
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1320

State of Washington

68th Legislature

2023 Regular Session

By House Appropriations (originally sponsored by Representatives Reed, Berry, Ortiz-Self, Ramel, Pollet, and Fosse)

READ FIRST TIME 02/24/23.

1 AN ACT Relating to access to personnel records; amending RCW
2 49.12.250; creating a new section; prescribing penalties; and
3 providing an effective date.

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

5 NEW SECTION. **Sec. 1.** The legislature intends to codify, modify,
6 and clarify certain current laws and administrative requirements
7 regarding access to personnel files to:

8 (1) Increase transparency and knowledge for both employers and
9 employees;

10 (2) Provide greater consistency across all employment settings;
11 and

12 (3) Encourage more equitable compliance with and enforcement of
13 the law across all employment settings.

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

16 (1) ((Each)) Within 14 calendar days of a request by an employee,
17 former employee, or their attorney, agent, or fiduciary, each
18 employer ((shall make such file(s) available locally within a
19 reasonable period of time after the employee requests the)) must
20 furnish to the employee or former employee a complete electronic or

1 paper copy of the employee's personnel file(s) as the contents of the
2 file(s) exist at the time of the request at no cost to the employee
3 or former employee. The personnel file must be unredacted unless
4 redaction is required under this section.

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

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

19 (4) Every employer shall, within 14 calendar days of receiving a
20 written request from a former employee, or their attorney, agent, or
21 fiduciary, furnish a signed written statement to the former employee
22 stating the effective date of discharge, whether the employer had a
23 reason for the discharge, and if so, the reasons.

24 (5) An employee or former employee may enforce this section
25 through a private cause of action in superior court, without
26 exhausting any administrative remedies, and for each violation will
27 be entitled to equitable relief, statutory damages, and reasonable
28 attorney fees and costs. The statutory damages for each violation
29 shall be: \$250 if the complete file, statement, or redaction log is
30 not provided within 14 calendar days from the due date; \$500 if the
31 complete file, statement, or redaction log is not provided within 28
32 calendar days from the due date; and \$1,000 if the complete file,
33 statement, or redaction log is provided later than 28 calendar days
34 from the due date. The statutory damages for any other violations
35 shall be \$500.

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

- 39 (a) All job application records;
40 (b) All performance evaluations;

1 (c) All disciplinary records;

2 (d) All medical, leave, and reasonable accommodation records,
3 which an employer should maintain separately from other personnel
4 records for medical privacy;

5 (e) All payroll records;

6 (f) All employment agreements; and

7 (g) All other records the employer actually included and
8 maintained in a personnel or employment file for that employee,
9 however the file is designated.

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

13 (b) This section does not require an employer to create personnel
14 records; rather the employer must furnish the records that the
15 employer has already created and included in a personnel file.

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

19 (9)(a) An employer that is a health care provider may redact
20 patient information before sending the copy of the personnel file
21 only to the extent required by the federal health insurance
22 portability and accountability act of 1996. Within 14 calendar days
23 after furnishing the file, such employer must identify what
24 information is redacted and the specific provision of the federal
25 health insurance portability and accountability act of 1996 requiring
26 the redaction. The health care provider employer bears the burden of
27 proving that the redactions were required by law and that it provided
28 the redaction log as required. The health care provider employer is
29 subject to liability under this section for bad faith redaction or
30 failure to provide the redaction log.

31 (b) Upon receiving a request for an employee's or former
32 employee's own personnel file, unless the request specifies that it
33 is made under chapter 42.56 RCW, a public employer must treat the
34 request as made under this section and the request is not subject to
35 the requirements of, or exemptions to, chapter 42.56 RCW. However, a
36 public employer must apply the redactions required under RCW
37 42.56.250(6). The public employer must treat requests for any other
38 records that accompany the request for the personnel file as requests
39 made under chapter 42.56 RCW. The public employer bears the burden of

1 proving that it redacted only such information as required and is
2 subject to liability under this section for bad faith redaction.

3 (c) An employer that is a postsecondary educational institution
4 must redact the personal identifying information of the complainant
5 and any witnesses from any substantiated findings of sexual
6 misconduct committed by the employee while the employee was employed
7 with the postsecondary educational institution that are included in
8 the employee's personnel file or employment records. The institution
9 bears the burden of proving that it redacted only such personal
10 identifying information and is subject to liability under this
11 section for bad faith redaction.

12 (10)(a) The department must develop and furnish to each employer
13 information which describes an employer's obligations and an
14 employee's rights under this section.

15 (b) The department must provide this information to employers at
16 least annually, which may include being provided with other annual
17 notices.

18 (c) The employment security department must provide this
19 information to employers, as defined by RCW 50A.05.010, at least
20 annually, which may include being provided with other annual notices.

21 (d) Failure to provide the information does not relieve an
22 employer of its obligations under this section.

23 (11) If a conflict exists between this section and a collective
24 bargaining agreement in existence on the effective date of this act,
25 nothing in this section requires the parties to the agreement to
26 reopen negotiations of the agreement or to apply any of the rights
27 and responsibilities under this section unless and until the existing
28 agreement is reopened or renegotiated by the parties or expires.

29 (12) For purposes of this section:

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

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

34 NEW SECTION. Sec. 3. This act takes effect January 1, 2024.

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