
SUBSTITUTE SENATE BILL 5033

State of Washington

57th Legislature

2001 Regular Session

By Senate Committee on Labor, Commerce & Financial Institutions
(originally sponsored by Senators Fairley and Costa)

READ FIRST TIME 02/21/01.

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
14 business entity which engages in any business, industry,
15 profession, or activity in this state and employs one or more
16 employees and for the purposes of RCW 49.12.270 through 49.12.295
17 and 49.12.450 also includes the state, any state institution, any

1 state agency, political subdivisions of the state, and any
2 municipal corporation or quasi-municipal corporation.

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

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

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

18 (7) The term "personnel files" means records kept by an
19 employer, in any form, that are used or have been used to
20 determine the employee's qualification for employment, promotion,
21 additional compensation, or employment termination, or other
22 disciplinary action.

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

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

28 (1) If an employer keeps a personnel file on an employee, the
29 employer shall, at least annually, upon the request of that
30 employee, permit that employee or that employee's representative
31 to inspect and copy without charges, except a reasonable copying
32 charge, any or all of his or her own personnel file(s). These
33 file(s) shall be retained by the employer for a minimum of three
34 years after the employee ceases work for that employer.

35 (2) Each employer shall make such file(s) available locally
36 within ((a reasonable period of time)) fourteen days after the
37 employee requests the file(s).

1 ~~((+2))~~ (3) An employee annually may petition that the employer
2 review all information in the employee's personnel file(s) that
3 are regularly maintained by the employer as a part of his business
4 records or are subject to reference for information given to
5 persons outside of the company. The employer shall determine if
6 there is any irrelevant or erroneous information in the file(s),
7 and shall remove all such information from the file(s). If an
8 employee does not agree with the employer's determination, the
9 employee may at his or her request have placed in the employee's
10 personnel file a statement containing the employee's rebuttal or
11 correction. Nothing in this subsection prevents the employer from
12 removing information more frequently.

13 ~~((+3))~~ (4) A former employee shall retain the right of
14 rebuttal or correction ~~((for a period not to exceed two years))~~.

15 (5) Individuals performing personal services for, or for the
16 benefit of, a third party pursuant to a contract with a temporary
17 services agency shall be, for the purposes of this section and RCW
18 49.12.050, employees of both the temporary services agency and the
19 third party.

20 (6) The director shall assess any employer found to be in
21 violation of this section, or rules or orders adopted or issued
22 pursuant to this section, a civil penalty of not less than five
23 thousand dollars a day for each violation. Each and every violation
24 shall be a separate and distinct offense, and in case of a
25 continuing violation, every day's continuance shall be a separate
26 and distinct violation. Any penalty amount set in excess of five
27 thousand dollars shall be set by the director in consideration of
28 any previous history of violations by the violator.

29 (7) In addition to any other penalty provided by law, an
30 employee whose request to inspect and copy personnel files has
31 been denied in violation of this section may bring an action in
32 any court of competent jurisdiction to recover damages for the
33 violation in the amount of five thousand dollars. The court shall
34 award reasonable attorney fees to a prevailing plaintiff.

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

37

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

3 RCW (~~49.12.240 and~~) 49.12.250 (~~do~~) does not apply to the
4 records of an employee relating to the investigation of a possible
5 criminal offense. RCW (~~49.12.240 and~~) 49.12.250 (~~do~~) does not
6 apply to information or records compiled in preparation for an
7 impending lawsuit which would not be available to another party
8 under the rules of pretrial discovery for causes pending in the
9 superior courts.

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

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