PRINTER'S NO. 640

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 567 Session of 2005

INTRODUCED BY BIRMELIN, CALTAGIRONE, BASTIAN, CAPPELLI, CRAHALLA, J. EVANS, KILLION, LEH, PALLONE, REICHLEY, ROHRER, RUBLEY, SATHER, STABACK, E. Z. TAYLOR, THOMAS, TIGUE, WILT, YOUNGBLOOD AND O'NEILL, FEBRUARY 16, 2005

REFERRED TO COMMITTEE ON LABOR RELATIONS, FEBRUARY 16, 2005

AN ACT

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

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

Section 1. Short title.

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

Section 2. Definitions.

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

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

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

"Designated representative." An individual or organization

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

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

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

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

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

Section 3. Maintenance of records.

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

(b) Medical records.--

(1) Medical records shall be maintained as a file 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

personnel records to be inspected.

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

Section 5. Restrictions on inspection.

(a) Record removal.--An employer may prohibit an employee or designated representative from removing personnel records from the place of the employer's premises where it is made available for inspection and may prohibit the copying of the contents of such records, except where regulations promulgated pursuant to the United States Occupational Safety and Health Act of 1970 (Public Law 91-596, 29 U.S.C. § 651 et seq.) allow otherwise.

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

Section 6. Enforcement.

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

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

(1) To address violations of section 9 (relating to retaliation against employees).

(2) To provide access to personnel records.

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

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

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

Section 7. Penalties.

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

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

Section 8. Discovery under other law.

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

Section 9. Retaliation against employees.

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

Section 20. Repeal.

The act of November 26, 1978 (P.L.1212, No.286), referred to as the Inspection of Employment Records Law, is repealed.

Section 21. Effective date.

This act shall take effect January 1, 2007.