

2023 -- H 5592

LC000626

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- INSPECTION OF PERSONNEL FILES

Introduced By: Representatives Batista, Potter, Alzate, and Felix

Date Introduced: February 15, 2023

Referred To: House Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 28-6.4-1 and 28-6.4-2 of the General Laws in Chapter 28-6.4 entitled d  
2 "Inspection of Personnel Files" are hereby amended to read as follows:

3 **28-6.4-1. ~~Inspection of files~~ Employee personnel records.**

4 (a)(1) Every employer shall, ~~upon not less than seven (7)~~ within five (5) days<sup>2</sup> of a request  
5 by an employee, ~~advance notice,~~ holidays, Saturdays, and Sundays excluded, ~~and at any reasonable~~  
6 ~~time other than the employee's work hours~~ and upon the written request of an employee, ~~permit~~  
7 provide an employee ~~to inspect~~ with a copy of the employee's personnel ~~files~~ records, ~~that are used~~  
8 ~~or have been used to determine that employee's qualifications for employment, promotion,~~  
9 ~~additional compensation, termination, or disciplinary action. This inspection shall be made in the~~  
10 ~~presence of an employer or employer's designee.~~

11 ~~(2) The employee shall not be permitted to make any copies of nor remove his or her~~  
12 ~~personnel file from the immediate place of inspection located on the business premises.~~

13 ~~(3) The employer may charge the employee a fee reasonably related to the cost of supplying~~  
14 ~~copies of requested documents.~~

15 (2) "Employee" means a person currently employed or formerly employed by an employer.

16 (3) "Employer" means an individual, corporation, partnership, labor organization,  
17 unincorporated association, the state and all political subdivisions of the state, or any other legal  
18 business, public or private, or commercial entity employing one or more employees, including

1 agents of the employer.

2 (4) "Personnel records", means a record kept by an employer that identifies an employee,  
3 to the extent that the record is used or has been used, or may affect or be used relative to that  
4 employee's qualifications for employment, promotion, transfer, additional compensation,  
5 disciplinary action or termination. A personnel record shall include a record in the possession of a  
6 person, corporation, partnership or other association that has a contractual agreement with the  
7 employer to keep or supply a personnel record as provided in this section. Without limiting the  
8 applicability or generality of the foregoing, all of the following written information or documents  
9 to the extent prepared by an employer of one or more employees regarding an employee shall be  
10 included in the personnel record for that employee: the name, address, date of birth, job title and  
11 description; rate of pay and any other compensation paid to the employee; starting date of  
12 employment; the job application of the employee; resumes or other forms of employment inquiry  
13 submitted to the employer in response to his/her advertisement by the employee; all employee  
14 performance evaluations, including, but not limited to, employee evaluation documents; written  
15 warnings of substandard performance; lists of probationary periods; waivers by the employee;  
16 copies of dated termination notices; any other documents relating to disciplinary action regarding  
17 the employee. A personnel record shall be maintained electronically, in typewritten or printed form,  
18 or may be handwritten in indelible ink.

19 ~~(4)(5) This section does not apply to records of an employee relating to the investigation~~  
20 ~~of a possible criminal offense or records prepared for use in any civil, criminal, or grievance~~  
21 ~~proceedings, any letter of reference, recommendations, managerial records kept or used only by the~~  
22 ~~employer, confidential reports from previous employers, and managerial planning records.~~

23 (6) An employer shall retain the complete personnel records of an employee as described  
24 in subsection (a)(4) of this section without deletions or expungement of information from the date  
25 of employment of an employee to a date three (3) years after the termination of employment by the  
26 employee with the employer. In any cause of action brought by an employee against such employer  
27 of in any administrative or judicial proceeding, including, but not limited to, the Rhode Island  
28 commission for human rights, the Rhode Island department of labor and training, the Rhode Island  
29 office of the attorney general, or a court of appropriate jurisdiction, the employer shall retain any  
30 personnel records required to be kept under this section which is relevant to such action until the  
31 final disposition thereof.

32 (b) Employers are not required to permit an inspection of any employee's personnel ~~file or~~  
33 records or to provide a copy of personnel records to the employee on more than three (3) occasions  
34 in any calendar year; provided, however, that the notification and review caused by the placing of

1 negative information in the personnel record shall not be deemed to be one of the three (3) annually  
2 permitted reviews and copies.

3 (c) An employer that, upon request by a prospective employer or a current or former  
4 employee, provides fair and unbiased information about a current or former employee's job  
5 performance is presumed to be acting in good faith and is immune from civil liability for the  
6 disclosure and the consequences of the disclosure. The presumption of good faith is rebuttable upon  
7 a showing by a preponderance of the evidence that the information disclosed was:

- 8 (1) Knowingly false;
- 9 (2) Deliberately misleading;
- 10 (3) Disclosed for a malicious purpose; or
- 11 (4) Violative of the current or former employee's civil rights under the employment  
12 discrimination laws in effect at the time of the disclosure.

13 **28-6.4-2. Violation — Penalties.**

14 Any employer or any agent of an employer who violates the provisions of ~~this chapter~~  
15 ~~without just cause § 28-6.4-1~~ shall be fined not ~~more than one hundred dollars (\$100)~~ less than five  
16 hundred (\$500) nor more than two thousand five hundred dollars (\$2,500) which shall be paid to  
17 the Rhode Island department of labor and training. In determining the amount of any penalty  
18 imposed under this section, the director, or designee shall consider the size of the employer's  
19 business; the good faith of the employer; the gravity of the violation; the history of previous  
20 violations; and whether or not the violation was an innocent mistake or willful.

21 Any employer who fails to allow inspection of personnel records or to provide copies of  
22 personnel records pursuant to the provisions of § 28-6.4-1 shall be liable to the employee for  
23 liquidated damages of five hundred dollars (\$500) in addition to any other relief provided under §  
24 28-14-19.2.

25 SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- INSPECTION OF PERSONNEL  
FILES

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1           This act would amend the definitions of the inspection of personnel files. The act would  
2 also amend the penalties by increasing them to not less than five hundred dollars (\$500) nor more  
3 than two thousand five hundred dollars (\$2,500).

4           This act would take effect upon passage.

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