



## 103RD GENERAL ASSEMBLY

### State of Illinois

### 2023 and 2024

### HB3763

Introduced 2/17/2023, by Rep. Will Guzzardi

#### SYNOPSIS AS INTRODUCED:

820 ILCS 40/2	from Ch. 48, par. 2002
820 ILCS 40/3	from Ch. 48, par. 2003
820 ILCS 40/9	from Ch. 48, par. 2009
820 ILCS 40/12	from Ch. 48, par. 2012
820 ILCS 40/5 rep.	

Amends the Personnel Record Review Act. Provides for specific documents that every employee has a legal right to inspect and copy. Provides that an employer shall not include the imputed costs of time spent duplicating the information, purchasing or renting a copying machine, purchasing or renting computer equipment, or purchasing, renting, or licensing software in a fee for providing a copy of the documents. Provides that an employee may bring an action in circuit court regardless of whether that employee has filed a complaint concerning the same violation with the Department of Labor. Authorizes an employee to file a complaint with the Department regardless of whether the employee pursued or is pursuing an action for the same violation in circuit court. Repeals provisions concerning personnel record inspections by representatives of the employee.

LRB103 30532 DTM 56965 b

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Personnel Record Review Act is amended by  
5 changing Sections 2, 3, 9, and 12 as follows:

6 (820 ILCS 40/2) (from Ch. 48, par. 2002)

7 Sec. 2. Open Records.

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

13 (1) any personnel documents which are, have been or  
14 are intended to be used in determining that employee's  
15 qualifications for employment, promotion, transfer,  
16 ~~additional~~ compensation, benefits, perquisites,  
17 discharge, or other disciplinary action, except as  
18 provided in Section 10;

19 (2) any contracts or agreements that the employee  
20 signed or that the employer maintains the manifested  
21 intent of the employee to be bound or that the employer  
22 maintains are legally binding on the employee;

23 (3) job descriptions for any position held by the

1 employee or any position for which the employee applied;

2 (4) any employee handbooks that the employer made  
3 available to the employee or that the employee  
4 acknowledged recovery;

5 (5) any employer policies or procedures that the  
6 employer contends the employee was subject to and that  
7 concern qualifications for employment, promotion,  
8 transfer, compensation, benefits, perquisites, discharge,  
9 or other disciplinary action;

10 (6) press releases, announcements, internet postings,  
11 or social-media posts about or concerning the employee;  
12 and

13 (7) reports by or concerning the employee alleging  
14 harassment or discrimination related to a protected class  
15 as defined by the Illinois Human Rights Act; retaliation  
16 under State, federal, or local law; failure to pay wages  
17 or other compensation under the Illinois Wage Payment and  
18 Collection Act; ethical violations; any code of conduct  
19 violation; any violation of the rules or standards of any  
20 professional organization, self-regulatory organization,  
21 accrediting organization, or certifying organization; and  
22 any violation of any federal, State, local, or foreign  
23 law, ordinance, rule, or regulation.

24 The inspection right encompasses personnel documents in  
25 the possession of a person, corporation, partnership, or other  
26 association having a contractual agreement with the employer

1 to keep or supply a personnel record. An employee does not have  
2 a legal right under this Act to the documents categorized ~~may~~  
3 ~~request all or any part of his or her records, except as~~  
4 ~~provided~~ in Section 10.

5 (b) The employer shall, upon an employee's request, grant  
6 at least 2 ~~inspection~~ requests by an employee in a calendar  
7 year to inspect, copy, and receive copies of records to which  
8 that employee has a legal right under this Act. Requests must  
9 be ~~when requests are~~ made at reasonable intervals, unless  
10 otherwise provided in a collective bargaining agreement. The  
11 employer may require the request to be in writing. Electronic  
12 communications such as email and text messages suffice as  
13 written requests under this subsection. The written request  
14 need only apprise a reasonable employer that the employee is  
15 requesting some or all of the employee's records. The employee  
16 may specify in the employee's request if the employee is  
17 requesting to inspect, to copy, or to receive copies of the  
18 records. The employee may request that copies be provided in  
19 hardcopy or in a reasonable and commercially available  
20 electronic format. The employee may request that the  
21 inspection, copying, or receipt of copies be performed by that  
22 employee's representative, including, but not limited to,  
23 family members, clergy, accountants, lawyers, union stewards,  
24 other union officials, translators, representatives of  
25 workers' centers, or members of the press. The employer shall  
26 comply with the employee's request ~~provide the employee with~~

