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EMPLOYMENT **(820 ILCS 40/) Personnel Record Review Act.**

(820 ILCS 40/0.01) (from Ch. 48, par. 2000)

Sec. 0.01. Short title. This Act may be cited as the Personnel Record Review Act.

(Source: P.A. 86-1324.)

(820 ILCS 40/1) (from Ch. 48, par. 2001)

Sec. 1. Definitions. As used in this Act:

(a) "Employee" means a person currently employed or subject to recall after layoff or leave of absence with a right to return at a position with an employer or a former employee who has terminated service within the preceding year.

(b) "Employer" means an individual, corporation, partnership, labor organization, unincorporated association, the State, an agency or a political subdivision of the State, or any other legal, business, or commercial entity which has 5 employees or more than 5 employees exclusive of the employer's parent, spouse or child or other members of his immediate family and includes an agent of the employer.

(Source: P.A. 83-1339.)

(820 ILCS 40/2) (from Ch. 48, par. 2002)

Sec. 2. Open Records. Every employer shall, upon an employee's request which the employer may require be in writing on a form supplied by the employer, permit the employee to inspect any personnel documents which are, have been or are intended to be used in determining that employee's qualifications for employment, promotion, transfer, additional compensation, discharge or other disciplinary action, except as provided in Section 10. The inspection right encompasses personnel documents in the possession of a person, corporation, partnership, or other association having a contractual agreement with the employer to keep or supply a personnel record. An employee may request all or any part of his or her records, except as provided in Section 10. The employer shall grant at least 2 inspection requests by an employee in a calendar year when requests are made at reasonable intervals, unless otherwise provided in a collective bargaining agreement. The employer shall provide the employee with the inspection opportunity within 7 working days after the employee makes the request or if the employer can reasonably show that such deadline cannot be met, the employer shall have an additional 7 days to comply. The inspection shall take place at a location reasonably near the employee's place of employment and during normal working hours. The employer may allow the inspection to take place at a time other than working hours or at a place other than where the records are maintained if that time or place would be more convenient for the employee. Nothing in this Act shall be construed as a requirement that an employee be permitted to remove any part of such personnel records or any part of such records from the place on the employer's premises where it is made available for inspection. Each employer shall retain the right to protect his records from loss, damage, or alteration to insure the integrity of the records. If an employee demonstrates that he or she is unable to review his or her personnel record at the employing unit, the employer shall, upon the employee's

written request, mail a copy of the requested record to the employee.

(Source: P.A. 83-1362.)

(820 ILCS 40/3) (from Ch. 48, par. 2003)

Sec. 3. Copies. After the review time provided in Section 2, an employee may obtain a copy of the information or part of the information contained in the employee's personnel record. An employer may charge a fee for providing a copy of such information. The fee shall be limited to the actual cost of duplicating the information.

(Source: P.A. 83-1104.)

(820 ILCS 40/4) (from Ch. 48, par. 2004)

Sec. 4. Personnel record information which was not included in the personnel record but should have been as required by this Act shall not be used by an employer in a judicial or quasi-judicial proceeding. However, personnel record information which, in the opinion of the judge in a judicial proceeding or the hearing officer in a quasi-judicial proceeding, was not intentionally excluded from the personnel record may be used by the employer in the proceeding if the employee agrees or has been given a reasonable time to review the information. Material which should have been included in the personnel record shall be used at the request of the employee.

(Source: P.A. 83-1104.)

(820 ILCS 40/5) (from Ch. 48, par. 2005)

Sec. 5. Personnel Record Inspection by Representative. An employee who is involved in a current grievance against the employer may designate in writing a representative of the employee's union or collective bargaining unit or other representative to inspect the employee's personnel record which may have a bearing on the resolution of the grievance, except as provided in Section 10. The employer shall allow such a designated representative to inspect that employee's personnel record in the same manner as provided under Section 2.

(Source: P.A. 83-1362.)

(820 ILCS 40/6) (from Ch. 48, par. 2006)

Sec. 6. Personnel Record Correction. If the employee disagrees with any information contained in the personnel record, a removal or correction of that information may be mutually agreed upon by the employer and the employee. If an agreement cannot be reached, the employee may submit a written statement explaining the employee's position. The employer shall attach the employee's statement to the disputed portion of the personnel record. The employee's statement shall be included whenever that disputed portion of the personnel record is released to a third party as long as the disputed record is a part of the file. The inclusion of any written statement attached in the record without further comment or action by the employer, shall not imply or create any presumption of employer agreement with its contents. If either the employer or the employee knowingly places in the personnel record information which is false, the employer or employee, whichever is appropriate, shall have remedy through legal action to have that information expunged.

(Source: P.A. 83-1104.)

(820 ILCS 40/7) (from Ch. 48, par. 2007)

Sec. 7. (1) An employer or former employer shall not divulge a disciplinary report, letter of reprimand, or other disciplinary action to a third party, to a party who is not a part of the employer's organization, or to a party who is not a part of a labor organization representing the employee, without written notice as provided in this Section.

(2) The written notice to the employee shall be by first-class mail to the employee's last known address and shall be

mailed on or before the day the information is divulged.

(3) This Section shall not apply if:

(a) the employee has specifically waived written notice as part of a written, signed employment application with another employer;

(b) the disclosure is ordered to a party in a legal action or arbitration; or

(c) information is requested by a government agency as a result of a claim or complaint by an employee, or as a result of a criminal investigation by such agency.

