

The Illinois Personnel Record Review Act

Since 1990, Illinois employers have been subject to a law known as the Personnel Record Review Act (the Act). The Act gives employees the right to inspect and photocopy the contents of their personnel records. Employers need to know about the Act because violators are subject to lawsuits, damages, and criminal sanctions.

The Act applies to employers who employ five or more employees (excluding parents, spouses, children, and other immediate family members). The Act defines an *employee* as someone who is currently employed, who is subject to recall after a layoff or leave of absence, or who was terminated within the preceding year.

Under the Act, *personnel documents* are those records that employers use, have used, or intend to use to determine an employee's qualifications for employment, promotion, transfer, additional compensation, disciplinary action, or discharge. However, employers may not gather or keep records of employees' nonemployment activities, such as an employee's associations, political activities, or publications unless (1) the activities occur on the employer's premises or during the employee's working hours and interfere with the performance of job duties by the employees, (2) the activities constitute criminal conduct, (3) the activities may reasonably be expected to harm the employer's property, operations, or business, or (4) the activities could cause the employer financial liability.

The Act does not require employers to maintain personnel records. However, employers who do not maintain personnel records may not use information contained within personnel-related documents in any administrative or court proceeding. For example, let's say that you do not maintain personnel records and you fire an employee who then sues you for wrongful termination. You may not be able to defend yourself with the documents that support your decision because you never put them into a personnel file.

Employers who do decide to maintain personnel records regarding their employees must permit employees to inspect their personnel documents at least twice each calendar year at reasonable intervals. Employers must allow the inspections within seven working days after an employee makes a request unless, under the circumstances (for example, due to the business's workload), the employer cannot comply with the seven-day deadline. In that case, the employer has an additional seven days in which to allow the inspection.

The inspection must occur at or reasonably near the employee's place of employment during normal working hours unless a different location or time would be more convenient for the employee. The employee may photocopy, but may not remove, any document within the personnel record. The employer may require the employee to pay the actual cost of the photocopying. If the employee is unable to review the records where they are kept, the employer must mail a copy of the records to the employee.

If an employee disagrees with any information that is contained within a personnel record, the employee may submit a written statement explaining the employee's position (if the employer and employee cannot mutually agree on a correction). The employer must attach the employee's explanation to the disputed portion of the personnel record and must include that explanation whenever that portion is released to a third party. If either the employer or the employee knowingly places false information into the personnel record, the other party may obtain a court order expunging the false information.

Current or former employers may not divulge to third parties records regarding disciplinary actions or reprimands that are more than four years old. Employers who divulge disciplinary information that is less than four years old must simultaneously notify the employee by first-class mail sent to the employee's last known address. The notice requirement does not apply when the employee specifically waives it as part of a written, signed employment application with another employer. However, neither of these requirements applies in the following instances: (1) the information is subpoenaed by a third party, (2) the information is requested by a governmental agency that is investigating a claim by an employee, or (3) the information is requested by a governmental agency in a criminal investigation.

The Illinois Department of Labor may sue employers who violate the Act. Employees may also sue their employers for violations of the Act. Employees may recover a panoply of damages, including actual damages, and in cases involving "willful and knowing" violations, they may recover an additional \$200 plus reasonable attorney's fees. Finally, violations of the Act can subject employers to criminal sanctions.

In conclusion, maintaining proper personnel records adds administrative burdens and subjects employers to the risk liability for information that the employees deem improper. However, by not maintaining personnel records, employers will be unable to use that information if needed to defend themselves. To be on the safe side, employers should consult with their

attorney before setting up personnel files and whenever an employee questions the contents of their file.