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CLIENT ALERT

New York Gives Employees Access to Their Personnel Files: What Employers Need to Know

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Bottom Line

On September 9, 2026, Governor Kathy Hochul signed Senate Bill S3460, which gives current and former employees the right to access and challenge information in their personnel file (which the law refers to as a "personnel record"). The law also requires employers to notify employees within ten days of adding to a personnel file information that could "negatively affect" the employee and to maintain personnel files for three years after the conclusion of an employee's employment, among other requirements. The law takes effect on November 8, 2026.

In her signing memo, Governor Hochul noted that the law as currently drafted has "ambiguities that need to be resolved to avoid uncertainty for both employees and employers." She also noted that she has reached an agreement with the legislature to pass clarifying amendments in the upcoming legislative session, including making clear that the law does not require employers to create a personnel file or documents beyond what they currently maintain.

Key Provisions

Who Is Covered?

The law applies to all public and private employers in New York. "Employee" includes both current and former employees. The law also covers employer agents (such as professional employer organizations and payroll providers) who maintain employee records.

Definition of "Personnel Record"

The law defines "personnel record" based on how a document is used, not where it is stored. A document that identifies an employee and is used, or could be used, to make decisions about hiring, promotion, pay, discipline, or termination is considered part of a "personnel record." This includes records held outside a formal personnel folder, such as files maintained in the employer's human resources database or payroll systems or by an outside payroll or human resources vendor. Examples of covered records include:

- Basic employment information: name, address, date of birth, job title, job description, pay rate, other compensation, and start date.
- Hiring materials: job applications, résumés, and interview notes.
- Performance and discipline records: evaluations, written warnings, probationary periods, performance improvement plans, termination notices, and disciplinary documents.
- Waivers or agreements signed by an employee.

While the law defines "personnel record" broadly, its definitions do not control if "the context clearly requires otherwise." Although the scope and meaning of this language is unclear—and relying on it to exclude documents from a personnel record is, for the time being, untested and therefore would entail risk of noncompliance—it does give employers a basis to construe the definition of "personnel record" more narrowly in certain circumstances.

The law expressly excludes from coverage personal information about individuals other than the employee if disclosing it would constitute an unwarranted invasion of privacy.

Employee Rights

Access within five business days. When an employee submits a written request, the employer must provide a free copy of the employee's personnel record within five business days. Employers do not have to grant more than two routine requests per calendar year.

Notice of negative information within ten days. When an employer adds information to an employee's personnel record that could adversely impact the employee's standing, the employer must notify the employee within ten calendar days of doing so. The law uses the term "negatively affect" and arguably covers any documentation that

could influence decisions about promotion, pay, discipline, or termination. While the precise scope of this requirement is unclear, at a minimum, employers should notify employees when performance reviews, performance improvement plans, written warnings, other formal feedback, or disciplinary notices are saved in the employer's (or its vendor's) electronic or hard copy filing systems. Requests to review newly-added negative information do not count toward the two-request annual limit.

Right to challenge information. If an employee disagrees with something in their personnel record, the employer and employee can agree to correct or remove it. If they cannot agree, the employee may submit a written statement explaining their position, which becomes part of the personnel record and must be included whenever the employer shares the disputed information with a third party. Employees can also ask to have false information permanently removed if the employer knew, or should have known, it was false.

Protection from retaliation. Employers cannot fire, threaten, penalize, discriminate, or retaliate against employees for exercising their rights under this law. Retaliation specifically includes threatening to report or reporting an employee's or their family member's citizenship or immigration status to a government agency.

Collective bargaining agreements. The law does not override collective bargaining agreements that already provide similar file-access rights.

Recordkeeping Requirement

Employers must save personnel records from the date of hire until three years after the employee leaves the employer. Records generally cannot be deleted during this period. Exceptions apply when the employer and employee agree to correct or remove information, or when false information is properly removed. Note that certain personnel records must be kept longer than three years; for example, New York law requires employers to retain wage statements for six years.

Written Policy Maintenance

Employers that have written personnel policies, such as employee handbooks, must maintain such policies at the office where personnel matters are administered.

Enforcement and Penalties

The New York Attorney General enforces the law, and violations subject employers to fines ranging from $500 to $2,500. The law also states that an employee may pursue a remedy through "judicial process" to expunge information the employer knew or should have known was false, but it does not expressly contain a private right of action. Therefore, the process by which employees can seek redress under the law, if at all, is unclear.

Open Questions

Amendments, agency guidance, or court decisions may address the following questions:

- Will the expected amendments change or clarify which records are considered part of an employee's personnel file for purposes of this law?
- To what extent can employers rely on the law's "unless the context clearly requires otherwise" language to defend against allegations of noncompliance?
- What counts as "negative information"? Does it, for example, include informal coaching notes, customer complaints, draft evaluations, or manager notes?
- What must the ten-day notice of newly added negative information say?
- How should employers protect confidential information (such as witness statements, medical records, or privileged documents) while still complying with access requirements?
- How, if at all, can employees seek redress under the law, and for what violations? If they can, what relief may courts order?

Although the law was modeled after a similar law in Massachusetts that has been on the books since 1986, there is limited authority interpreting that law, and it remains to be seen how New York courts and the legislature will address the law's numerous ambiguities and the practical challenges it creates for employers. In the meantime, employers should develop a process for responding to personnel records requests; determine which documents will trigger the notice requirement and how employees will be notified; and ensure that personnel records are being maintained for at least three years after an employee leaves the organization.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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