(4) An employer who receives a request for records of a disciplinary report, letter of reprimand, or other disciplinary action in relation to an employee under the Freedom of Information Act may provide notification to the employee in written form as described in subsection (2) or through electronic mail, if available.

(Source: P.A. 96-1212, eff. 7-22-10.)

(820 ILCS 40/8) (from Ch. 48, par. 2008)

Sec. 8. An employer shall review a personnel record before releasing information to a third party and, except when the release is ordered to a party in a legal action or arbitration, delete disciplinary reports, letters of reprimand, or other records of disciplinary action which are more than 4 years old.

(Source: P.A. 83-1104.)

(820 ILCS 40/9) (from Ch. 48, par. 2009)

Sec. 9. An employer shall not gather or keep a record of an employee's associations, political activities, publications, communications or nonemployment activities, unless the employee submits the information in writing or authorizes the employer in writing to keep or gather the information. This prohibition shall not apply to the activities that occur on the employer's premises or during the employee's working hours with that employer which interfere with the performance of the employee's duties or the duties of other employees or activities, regardless of when and where occurring, which constitute criminal conduct or may reasonably be expected to harm the employer's property, operations or business, or could by the employee's action cause the employer financial liability. A record which is kept by the employer as permitted under this Section shall be part of the personnel record.

(Source: P.A. 91-357, eff. 7-29-99.)

(820 ILCS 40/10) (from Ch. 48, par. 2010)

Sec. 10. Exceptions. The right of the employee or the employee's designated representative to inspect his or her personnel records does not apply to:

(a) Letters of reference for that employee or external peer review documents for academic employees of institutions of higher education.

(b) Any portion of a test document, except that the employee may see a cumulative total test score for either a section of or the entire test document.

(c) Materials relating to the employer's staff planning, such as matters relating to the business' development, expansion, closing or operational goals, where the materials relate to or affect more than one employee, provided, however, that this exception does not apply if such materials are, have been or are intended to be used by the employer in determining an individual employee's qualifications for employment, promotion, transfer, or additional compensation, or in determining an individual employee's discharge or discipline.

(d) Information of a personal nature about a person other than the employee if disclosure of the information would constitute a clearly unwarranted invasion of the other person's privacy.

(e) An employer who does not maintain any personnel records.

(f) Records relevant to any other pending claim between the employer and employee which may be discovered in a judicial proceeding.

(g) Investigatory or security records maintained by an employer to investigate criminal conduct by an employee or other activity by the employee which could reasonably be expected to harm the employer's property, operations, or business or could by the employee's activity cause the employer financial liability, unless and until the employer takes adverse personnel action based on information in such records.

(Source: P.A. 85-1440.)

(820 ILCS 40/11) (from Ch. 48, par. 2011)

Sec. 11. This Act shall not be construed to diminish a right of access to records already otherwise provided by law, provided that disclosure of performance evaluations under the Freedom of Information Act shall be prohibited.

(Source: P.A. 96-1483, eff. 12-1-10.)

(820 ILCS 40/12) (from Ch. 48, par. 2012)

Sec. 12. (a) The Director of Labor or his authorized representative shall administer and enforce the provisions of this Act. The Director of Labor may issue rules and regulations necessary to administer and enforce the provisions of this Act.

(b) If an employee alleges that he or she has been denied his or her rights under this Act, he or she may file a complaint with the Department of Labor. The Department shall investigate the complaint and shall have authority to request the issuance of a search warrant or subpoena to inspect the files of the employer, if necessary. The Department shall attempt to resolve the complaint by conference, conciliation, or persuasion. If the complaint is not so resolved and the Department finds the employer has violated the Act, the Department may commence an action in the circuit court to enforce the provisions of this Act including an action to compel compliance. The circuit court for the county in which the complainant resides, in which the complainant is employed, or in which the personnel record is maintained shall have jurisdiction in such actions.

(c) If an employer violates this Act, an employee may commence an action in the circuit court to enforce the provisions of this Act, including actions to compel compliance, where efforts to resolve the employee's complaint concerning such violation by conference, conciliation or persuasion pursuant to subsection (b) have failed and the Department has not commenced an action in circuit court to redress such violation. The circuit court for the county in which the complainant resides, in which the complainant is employed, or in which the personnel record is maintained shall have jurisdiction in such actions.

(d) Failure to comply with an order of the court may be punished as contempt. In addition, the court shall award an employee prevailing in an action pursuant to this Act the following damages:

(1) Actual damages plus costs.

(2) For a willful and knowing violation of this Act, \$200 plus costs, reasonable attorney's fees, and actual damages.

(e) Any employer or his agent who violates the provisions of this Act is guilty of a petty offense.

(f) Any employer or his agent, or the officer or agent of any private employer, who discharges or in any other manner discriminates against any employee because that employee has made a complaint to his employer, or to the Director or his authorized representative, or because that employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to this Act, or because that employee has testified or is about to testify in an investigation or proceeding under this Act, is guilty of a petty offense.

(Source: P.A. 84-525.)

(820 ILCS 40/13) (from Ch. 48, par. 2013)

Sec. 13. An employer shall not gather or keep a record identifying an employee as the subject of an investigation by the Department of Children and Family Services if the investigation by the Department of Children and Family Services resulted in an unfounded report as specified in the Abused and Neglected Child Reporting Act.

An employee upon receiving written notification from the Department of Children and Family Services that an investigation has resulted in an unfounded report shall take the written notification to his or her employer and have any record of the investigation expunged from his or her employee record.

(Source: P.A. 87-400.)