



Rep. Will Guzzardi

Filed: 4/11/2024

10300HB3763ham002

LRB103 30532 SPS 71930 a

1 AMENDMENT TO HOUSE BILL 3763

2 AMENDMENT NO. _____. Amend House Bill 3763, AS AMENDED,
3 by replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Personnel Record Review Act is amended by
6 changing Sections 2, 9, 10 and 12 as follows:

7 (820 ILCS 40/2) (from Ch. 48, par. 2002)

8 Sec. 2. Open records.

9 (a) Upon request in writing to their employer, every
10 employee has a right under this Act to inspect, copy, and
11 receive copies of the following documents: ~~Every employer~~
12 ~~shall, upon an employee's request which the employer may~~
13 ~~require be in writing on a form supplied by the employer,~~
14 ~~permit the employee to inspect~~

15 (1) any personnel documents which are, have been or
16 are intended to be used in determining that employee's

1 qualifications for employment, promotion, transfer,
2 ~~additional~~ compensation, benefits, discharge, or other
3 disciplinary action, except as provided in Section 10;

4 (2) any employment-related contracts or agreements
5 that the employer maintains are legally binding on the
6 employee;

7 (3) any employee handbooks that the employer made
8 available to the employee or that the employee
9 acknowledged receiving; and

10 (4) any written employer policies or procedures that
11 the employer contends the employee was subject to and that
12 concern qualifications for employment, promotion,
13 transfer, compensation, benefits, discharge, or other
14 disciplinary action.

15 The inspection right encompasses personnel documents in
16 the possession of a person, corporation, partnership, or other
17 association having a contractual agreement with the employer
18 to keep or supply a personnel record. An employee does not have
19 a right under this Act to the documents categorized ~~may~~
20 ~~request all or any part of his or her records, except as~~
21 ~~provided~~ in Section 10.

22 (b) The employer, upon an employee's written request,
23 shall grant at least 2 inspection requests by an employee in a
24 calendar year to inspect, copy, and receive copies of records
25 to which that employee has a right under this Act. Requests
26 shall be: ~~when requests are~~

1 (1) made at reasonable intervals, unless otherwise
2 provided in a collective bargaining agreement; and-

3 (2) made to a person responsible for maintaining the
4 employer's personnel records, including the employer's
5 human resources department, payroll department, the
6 employee's supervisor or department manager, or to an
7 individual as provided in the employer's written policy.

8 (c) A written request shall:

9 (1) identify what personnel records the employee is
10 requesting or if the employee is requesting all of the
11 records allowed to be requested under this Section;

12 (2) specify if the employee is requesting to inspect,
13 copy, or receive copies of the records;

14 (3) specify whether records be provided in hardcopy or
15 in a reasonable and commercially available electronic
16 format;

17 (4) specify whether inspection, copying, or receipt of
18 copies will be performed by that employee's
19 representative, including family members, lawyers, union
20 stewards, other union officials, or translators; and

21 (5) if the records being requested include medical
22 information and medical records, include a signed waiver
23 to release medical information and medical records to that
24 employee's specific representative.

25 (d) The employer shall comply with the employee's request
26 ~~provide the employee with the inspection opportunity~~ within 7

1 working days after the receipt of ~~employee makes~~ the request,
2 or, if the employer can reasonably show that such deadline
3 cannot be met, the employer shall have an additional 7
4 calendar days to comply. If an employer does not maintain
5 records in one or more of the categories requested, the
6 employer may respond in writing notifying the employee that
7 the employer does not maintain records in the category, but
8 must still permit inspection, copying, and receipt of copies
9 as required by subsection (b) of any other category requested
10 as to which the employer does maintain records. If the records
11 are maintained in a manner and fashion that is already
12 accessible by the employee, the employer may instead provide
13 the employee with instructions on how to access that
14 information. Any in-person ~~The~~ inspection shall take place at
15 a location reasonably near the employee's place of employment
16 and during normal working hours. The employer may allow the
17 inspection to take place at a time other than working hours or
18 at a place other than where the records are maintained if that
19 time or place would be more convenient for the employee.
20 Nothing in this Act shall be construed as a requirement that an
21 employee be permitted to remove any part of such personnel
22 records or any part of such records from the place on the
23 employer's premises where it is made available for inspection.
24 Each employer shall retain the right to protect his records
25 from loss, damage, or alteration to ensure ~~insure~~ the
26 integrity of the records. The employer shall, upon the

1 employee's written request, email or mail a copy of the
2 requested record to the employee by the email address or
3 mailing address identified by the employee for the purpose of
4 receiving the copy of requested record. An employer may charge
5 a fee for providing a copy of the requested record. The fee
6 shall be limited to the actual cost of duplicating the
7 requested record and may not include the imputed costs of time
8 spent duplicating the information, the purchase or rental of
9 copying machines, the purchase or rental of computer
10 equipment, the purchase, rental, or licensing of software, or
11 any other similar expenses.

12 (e) As used in this Section, "written request" includes
13 any electronic communications, such as email or text messages.

14 (Source: P.A. 103-201, eff. 1-1-24.)

