
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,
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YOUNGBLOOD, O'NEILL, CLYMER, MAHER AND DENLINGER,
FEBRUARY 16, 2005

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
APRIL 24, 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 "FORMER EMPLOYEE." AN INDIVIDUAL WHO WAS AN EMPLOYEE OF AN <—
13 EMPLOYER AND WHO IS AUTHORIZED TO TAKE ACTION UNDER THIS ACT.

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

16 "Personnel records." Information gathered by the employer on
17 an employee OR FORMER EMPLOYEE USED TO DETERMINE QUALIFICATIONS <—
18 FOR EMPLOYMENT, PROMOTION, ADDITIONAL COMPENSATION, TERMINATION
19 OR DISCIPLINARY ACTION INCLUDING WAGE OR SALARY INFORMATION,
20 ATTENDANCE RECORDS, PERFORMANCE EVALUATIONS, COMMENDATIONS AND
21 DISCIPLINE. The term does not include records of an employee
22 relating to the investigation of a possible criminal offense;
23 letters of reference; documents which are being developed or
24 prepared for use in civil, criminal or grievance procedures;
25 medical records; materials which are used by the employer to
26 plan for future operations; or information available to the
27 employee under the Fair Credit Reporting Act (Public Law 91-508,
28 15 U.S.C. § 1681 et seq.).

29 Section 3. Maintenance of records.

30 (a) Personnel records.--Personnel records shall be

1 accessible only to employees and their designated
2 representatives under section 4 (relating to inspection of
3 personnel records), to confidential employees and to supervisors
4 and managers with a legitimate need to access them for the
5 furtherance of employer's affairs.

6 (b) Medical records.--

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

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

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

12 (i) Supervisors and managers may be informed
13 regarding necessary restrictions on the work or duties of
14 the employee and whether a reasonable accommodation is
15 required for an employee.

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

19 (iii) Other employees may be informed of a health
20 condition if the employee is having a health-related
21 emergency.

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

26 (D) FORMER EMPLOYEE.--A FORMER EMPLOYEE MAY SEEK INSPECTION
27 OF PERSONNEL FILES UNDER THIS ACT IF THE EMPLOYEE PROVIDES
28 WRITTEN NOTIFICATION REQUESTING INSPECTION TO THE DEPARTMENT NO
29 MORE THAN 14 DAYS AFTER THE EMPLOYEE'S LAST DAY OF EMPLOYMENT
30 WITH THE EMPLOYER.

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1 Section 4. Inspection of personnel records.

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

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

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

27 Section 5. Restrictions on inspection.

28 (a) Record removal.--An employer may prohibit an employee or
29 designated representative from removing personnel records from
30 the place of the employer's premises where it is made available

1 for inspection and may prohibit the copying of the contents of
2 such records, except where regulations promulgated pursuant to
3 the United States Occupational Safety and Health Act of 1970
4 (Public Law 91-596, 29 U.S.C. § 651 et seq.) allow otherwise.

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

13 Section 6. Enforcement.

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

15 (b) Orders.--The department shall have the authority to
16 issue the following orders:

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

19 (2) To provide access to personnel records.

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

24 (4) Any other orders consistent with the enforcement of
25 this act.

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

1 (d) Limitations.--The department shall not investigate
2 alleged errors detected by an employee in personnel records or
3 medical records. The department may review the contents of a
4 personnel file at an administrative hearing to determine the
5 existence or nonexistence of documents in the personnel file.
6 The department may not release or disclose the contents of the
7 personnel file.

8 (e) Hearings.--In order to enforce the provisions of this
9 act, the department may conduct a hearing subject to the right
10 of notice and adjudication and the right of appeal in accordance
11 with 2 Pa.C.S. (relating to administrative law and procedure).
12 The department has the power to subpoena witnesses, to
13 administer oaths, to examine witnesses and to take testimony or
14 compel the production of documents. Upon application of an
15 attorney for the Commonwealth, the department may issue an
16 investigative subpoena to compel the production of documents
17 other than the employee's personnel file.

18 Section 7. Penalties.

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

23 (b) Administrative penalty.--Unless a criminal penalty is
24 imposed under subsection (a), the department may impose an
25 administrative penalty of up to \$1,000 for each violation of
26 this act in accordance with the procedures contained in section
27 6(e). THE DEPARTMENT MAY NOT IMPOSE THIS PENALTY FOR VIOLATIONS
28 OF SECTION 3. <—

29 (C) CIVIL ACTIONS.--AN EMPLOYEE OR FORMER EMPLOYEE MAY
30 INITIATE A CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION OF

1 THIS COMMONWEALTH TO OBTAIN JUDGMENT FROM AN EMPLOYER OF UP TO
2 \$1,000 FOR EACH VIOLATION BY THE EMPLOYER OF SECTION 3.

3 Section 8. Discovery under other law.

4 Nothing in this act shall diminish any rights to discovery
5 granted under the Pennsylvania Rules of Civil Procedure, the
6 Pennsylvania Rules of Criminal Procedure, the Federal Rules of
7 Civil Procedure and the Federal Rules of Criminal Procedure.

8 Section 9. Retaliation against employees.

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

12 Section 10. Enforcement.

13 The department is authorized to apply to Commonwealth Court
14 to enforce orders issued under this act.

15 Section 20. Repeal.

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

18 Section 21. Effective date.

19 This act shall take effect January 1, 2007.