
SENATE BILL 5061

State of Washington

68th Legislature

2023 Regular Session

By Senators Kuderer, Stanford, Conway, Frame, Hasegawa, Hunt, Keiser, Nobles, Valdez, Wellman, and C. Wilson

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1 AN ACT Relating to access to personnel records; amending RCW
2 49.12.250; and creating a new section.

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

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

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

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

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

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

15 (1) ((Each)) Within 14 calendar days of a request by an employee,
16 former employee, or their attorney, agent, or fiduciary, each
17 employer ((shall make such file(s) available locally within a
18 reasonable period of time after the employee requests the)) must
19 furnish to the employee a complete, unredacted electronic or paper
20 copy of the employee's personnel file(s) at no cost to the employee.

1 (2) An employee annually may petition that the employer review
2 all information in the employee's personnel file(s) (~~that are~~
3 ~~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 there
6 is any irrelevant or erroneous information in the file(s), and shall
7 remove all such information from the file(s). If an employee does not
8 agree with the employer's determination, the employee may at his or
9 her request have placed in the employee's personnel file a statement
10 containing the employee's rebuttal or correction. Nothing in this
11 subsection prevents the employer from removing information more
12 frequently.

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

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

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

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

32 (a) All job application records;

33 (b) All performance evaluations;

34 (c) All disciplinary records;

35 (d) All medical, leave, and reasonable accommodation records,
36 which an employer should maintain separately from other personnel
37 records for medical privacy;

38 (e) All payroll records;

39 (f) All employment agreements; and

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

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

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

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

13 (10) The department must develop and furnish to each employer
14 information which describes an employer's obligations and an
15 employee's rights under this section. The department and the
16 employment security department must provide this information to
17 employers at least annually, which may include being provided with
18 other annual notices. Failure to provide the information does not
19 relieve an employer of its obligations under this section.

20 (11) For purposes of this section:

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

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

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