiguities” in the law in early 2027.





New Right to Access Personnel Records

- Both current and former employees will have the right to inspect and obtain copies of their personnel records two times per calendar year.
- Employers must provide a copy of an employee's personnel record within five (5) business days of an employee's written request.
- Broad definition of "personnel record."
- Requires employers to retain the complete personnel record of any employee for three years after the end of the employee's employment.

Notice Requirement for “Negative” Information

- Employers must notify employees within ten (10) days after placing “negative” information in the employee’s personnel record.
- Employees have an opportunity to respond.
- Employee’s response must be placed in personnel record.
- A review sought after notification of negative information is in addition to the two annual reviews.

Broad Definition of “Personnel Record”

- Includes any record that
 - “identifies an employee”
 - is “used or has been used or may affect or be used relative to” the employee’s “qualifications for employment, promotion, transfer, additional compensation or disciplinary action.”
- Includes both records in the employer’s possession and records kept by third party vendors with contractual agreements with the employer to keep or supply personnel records.
- Exception: does not include information of a “personal nature” about others “if the disclosure of the information would constitute a clearly unwarranted invasion of such other person’s privacy.”

Broad Definition of “Personnel Record” cont’d.

- The new law states "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 the employer's 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."

Definition of “Negative Information”

- “Any information to the extent that the information is, has been used or may be used, to negatively affect the employee’s qualifications for employment, promotion, transfer, additional compensation or the possibility that the employee will be subject to disciplinary action.”

Access or a copy? In what format must the personnel records be provided?

- The law states that “[a] personnel record shall be maintained in type-written or printed form or may be handwritten in indelible ink.”
- The law does not address electronic records.
- Employers are required to provide a “copy of such personnel record, at no cost to the employee,” not just access to view the records.

Employee's Right to Reply

- If there is a disagreement, the employer and employee may agree to remove or correct the information.
- If no agreement is reached, an employee may provide a written statement explaining the employee's position.
- The employee's statement must be included in the personnel record, including if the record is provided to a third party.
- Employees can ask a court to expunge any information in a personnel record that an employee contends the employer "knew or should have known to be false."

Enforcement and Remedies

- Prohibits retaliation against employees who exercise their rights under the statute.
- Prohibited retaliation includes threatening to contact immigration authorities.
- Provides private right of action for employees to seek injunctive relief to remove information from a personnel record that the employer knew or should have known was false.
- The New York Attorney General will have authority to seek civil penalties ranging from \$500 to \$2,500 per violation.

Potential Legal Claims

- The statute does not expressly provide a private right of action for damages.
- Other sections of the NY Labor Law allow legal claims for violations of the NY Labor Law. For example:
 - Section 215 prohibits employers from taking adverse actions, discriminating or retaliating against an employee because the employee made a complaint about a violation of the Labor Law or otherwise exercised rights protected under the Labor Law.
 - Section 740 prohibits an employer from retaliating against an employee for exercising any rights under the Labor Law.
- Duty to preserve: Sanctions under CPLR Section 3126 cannot be imposed unless there was a duty to preserve evidence at the time it was lost or destroyed. This new Section of the Labor Law creates such a duty.

Collective Bargaining Agreements

- The law does not 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.”
- Not clear what “similar access” is.
- Not clear whether employees will be required to pursue remedies under a collective bargaining agreement (e.g., grievance, arbitration) prior to seeking injunctive relief.

Anticipated Amendments

- Definition of “Personnel Record” is expected to be clarified to include only records used to determine hiring, retention, promotion, transfer, additional compensation, or disciplinary action.
- Amendment will likely clarify that employers will not be required to create new documents.
- Notice period for negative information is expected to increase to 15 days.
- Time for employer to provide copy of requested records is expected to increase to 10 days.



Next Steps for Employers Before November 8

- Review existing personnel file policies and practices.
- Identify what documents are currently maintained for each employee, including where the documents or information is maintained.
- Consider compiling all documents in one place now.
- Develop procedures to respond to employee requests within the required deadline.
- Implement processes to provide timely notice when negative information is added.
- Train Human Resources personnel and managers regarding the new notice obligations.
- Review document retention and performance management practices.
- Update employee handbooks and personnel record policies as necessary.

Unanswered Questions

- **What counts as a “personnel record” (at least until the expected amendments)?** It is currently unclear if “personnel record” includes things such as drafts, coaching notes that do not lead to discipline, a manager’s unofficial notes, email communications, employee complaints, investigation documents.
- **When is information “placed” in the personnel record, for purposes of providing the 10-day notice?** When it is physically filed, or when it is used to “negatively affect the employee’s qualifications for employment, promotion, transfer, additional compensation or the possibility that the employee will be subject to disciplinary action.”
- **When an employee is notified about “negative information,” does the employee have the right to a copy of the whole personnel record or just the “negative information?”** Prepare to produce the whole record, as an employee notified of negative information may request to see the whole record and the law states “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.
- **Can any former employee request their file, regardless of how long ago they were terminated?** The law only requires employers to keep the complete personnel record for three years, but many employers retain such records for far longer.



Unanswered Questions cont'd.

- **How, if at all, will the law be enforced between the November 8, 2026 effective date and the expected amendments in early 2027?**
- **Will employees whose employment ended before November 8, 2026 be legally entitled to request access to their personnel records?** Likely yes. As of November 8 all former employees will have the right to request their personnel record.
- **How, if at all, will the law affect the disciplinary process and/or employment litigation?**



Other Jurisdictions With Right to Access Personnel Records

ALASKA

Current and former employees; employer response time not specified

CALIFORNIA

Current and former employees; employer has up to 30 days to produce

CONNECTICUT

Current and former employees; 7 days to respond to current employees, 10 days for former employees

COLORADO

Current employees and former employees, once after termination; response time not specified

DELAWARE

Current employees, laid off, with reemployment rights, on leave; employer response time not specified

ILLINOIS

Current employees and former employees terminated within the past year; 7 days to respond

IOWA

Current employees; response time not specified

MAINE

Current and former employees; 10 days to respond

MASSACHUSETTS

Current and former employees; 5 business days to respond

MICHIGAN

Current and former employees; response time not specified

MINNESOTA

Current employees, former employees terminated within the past year; 7 days to respond if records are within the state, 14 working days if records are out of state

NEVADA

Current and former employees; response time not specified

NEW HAMPSHIRE

Current and former employees; response time not specified

OREGON

Current employees and former employees within 60 days of termination; 45 days to respond

PENNSYLVANIA

Current employees; response time not specified

RHODE ISLAND

No distinction between current and former employees; 7 business days to respond

VIRGINIA

Current and former employees can request certain information; 30 days to respond

WASHINGTON

Current and former employees; 21 days to respond

WISCONSIN

Current and former employees; 7 working days to respond

Thank you!



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