15 (820 ILCS 40/9) (from Ch. 48, par. 2009)

16 Sec. 9. An employer shall not gather or keep a record of an
17 employee's associations, political activities, publications,
18 communications or nonemployment activities, unless the
19 employee submits the information in writing or gives
20 authorizes the employer express, written consent when the
21 employer keeps or gathers in writing to keep or gather the
22 information. This prohibition shall not apply to (i)
23 activities or associations with individuals or groups involved
24 in the physical, sexual, or other exploitation of a minor or
25 (ii) the activities that occur on the employer's premises or

1 during the employee's working hours with that employer which
2 interfere with the performance of the employee's duties or the
3 duties of other employees or activities, regardless of when
4 and where occurring, which constitute criminal conduct or may
5 reasonably be expected to harm the employer's property,
6 operations or business, or could by the employee's action
7 cause the employer financial liability. A record which is kept
8 by the employer as permitted under this Section shall be part
9 of the personnel record.

10 (Source: P.A. 101-531, eff. 8-23-19.)

11 (820 ILCS 40/10) (from Ch. 48, par. 2010)

12 Sec. 10. Exceptions. The right of the employee or the
13 employee's designated representative to inspect his or her
14 personnel records does not apply to:

15 (a) Letters of reference for that employee or external
16 peer review documents for academic employees of institutions
17 of higher education.

18 (b) Any portion of a test document, except that the
19 employee may see a cumulative total test score for either a
20 section of or the entire test document.

21 (c) Materials relating to the employer's staff planning,
22 such as matters relating to the business' development,
23 expansion, closing or operational goals, where the materials
24 relate to or affect more than one employee, provided, however,
25 that this exception does not apply if such materials are, have

1 been or are intended to be used by the employer in determining
2 an individual employee's qualifications for employment,
3 promotion, transfer, ~~or additional~~ compensation, or benefits,
4 or in determining an individual employee's discharge or
5 discipline.

6 (d) Information of a personal nature about a person other
7 than the employee if disclosure of the information would
8 constitute a clearly unwarranted invasion of the other
9 person's privacy.

10 (e) An employer who does not maintain any personnel
11 records.

12 (f) Records relevant to any other pending claim between
13 the employer and employee which may be discovered in a
14 judicial proceeding.

15 (g) Investigatory or security records maintained by an
16 employer to investigate criminal conduct by an employee or
17 other activity by the employee which could reasonably be
18 expected to harm the employer's property, operations, or
19 business or could by the employee's activity cause the
20 employer financial liability, unless and until the employer
21 takes adverse personnel action based on information in such
22 records.

23 (h) An employer's trade secrets, client lists, sales
24 projections, and financial data.

25 (Source: P.A. 85-1440.)

1 (820 ILCS 40/12) (from Ch. 48, par. 2012)

2 Sec. 12. Administration and enforcement of the Act.

3 (a) The Director of Labor or his authorized representative
4 shall administer and enforce the provisions of this Act. The
5 Director of Labor may issue rules and regulations necessary to
6 administer and enforce the provisions of this Act.

7 (b) If an employee alleges that he or she has been denied
8 his or her rights under this Act, he or she may file a
9 complaint with the Department of Labor. The Department shall
10 investigate the complaint and shall have authority to request
11 the issuance of a search warrant or subpoena to inspect the
12 files of the employer, if necessary. The Department shall
13 attempt to resolve the complaint by conference, conciliation,
14 or persuasion. If the complaint is not so resolved and the
15 Department finds the employer has violated the Act, the
16 Department may commence an action in the circuit court to
17 enforce the provisions of this Act including an action to
18 compel compliance. The circuit court for the county in which
19 the complainant resides, in which the complainant is employed,
20 or in which the personnel record is maintained shall have
21 jurisdiction in such actions.

22 (c) If an employer is alleged to have violated ~~violates~~
23 this Act and the Department has failed to resolve the
24 complaint within 180 calendar days after the complaint is
25 filed with the Department, or the Department certifies in
26 writing that it is unlikely to be able to resolve the complaint

1 within that 180 calendar days, an employee may commence an
2 action in the circuit court to enforce the provisions of this
3 Act, including actions to compel compliance, ~~where efforts to~~
4 ~~resolve the employee's complaint concerning such violation by~~
5 ~~conference, conciliation or persuasion pursuant to subsection~~
6 ~~(b) have failed and the Department has not commenced an action~~
7 ~~in circuit court to redress such violation~~. The circuit court
8 for the county in which the complainant resides, in which the
9 complainant is employed, or in which the personnel record is
10 maintained shall have jurisdiction in such actions.

11 (d) Failure to comply with an order of the court may be
12 punished as contempt. In addition, the court shall award an
13 employee prevailing in an action pursuant to this Act the
14 following damages:

15 (1) Actual damages plus costs.

16 (2) For a willful and knowing violation of this Act,
17 \$200 plus costs, reasonable attorney's fees, and actual
18 damages.

19 (d-5) An action brought under this Act against the State
20 of Illinois for injunctive relief or contempt may be brought
21 in the circuit court. An action brought under this Act against
22 the State of Illinois for monetary relief shall only be
23 brought in the Court of Claims.

24 (e) Any employer or his agent who violates the provisions
25 of this Act is guilty of a petty offense.

26 (f) Any employer or his agent, or the officer or agent of

1 any private employer, who discharges or in any other manner
2 discriminates against any employee because that employee has
3 made a complaint to his employer, or to the Director or his
4 authorized representative, or because that employee has caused
5 to be instituted or is about to cause to be instituted any
6 proceeding under or related to this Act, or because that
7 employee has testified or is about to testify in an
8 investigation or proceeding under this Act, is guilty of a
9 petty offense.

10 (Source: P.A. 84-525.)

11 (820 ILCS 40/5 rep.)

12 Section 10. The Personnel Record Review Act is amended by
13 repealing Section 5."