

## ComplianceHR - PolicySmart

### Illinois Amends Personnel Records Review Act--Now Includes Updated Policy Requires Policy Changes

Posted November 2, 2024 - The Illinois state legislature has once again amended the Personnel Records Review Act (the "Act"), imposing new obligations on employers navigating personnel record requests. Effective January 1, 2025, [HB 3763](#) requires those responding to such requests to update current procedures to make way for these new requirements.

#### New Employee Requirements

The amendments clarify that all requests under the Act must be made *in writing*, which includes electronic communications such as email or text messages. Each request must:

1. be made at reasonable intervals, unless otherwise provided in a collective bargaining agreement;
2. be made to a person responsible for maintaining the employer's personnel records, including the employer's human resources department, payroll department, the employee's supervisor or department manager, or to an individual as provided in the employer's written policy;
3. identify what personnel records the employee is requesting or if the employee is requesting all of the records allowed to be requested under the Act;
4. specify if the employee is requesting to inspect, copy, or receive copies of the records;
5. specify whether records be provided in hardcopy or in a reasonable and commercially available electronic format;
6. specify whether inspection, copying, or receipt of copies will be performed by that employee's representative, including family members, lawyers, union stewards, other union officials, or translators; and
7. if the records being requested include medical information and medical records, include a signed waiver to release medical information and medical records to that employee's specific representative.

#### New Employer Obligations and Protections

If a request is submitted in line with the above requirements, then employees are entitled to the following categories of documents:

1. any personnel documents which are, have been or are intended to be used in determining that employee's qualifications for employment, promotion, transfer, additional compensation, benefits, discharge, or other disciplinary action, except as provided in Section 10 of the Act;
2. any employment-related contracts or agreements that the employer maintains are legally binding on the employee;
3. any employee handbooks that the employer made available to the employee or that the employee acknowledged receiving; and
4. any written employer policies or procedures that the employer contends the employee was subject to and that concern qualifications for employment, promotion, transfer, compensation, benefits, discharge, or other disciplinary action.

While the first category remains largely the same as under the current version of the Act, it now also entitles employees to the production of personnel documents relating to an employee's benefits. Employers should take special notice that the last three categories are *all new*. These additions represent significant changes to the Act, broadening inspection rights to items outside a typical personnel file. Employers should take care to maintain past and current handbooks and policies to which employees may have been subject.

As before, employers must produce requested documents to which employees are entitled within seven working days after receipt of the request. However, if the employer can reasonably show that such deadline cannot be

met, the employer may have an additional seven *calendar* days to comply.

The Act clarifies that employers must grant at least two requests from an individual or their representative in a calendar year for the inspection, copy, or production of records. In granting the request, the employer is not obligated to categorize responsive records in any specific manner.

An employer may still charge a fee for providing a copy of the requested record. However, the fee is limited to the actual cost of duplicating the requested record and may not include the imputed costs of time spent duplicating the information, the purchase or rental of copying machines, the purchase or rental of computer equipment, the use of software, or any other similar expenses.

Section 10 of the Act still contains certain exceptions to inspection of certain documents by employees. In addition to the already existing exceptions, the Act now will protect from inspection an employer's trade secrets, client lists, sales projections, and financial data.

## **Enforcement**

Similar to other labor and employment statutes in Illinois, the Act now provides a mechanism by which an employee may commence an action in circuit court if the Illinois Department of Labor does not resolve an employee's administrative complaint regarding a violation of the Act within 180 calendar days.

Damages under the Act remain the same; the court awards the prevailing party actual damages plus costs. For willful and knowing violations, the prevailing party is entitled to additional damages of \$200 and reasonable attorneys' fees. Failure to comply with the Act may be punishable by contempt. Any employer or their agent who violates the Act is guilty of a petty offense.

We will be updating the Access to Personnel Files policy from the Illinois supplement to reflect these changes.

*This content is from Elizabeth Hanford and Shanthy Gaur, [Latest Updates to Illinois Personnel Records Review Act](#), Littler ASAP (August 12, 2024).*

## **REVISIONS TO SAMPLE POLIC**

### **Access to Personnel Files**

Employees in Illinois can access their own personnel file at least two times each calendar year at reasonable intervals. An employee's request to access their personnel file must be in writing **(including email, text messages or other electronic communication) and [Optional: on a form provided by the Company] must do the following:**

- **Identify what records the employee is requesting, or if the employee is requesting all records they have a right to request under the Illinois Personnel Record Review Act;**
- **Specify if the employee wishes to inspect, copy, or receive copies of the records;**
- **Specify whether the records should be provided in hardcopy or in a reasonable and commercially available electronic format;**
- **Specify whether the employee's representative (i.e., a family member, attorney, union official, or translator) will inspect, copy, or receive the records; and**
- **If the requested records are being provided to a representative and include medical information and medical records, include a signed waiver for the release of those records to the employee's specific representative.**

**The request should be submitted to [insert the person or department responsible for maintaining personnel records, such as Human Resources, Payroll or the employee's supervisor or manager].**

Current employees will be permitted to inspect, and if requested, copy **or request copies of** their personnel files within seven business days after the Company receives their written request. If the Company is unable to provide access to the personnel file within seven working days, the Company will do so within the following seven **working-calendar** days. **If the Company does not maintain records in one or more of the requested categories, it will notify the employee. If the requested records are maintained in a manner that is already accessible by the employee, the Company may instead provide instructions on how to access the requested information.**

Employees subject to recall after layoff or on a leave of absence with a right to return to work and former employees whose employment ended during the previous year may also request to inspect their personnel file.

Inspection can take place during regular business hours at a location at, or reasonably near, the employee's place of employment or, if an employee submits a written request, the Company will provide a copy of the personnel file by sending it to the email address or mailing address identified by the employee for receipt. Employees who request and receive a copy or partial copy of their personnel file may be required to pay the cost of duplication.

An employee who is involved in a current grievance against the employer may designate in writing a representative to inspect their personnel file.

Personnel file documents do not include letters of reference **any portion of a test document (except for a cumulative score)**, materials **relating to staff planning, such as matters relating to the business's development, expansion, closing or operational goals, that are used by the Company to plan for future operations, information contained in separately maintained security files**, test information, the disclosure of which would invalidate the test, certain personal information about people other than the employee **if disclosure of the information would constitute a clearly unwarranted invasion of the other person's privacy, certain investigatory or security records**, documents that are being developed or prepared for use in civil, criminal or grievance procedures, **or the Company's trade secrets, client lists, sales projection, and financial data**

If an employee disagrees with any of the information contained in their personnel file, the employee may request that the Company remove or correct such information. If the employee and the Company cannot agree upon such removal or correction, the employee may submit a written statement explaining their position. The employee's written statement will be maintained as part of their personnel file or medical records and will accompany any transmittal or disclosure from such file or records made to a third party.