



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB3735

Introduced 2/9/2024, by Sen. Ram Villivalam

SYNOPSIS AS INTRODUCED:

820 ILCS 40/2	from Ch. 48, par. 2002
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 that every employee has a legal right to inspect, copy, and receive copies of specified documents. 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. Makes other changes. Repeals provisions concerning personnel record inspections by representatives of the employee.

LRB103 36782 SPS 66892 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, 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, or 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) any employee handbooks that the employer made

1 available to the employee or that the employee
2 acknowledged receiving; and

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

8 The inspection right encompasses personnel documents in
9 the possession of a person, corporation, partnership, or other
10 association having a contractual agreement with the employer
11 to keep or supply a personnel record. An employee does not have
12 a legal right under this Act to the documents categorized ~~may~~
13 ~~request all or any part of his or her records, except as~~
14 ~~provided~~ in Section 10.

15 (b) The employer shall, upon an employee's request, grant
16 at least 2 ~~inspection~~ requests ~~by an employee~~ in a calendar
17 year to inspect, copy, and receive copies of records to which
18 that employee has a legal right under this Act. Requests must
19 be ~~when requests are~~ made at reasonable intervals, unless
20 otherwise provided in a collective bargaining agreement. The
21 employer may require the request to be in writing. Electronic
22 communications such as e-mail and text messages suffice as
23 written requests under this subsection. The written request
24 need only apprise a reasonable employer that the employee is
25 requesting some or all of the employee's records. The employee
26 may specify in the employee's request if he or she is

1 requesting to inspect, to copy, and to receive copies of the
2 records. The employee may request that copies be provided in
3 hardcopy or in a reasonable and commercially available
4 electronic format. The employee may request that the
5 inspection, copying, or receipt of copies be performed by that
6 employee's representative, including, but not limited to,
7 family members, clergy, accountants, lawyers, union stewards,
8 other union officials, translators, representatives of
9 workers' centers, and members of the press. The employer shall
10 comply with the employee's request ~~provide the employee with~~
11 ~~the inspection opportunity~~ within 7 working days after the
12 employee makes the request or if the employer can reasonably
13 show that such deadline cannot be met, the employer shall have
14 an additional 7 days to comply. Any in-person ~~The~~ inspection
15 shall take place at a location reasonably near the employee's
16 place of employment and during normal working hours. The
17 employer may allow the inspection to take place at a time other
18 than working hours or at a place other than where the records
19 are maintained if that time or place would be more convenient
20 for the employee. Nothing in this Act shall be construed as a
21 requirement that an employee be permitted to remove any part
22 of such personnel records or any part of such records from the
23 place on the employer's premises where it is made available
24 for inspection. Each employer shall retain the right to
25 protect his records from loss, damage, or alteration to insure
26 the 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 to any ~~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 shall not include the imputed costs of
8 time spent duplicating the information, the purchase or rental
9 of copying machines, the purchase or rental of computer
10 equipment, the purchase, rental, or licensing of software, and
11 similar expenses.

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

13 (820 ILCS 40/9) (from Ch. 48, par. 2009)

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

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

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

9 (820 ILCS 40/12) (from Ch. 48, par. 2012)

10 Sec. 12. Administration and enforcement.

11 (a) The Director of Labor or his authorized representative
12 shall administer and enforce the provisions of this Act. The
13 Director of Labor may issue rules and regulations necessary to
14 administer and enforce the provisions of this Act.

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

1 compel compliance. The circuit court for the county in which
2 the complainant resides, in which the complainant is employed,
3 or in which the personnel record is maintained shall have
4 jurisdiction in such actions.

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

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

25 (1) Actual damages plus costs.

26 (2) For a willful and knowing violation of this Act, \$200

1 plus costs, reasonable attorney's fees, and actual damages.

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

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

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

15 (820 ILCS 40/5 rep.)

16 Section 10. The Personnel Record Review Act is amended by
17 repealing Section 5.