1 ~~the inspection opportunity~~ within 7 working days after the  
2 employee makes the request or if the employer can reasonably  
3 show that such deadline cannot be met, the employer shall have  
4 an additional 7 days to comply. Any in-person ~~The~~ inspection  
5 shall take place at a location reasonably near the employee's  
6 place of employment and during normal working hours. The  
7 employer may allow the inspection to take place at a time other  
8 than working hours or at a place other than where the records  
9 are maintained if that time or place would be more convenient  
10 for the employee. Nothing in this Act shall be construed as a  
11 requirement that an employee be permitted to remove any part  
12 of such personnel records or any part of such records from the  
13 place on the employer's premises where it is made available  
14 for inspection. Each employer shall retain the right to  
15 protect his records from loss, damage, or alteration to insure  
16 the integrity of the records. ~~If an employee demonstrates that~~  
17 ~~he or she is unable to review his or her personnel record at~~  
18 ~~the employing unit, the employer shall, upon the employee's~~  
19 ~~written request, mail a copy of the requested record to the~~  
20 ~~employee.~~

21 (Source: P.A. 83-1362.)

22 (820 ILCS 40/3) (from Ch. 48, par. 2003)

23 Sec. 3. Copies. ~~After the review time provided in Section~~  
24 ~~2, an employee may obtain a copy of the information or part of~~  
25 ~~the information contained in the employee's personnel record.~~

1 An employer may charge a fee for providing a copy of the ~~such~~  
2 information requested by the employee. The fee shall be  
3 limited to the actual cost of duplicating the information and  
4 shall not include the imputed costs of time spent duplicating  
5 the information, purchasing or renting a copying machine,  
6 purchasing or renting computer equipment, or purchasing,  
7 renting, or licensing software.

8 (Source: P.A. 83-1104.)

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

10 Sec. 9. An employer shall not gather or keep a record of an  
11 employee's associations, political activities, publications,  
12 communications or nonemployment activities, unless the  
13 employee submits the information in writing or gives  
14 ~~authorizes~~ the employer express, written consent when the  
15 employer keeps or gathers in writing to keep or gather the  
16 information. This prohibition shall not apply to (i)  
17 activities or associations with individuals or groups involved  
18 in the physical, sexual, or other exploitation of a minor or  
19 (ii) the activities that occur on the employer's premises or  
20 during the employee's working hours with that employer which  
21 interfere with the performance of the employee's duties or the  
22 duties of other employees or activities, regardless of when  
23 and where occurring, which constitute criminal conduct or may  
24 reasonably be expected to harm the employer's property,  
25 operations or business, or could by the employee's action

1 cause the employer financial liability. A record which is kept  
2 by the employer as permitted under this Section shall be part  
3 of the personnel record.

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

5 (820 ILCS 40/12) (from Ch. 48, par. 2012)

6 Sec. 12. Administration and enforcement of Act.

7 (a) The Director of Labor or his authorized representative  
8 shall administer and enforce the provisions of this Act. The  
9 Director of Labor may issue rules and regulations necessary to  
10 administer and enforce the provisions of this Act.

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

1 (c) If an employer violates this Act, an employee may  
2 commence an action in the circuit court to enforce the  
3 provisions of this Act, including actions to compel  
4 compliance, ~~where efforts to resolve the employee's complaint~~  
5 ~~concerning such violation by conference, conciliation or~~  
6 ~~persuasion pursuant to subsection (b) have failed and the~~  
7 ~~Department has not commenced an action in circuit court to~~  
8 ~~redress such violation.~~ The circuit court for the county in  
9 which the complainant resides, in which the complainant is  
10 employed, or in which the personnel record is maintained shall  
11 have jurisdiction in such actions. An employee may bring an  
12 action in circuit court regardless of whether that employee  
13 has filed a complaint concerning the same violation with the  
14 Department and an employee may file a complaint with the  
15 Department regardless of whether the employee pursued or is  
16 pursuing an action for the same violation in circuit court.

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

21 (1) Actual damages ~~plus costs.~~

22 (2) For a willful and knowing violation of this Act,  
23 \$200 ~~plus costs, reasonable attorney's fees,~~ and actual  
24 damages.

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



1           (3) Reasonable attorney's fees and costs.

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

12           (Source: P.A. 84-525.)

13           (820 ILCS 40/5 rep.)

14           Section 10. The Personnel Record Review Act is amended by  
15 repealing Section 5.