
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, unredacted

1 electronic or paper copy of the employee's personnel file(s) as the
2 contents of the file(s) exist at the time of the request at no cost
3 to the employee or former employee.

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

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

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

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

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

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

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

4 (e) All payroll records;

5 (f) All employment agreements; and

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

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

11 (b) This section does not require an employer to create personnel
12 records; rather the employer must furnish the records that the
13 employer has already created.

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

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

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

38 (c) An employer that is a postsecondary educational institution
39 must redact the personal identifying information of the complainant
40 and any witnesses from any substantiated findings of sexual

1 misconduct committed by the employee while the employee was employed
2 with the postsecondary educational institution that are included in
3 the employee's personnel file or employment records. The institution
4 bears the burden of proving that it redacted only such personal
5 identifying information and is subject to liability under this
6 section for bad faith redaction.

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

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

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

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

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

24 (12) For purposes of this section:

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

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

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

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