

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2941 Session of
2004

INTRODUCED BY BIRMELIN, ARMSTRONG, BASTIAN, BOYD, CLYMER,
DAILEY, GOODMAN, HARRIS, MUSTIO, MYERS, O'NEILL, SATHER,
SAYLOR, B. SMITH, TIGUE, WILT, ROHRER, SCAVELLO, GOOD AND
GINGRICH, OCTOBER 21, 2004

REFERRED TO COMMITTEE ON LABOR RELATIONS, OCTOBER 21, 2004

AN ACT

1 Providing for administration of employee records; imposing
2 powers and duties on the Department of Labor and Industry;
3 imposing penalties; and making a related repeal.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the
8 Administration of Employee Records Act.

9 Section 2. Definitions.

10 The following words and phrases when used in this act shall
11 have the meanings given to them in this section unless the
12 context clearly indicates otherwise:

13 "Confidential employee." An employee charged with
14 administering personnel records of employees.

15 "Department." The Department of Labor and Industry of the
16 Commonwealth.

17 "Designated representative." An individual or organization

1 to whom or which an employee gives written authorization to
2 exercise a right of access to records.

3 "Employee." An individual currently employed, laid off with
4 reemployment rights or on leave of absence. The term does not
5 include an applicant for employment.

6 "Employer." Any individual, person, partnership,
7 association, corporation or nonprofit corporation; the
8 Commonwealth; a political subdivision; or any agency, authority,
9 board or commission created by the Commonwealth or a political
10 subdivision.

11 "Medical records." Information gathered by the employer on
12 the medical condition or medical history of an employee.

13 "Personnel records." Information gathered by the employer on
14 an employee. The term does not include records of an employee
15 relating to the investigation of a possible criminal offense;
16 letters of reference; documents which are being developed or
17 prepared for use in civil, criminal or grievance procedures;
18 medical records; materials which are used by the employer to
19 plan for future operations; or information available to the
20 employee under the Fair Credit Reporting Act (Public Law 91-508,
21 15 U.S.C. § 1681 et seq.).

22 Section 3. Maintenance of records.

23 (a) Personnel records.--Personnel records shall be
24 accessible only to employees and representatives under section
25 4, to confidential employees and to supervisors and managers
26 with a legitimate need to access them for the furtherance of
27 employer's affairs.

28 (b) Medical records.--

29 (1) Medical records shall be maintained as a file
30 separate from personnel records.

(2) Except as set forth in paragraph (3), medical records shall be treated as confidential records.

(3) Notwithstanding paragraph (2), the following apply:

(i) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations.

(ii) First aid and safety personnel may be informed, when appropriate, if a health condition might require treatment.

(c) Confidentiality.--A confidential employee shall maintain the privacy of personnel records and medical records and shall only provide information in those records to individuals authorized by this act.

Section 4. Inspection of personnel records.

(a) Right to inspection.--An employer shall permit an employee or the employee's designated representative to inspect the employee's personnel records at reasonable times. The employer shall make these personnel records available during the regular business hours of the office where the personnel records are ordinarily maintained and shall allow inspection within three days of an employee's request. The employer may require that the requesting employee or designated representative inspect personnel records on the free time of the employee or the designated representative.

(b) Written request.--The employer may require that the employee file a written form to request access to the employee's personnel records. To assist the employer in providing the correct personnel records to meet the employee's need, the employee shall indicate in the written request the purpose for which the inspection is requested or the particular parts of the

1 personnel records to be inspected.

2 (c) Designated representative.--An employee may provide to
3 the employer a signed authorization designating an individual or
4 individuals who shall be authorized to inspect the employee's
5 personnel records. The signed authorization shall be for a
6 specific date or dates and shall indicate either the purpose for
7 which the inspection is authorized or the particular parts of
8 the employee's personnel records which the designated
9 representative is authorized to inspect.

10 Section 5. Restrictions on inspection.

11 (a) Record removal.--An employer may prohibit an employee or
12 designated representative from removing personnel records from
13 the place of the employer's premises where it is made available
14 for inspection and may prohibit the copying of the contents of
15 such records, except where regulations promulgated pursuant to
16 the United States Occupational Safety and Health Act allow
17 otherwise.

18 (b) Inspection.--The taking of notes by an employee or a
19 designated representative shall be permitted. The employer shall
20 retain the right to protect the records from loss, damage or
21 alteration to ensure the integrity of the records. The employer
22 may require inspection of the records in the presence of an
23 official designated by the employer. The employer shall allow
24 sufficient inspection time, commensurate with the volume and
25 content of the records.

26 Section 6. Enforcement.

27 (a) Enforcement.--The department shall enforce this act.

28 (b) Orders.--The department may issue the following orders:

29 (1) To address violations of section 9.

30 (2) To provide access to personnel records.

1 (3) To provide the opportunity for an employee to place
2 a counterstatement in the employee's personnel records if an
3 alleged error is determined by an employee in the personnel
4 records.

5 (c) Regulations.--The department may promulgate regulations
6 to implement this act. Any regulations promulgated by the
7 department to implement this act must adopt related Federal
8 standards where technically feasible and must be as consistent
9 as possible with Federal law.

10 (d) Limitations.--The department shall not inspect records
11 to investigate alleged errors detected by an employee in
12 personnel records or medical records.

13 Section 7. Penalties.

14 (a) Criminal.--A person that intentionally violates this act
15 commits a summary offense and shall, upon conviction, be
16 sentenced to pay a fine of not more than \$1,000 or to
17 imprisonment for not more than ten days, or both.

18 (b) Administrative penalty.--Unless a criminal penalty is
19 imposed under subsection (a), the department may impose an
20 administrative penalty of up to \$1,000 for each violation of
21 this act.

22 Section 8. Discovery under other law.

23 Nothing in this act shall diminish any rights to discovery
24 granted under the Pennsylvania Rules of Civil Procedure and the
25 Pennsylvania Rules of Criminal Procedure.

26 Section 9. Retaliation against employees.

27 An employer may not discharge, threaten or otherwise
28 discriminate against an employee who files a complaint under
29 this act or who acts as a witness in support of a complaint.

30 Section 20. Repeal.

1 The act of November 26, 1978 (P.L.1212, No.286), referred to
2 as the Inspection of Employment Records Law, is repealed.
3 Section 21. Effective date.
4 This act shall take effect January 1, 2006.