
HOUSE BILL 2811

State of Washington 57th Legislature 2002 Regular Session

By Representatives Conway, Wood, McDermott and Upthegrove

Read first time 01/29/2002. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to personnel files; amending RCW 49.12.005,
2 49.12.250, and 49.12.260; repealing RCW 49.12.240; and prescribing
3 penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 49.12.005 and 1998 c 334 s 1 are each amended to read
6 as follows:

7 For the purposes of this chapter:

8 (1) (~~The term~~) "Department" means the department of labor and
9 industries.

10 (2) (~~The term~~) "Director" means the director of the department of
11 labor and industries, or the director's designated representative.

12 (3) (~~The term~~) "Employer" means any person, firm, corporation,
13 partnership, business trust, legal representative, or other business
14 entity which engages in any business, industry, profession, or activity
15 in this state and employs one or more employees and for the purposes of
16 RCW 49.12.270 through 49.12.295 and 49.12.450 also includes the state,
17 any state institution, any state agency, political subdivisions of the
18 state, and any municipal corporation or quasi-municipal corporation.

1 (4) (~~The term~~) "Employee" means an employee who is employed in
2 the business of the employee's employer whether by way of manual labor
3 or otherwise.

4 (5) (~~The term~~) "Conditions of labor" (~~shall~~) means and includes
5 the conditions of rest and meal periods for employees including
6 provisions for personal privacy, practices, methods and means by or
7 through which labor or services are performed by employees and includes
8 bona fide physical qualifications in employment, but shall not include
9 conditions of labor otherwise governed by statutes and rules and
10 regulations relating to industrial safety and health administered by
11 the department.

12 (6) "Temporary services agency" means any individual or entity that
13 is engaged in the business of furnishing individuals to perform
14 services on a part-time or temporary basis for a third party.

15 (7) "Personnel files" means records kept by an employer, in any
16 form, that are used or have been used to determine the employee's
17 qualification for employment, promotion, additional compensation, or
18 employment termination, or other disciplinary action.

19 (8) For the purpose of chapter 16, Laws of 1973 2nd ex. sess. a
20 minor is defined to be a person of either sex under the age of eighteen
21 years.

22 **Sec. 2.** RCW 49.12.250 and 1985 c 336 s 2 are each amended to read
23 as follows:

24 (1) If an employer keeps a personnel file on an employee, the
25 employer will, at least annually, upon the request of that employee,
26 permit that employee or that employee's representative to inspect and
27 copy without charges, except a reasonable copying charge, any or all of
28 his or her own personnel file. Personnel files must be retained by the
29 employer for a minimum of three years after the employee ceases work
30 for that employer.

31 (2) Each employer shall make such file(s) available locally within
32 (~~a reasonable period of time~~) fourteen days after the employee
33 requests the file(s).

34 (~~(2)~~) (3) An employee annually may petition that the employer
35 review all information in the employee's personnel file(s) that are
36 regularly maintained by the employer as a part of his business records
37 or are subject to reference for information given to persons outside of
38 the company. The employer shall determine if there is any irrelevant

1 or erroneous information in the file(s), and shall remove all such
2 information from the file(s). If an employee does not agree with the
3 employer's determination, the employee may at his or her request have
4 placed in the employee's personnel file a statement containing the
5 employee's rebuttal or correction. Nothing in this subsection prevents
6 the employer from removing information more frequently.

7 ~~((3))~~ (4) A former employee shall retain the right of rebuttal or
8 correction ~~((for a period not to exceed two years))~~.

9 (5) Individuals performing personal services for, or for the
10 benefit of, a third party under a contract with a temporary services
11 agency are, for the purposes of this section and RCW 49.12.050,
12 employees of both the temporary services agency and the third party.

13 (6) The director will assess any employer found to be in violation
14 of this section, or rules or orders adopted or issued under this
15 section, a civil penalty of not less than five thousand dollars a day
16 for each violation. Each and every violation is a separate and
17 distinct offense, and in case of a continuing violation, every day's
18 continuance is a separate and distinct violation. Any penalty amount
19 set in excess of five thousand dollars will be set by the director in
20 consideration of any previous history of violations by the violator.

21 (7) In addition to any other penalty provided by law, an employee
22 whose request to inspect and copy personnel files has been denied in
23 violation of this section may bring an action in any court of competent
24 jurisdiction to recover damages for the violation in the amount of five
25 thousand dollars. The court will award reasonable attorney fees to a
26 prevailing plaintiff.

27 (8) A criminal action need not be brought against an employer for
28 that employer to be civilly liable under this section.

29 **Sec. 3.** RCW 49.12.260 and 1985 c 336 s 3 are each amended to read
30 as follows:

31 RCW ~~((49.12.240 and))~~ 49.12.250 ~~((do))~~ does not apply to the
32 records of an employee relating to the investigation of a possible
33 criminal offense. RCW ~~((49.12.240 and))~~ 49.12.250 ~~((do))~~ does not
34 apply to information or records compiled in preparation for an
35 impending lawsuit which would not be available to another party under
36 the rules of pretrial discovery for causes pending in the superior
37 courts.

1 NEW SECTION. **Sec. 4.** RCW 49.12.240 (Employee inspection of
2 personnel file) and 1985 c 336 s 1 are each repealed.

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