

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 567

Session of
2005

INTRODUCED BY BIRMELIN, CALTAGIRONE, BASTIAN, CAPPELLI,
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FEBRUARY 16, 2005

AS REPORTED FROM COMMITTEE ON LABOR RELATIONS, HOUSE OF
REPRESENTATIVES, AS AMENDED, MARCH 7, 2006

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.

1 "Designated representative." An individual or organization
2 to whom or which an employee gives written authorization to
3 exercise a right of access to records.

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

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

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

14 "Personnel records." Information gathered by the employer on
15 an employee. The term does not include records of an employee
16 relating to the investigation of a possible criminal offense;
17 letters of reference; documents which are being developed or
18 prepared for use in civil, criminal or grievance procedures;
19 medical records; materials which are used by the employer to
20 plan for future operations; or information available to the
21 employee under the Fair Credit Reporting Act (Public Law 91-508,
22 15 U.S.C. § 1681 et seq.).

23 Section 3. Maintenance of records.

24 (a) Personnel records.--Personnel records shall be
25 accessible only to employees and THEIR DESIGNATED <—
26 representatives under section 4 (relating to inspection of
27 personnel records), to confidential employees and to supervisors
28 and managers with a legitimate need to access them for the
29 furtherance of employer's affairs.

30 (b) Medical records.--

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

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

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

6 (i) Supervisors and managers may be informed
7 regarding necessary restrictions on the work or duties of
8 the employee and ~~necessary accommodations~~ WHETHER A <—
9 REASONABLE ACCOMMODATION IS REQUIRED FOR AN EMPLOYEE.

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

13 (III) OTHER EMPLOYEES MAY BE INFORMED OF A HEALTH <—
14 CONDITION IF THE EMPLOYEE IS HAVING A HEALTH-RELATED
15 EMERGENCY.

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

20 Section 4. Inspection of personnel records.

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

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

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

16 Section 5. Restrictions on inspection.

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

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

1 content of the records.

2 Section 6. Enforcement.

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

4 (b) Orders.--The department ~~may~~ SHALL HAVE THE AUTHORITY TO <—
5 issue the following orders:

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

8 (2) To provide access to personnel records.

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

13 (4) ANY OTHER ORDERS CONSISTENT WITH THE ENFORCEMENT OF <—
14 THIS ACT.

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

20 (d) Limitations.--The department shall not ~~inspect records~~ <—
21 ~~to~~ investigate alleged errors detected by an employee in
22 personnel records or medical records. THE DEPARTMENT MAY REVIEW <—
23 THE CONTENTS OF A PERSONNEL FILE AT AN ADMINISTRATIVE HEARING TO
24 DETERMINE THE EXISTENCE OR NONEXISTENCE OF DOCUMENTS IN THE
25 PERSONNEL FILE. THE DEPARTMENT MAY NOT RELEASE OR DISCLOSE THE
26 CONTENTS OF THE PERSONNEL FILE.

27 (E) HEARINGS.--IN ORDER TO ENFORCE THE PROVISIONS OF THIS
28 ACT, THE DEPARTMENT MAY CONDUCT A HEARING SUBJECT TO THE RIGHT
29 OF NOTICE AND ADJUDICATION AND THE RIGHT OF APPEAL IN ACCORDANCE
30 WITH 2 PA.C.S. (RELATING TO ADMINISTRATIVE LAW AND PROCEDURE).

1 THE DEPARTMENT HAS THE POWER TO SUBPOENA WITNESSES, TO
2 ADMINISTER OATHS, TO EXAMINE WITNESSES AND TO TAKE TESTIMONY OR
3 COMPEL THE PRODUCTION OF DOCUMENTS. UPON APPLICATION OF AN
4 ATTORNEY FOR THE COMMONWEALTH, THE DEPARTMENT MAY ISSUE AN
5 INVESTIGATIVE SUBPOENA TO COMPEL THE PRODUCTION OF DOCUMENTS
6 OTHER THAN THE EMPLOYEE'S PERSONNEL FILE.

7 Section 7. Penalties.

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

12 (b) Administrative penalty.--Unless a criminal penalty is
13 imposed under subsection (a), the department may impose an
14 administrative penalty of up to \$1,000 for each violation of
15 this act IN ACCORDANCE WITH THE PROCEDURES CONTAINED IN SECTION <—
16 6(E).

17 Section 8. Discovery under other law.

18 Nothing in this act shall diminish any rights to discovery
19 granted under the Pennsylvania Rules of Civil Procedure ~~and~~, the <—
20 Pennsylvania Rules of Criminal Procedure~~—~~, THE FEDERAL RULES OF <—
21 CIVIL PROCEDURE AND THE FEDERAL RULES OF CRIMINAL PROCEDURE.

22 Section 9. Retaliation against employees.

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

26 SECTION 10. ENFORCEMENT. <—

27 THE DEPARTMENT IS AUTHORIZED TO APPLY TO COMMONWEALTH COURT
28 TO ENFORCE ORDERS ISSUED UNDER THIS ACT.

29 Section 20. Repeal.

30 The act of November 26, 1978 (P.L.1212, No.286), referred to

1 as the Inspection of Employment Records Law, is repealed.

2 Section 21. Effective date.

3 This act shall take effect January 1, 2007.