

THE ILLINOIS PERSONNEL RECORDS ACT

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Illinois employers must once again allow employees access to certain personnel records.

In 1984, Illinois first enacted a law granting employees access to personnel files. However, in 1987, the Illinois supreme court, in *Spinelli v. Immanuel Lutheran Evangelical Congregation*, struck down this statute as

unconstitutionally vague. The legislature has redrafted the faulty provisions with the new Illinois Personnel Records Act having taken effect September 2, 1988.

What Employers are Subject to the Act?

All Illinois employers of more than five employees, exclusive of immediate family members of the employer, must comply with the Act.

What Employees are Covered by the Act?

"Employees" are current employees, employees on layoff or leave who are subject to recall, or former employees terminated within the preceding year. A union representative, with written authorization of an employee, may make a records disclosure request under the Act, on behalf of the employee.

What Procedure must the Employee follow to Access his Personnel Records?

The employer may require the employee to file a written request to inspect his own personnel records. Inspection must generally occur within seven

days of the request, but an additional seven days are allowed, for cause. The inspection must occur at or near the employer's work place, during normal working hours, unless otherwise agreed by the employer and employee. If the employee can show he is unable to view his file in person, he may make a written request for a copy of the documents to be mailed to him. The employer may charge the employee the actual cost of duplicating document copies requested by the employee. The employer must allow each employee up to two inspection requests per calendar year.

What Types of Records are Subject to Review?

Documents in the possession of the employer (including, but not limited to documents in the employee's personnel file) which are, have been, or are intended to be used in determining that employee's qualifications for employment, promotion, transfer, additional compensation, discharge or other disciplinary action must be produced.

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Excluded are documents which pertain to the employer's overall business plans which affect more than one employee, letters of reference for the employee, test documents (except for the employee's cumulative score), personal information concerning a person other than the employee if disclosure would constitute an invasion of privacy, and records subject to discovery in a pending legal action of the employee. In addition, investigatory or security records pertaining to criminal conduct, or conduct by the employee which could harm the employer's business interests are excluded as long as the employer has not taken any adverse personnel action concerning the employee based upon that information.

What if the Employee Disputes a Document Contained in his File?

If there is no agreement to correct or remove a document disputed by the employee, the employee may submit a written explanation which must be attached to the disputed portion of the file and must be included if that portion of the record is ever released to a third party.

What Restrictions does the Act Place on the Release of Personnel Records to Third Parties?

The Act prohibits the release of any reprimand, disciplinary

report or action to a third party, except the employee's union or other representative, without written notice to the employee. The notice must be mailed to the employee's last known address unless the employee has 1) in writing, waived the written notice as part of a job application with another employer, 2) the disclosure is ordered by a legal proceeding or arbitration, or 3) the information is requested by a government agency investigation involving the employee. Disciplinary action reports more than four years old cannot be released to a third party unless the disclosure is ordered pursuant to a legal action or arbitration involving the employee.

What Information Does the Act Prohibit the Employer Keeping in an Employee's Personnel Record?

The employer may not gather or keep a record of an employee's associations, political activities, publications, communications or other nonemployment activities, unless the employee submits the information in writing or authorizes the employer in writing to keep or gather the information. This prohibition does not apply to activities occurring on the employer's premises; activities during the employee's working hours which interfere with the performance of any employee; or activities, occurring at any time, which constitute criminal conduct or may harm the

employer's property, operation or business or cause the employer financial liability.

What are the Sanctions Provided by the Act?

Any withheld document which should have been provided an employee making a proper request under the Act cannot be later used by the employer in any judicial or quasi-judicial proceeding, unless the judge or hearing officer finds the employer unintentionally excluded the information and the employee agrees to its use or has been given a reasonable time to review the information.

An aggrieved employee may file a complaint with the State of Illinois, Department of Labor or initiate a private legal action in the circuit court. The Department may issue a subpoena or search warrant for records which are required to be produced under the Act and may seek compensation for actual damages and costs. If the violation is found to be willful, a fine may be levied and the employer ordered to pay the attorneys' fees of the employee.

While the Act appears, at first glance, to create a rather burdensome process, employers should realize that most, if not all of the records subject to employee inspection are documents which the employee has already received, seen, or has been told about. For the most part, the Act simply provides a formalized process for the employee to

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be apprised of documents in his file and to provide him an opportunity to obtain copies of such documents.

Two critical areas of concern are, however, present. First, employers should initiate steps to insure that all managers and personnel staff are familiar with the employer's duties under the Act, in order to avoid any inadvertent violations of the Act. Second, an employer must realize that so-called confidential, "memos to the file" placed in an employee's personnel jacket may be subject to disclosure under the Act. The contents of such documents should therefore be carefully monitored.

Generally, compliance with the Illinois Personnel Act will become a matter of routine in the administration of the personnel practices of Illinois employers. In unusual instances or where charges or suits are anticipated, legal advice should be sought.