
SUBSTITUTE SENATE BILL 5130

State of Washington

67th Legislature

2021 Regular Session

By Senate Labor, Commerce & Tribal Affairs (originally sponsored by Senators Kuderer, Keiser, Das, Hunt, Robinson, Saldaña, Stanford, and Wilson, C.)

READ FIRST TIME 02/15/21.

1 AN ACT Relating to employee's rights concerning personnel files
2 and disciplinary actions; and amending RCW 49.12.250.

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

4 **Sec. 1.** RCW 49.12.250 and 1985 c 336 s 2 are each amended to
5 read as follows:

6 (1) ~~((Each))~~ Within 14 calendar days of a request by an employee,
7 former employee, or their attorney, agent, or fiduciary, each
8 employer ((shall make such file(s) available locally within a
9 reasonable period of time after the employee requests the)) must
10 furnish to the employee a complete, unredacted electronic or paper
11 copy of the employee's personnel file(s) at no cost to the employee.

12 (2) An employee annually may petition that the employer review
13 all information in the employee's personnel file(s) ~~((that are~~
14 ~~regularly maintained by the employer as a part of his business~~
15 ~~records))~~ or are subject to reference for information given to
16 persons outside of the company. The employer shall determine if there
17 is any irrelevant or erroneous information in the file(s), and shall
18 remove all such information from the file(s). If an employee does not
19 agree with the employer's determination, the employee may at his or
20 her request have placed in the employee's personnel file a statement
21 containing the employee's rebuttal or correction. Nothing in this

1 subsection prevents the employer from removing information more
2 frequently.

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

5 (4) Every employer shall, within 14 business days of receiving a
6 written request by a former employee, or their attorney, agent, or
7 fiduciary, furnish a signed written statement to the employee stating
8 the reasons for and effective date of discharge.

9 (5) An employee may enforce this section through a private cause
10 of action in superior court, without exhausting any administrative
11 remedies, and for each violation will be entitled to equitable
12 relief, statutory damages, and reasonable attorney fees and costs.
13 The statutory damages for each violation shall be: \$250 if the file
14 or statement is not provided within 14 days from the due date; \$500
15 if the file or statement is not provided within 28 days from the due
16 date; and \$1,000 if the file or statement is provided later than 28
17 days from the due date.

18 (6) For the purposes of this section, "personnel file" includes
19 the following records, regardless of the labels of the files or
20 folders in which they are maintained:

21 (a) All job application records;

22 (b) All performance evaluations;

23 (c) All disciplinary records;

24 (d) All medical, leave, and reasonable accommodation records,
25 which an employer should maintain separately from other personnel
26 records for medical privacy;

27 (e) All payroll records;

28 (f) All employment agreements; and

29 (g) All other records maintained in a personnel or employment
30 file for that employee, however designated.

31 (7) This section may not be construed to create a retention
32 schedule for records or to entitle an employee to an employer's
33 protected legal file.

34 (8) Agents and fiduciaries must provide the document evidencing
35 their legal authority to represent the employee or former employee at
36 the time of any request.

37 (9) A public employer may redact information before sending the
38 copy of the personnel file if required by law. The public employer
39 must provide the reasons for any redaction and the supporting laws
40 when furnishing the file.

1 (10) For purposes of this section:

2 (a) "Agent" means an attorney-in-fact granted authority under a
3 durable or nondurable power of attorney.

4 (b) "Fiduciary" means an original, additional, or successor
5 personal representative, guardian, or trustee.

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