

New York Enacts New Personnel Records Access Requirements

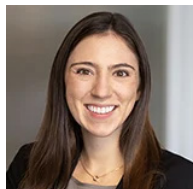
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Key Takeaways

- Effective November 8, New York employers must provide current and former employees access to their personnel records upon written request at no cost.

- Employers have new obligations regarding timely notice to employees of negative information placed in their personnel files.
- Employees have the right to dispute information contained in their files, and employers must not retaliate against employees who exercise their rights under the law.
- Anticipated chapter amendments may clarify that employers are not required to create new records and will further define “personnel records.”

Effective November 8, 2026, New York employers will be required to provide employees with access to their personnel records upon request.

On September 9, New York Governor Kathy Hochul signed into law the Employee Access to Personnel Records bill, which amends New York Labor Law to add new section 210-b. Modeled after a similar Massachusetts personnel records law, the statute grants current and former employees access to their personnel records upon request and imposes new notice and record-retention obligations on New York employers.

Key Employer Obligations

The law covers both public and private employers, including individuals, corporations, partnerships, labor organizations, unincorporated associations, other legal businesses, governmental and public employers, and employer agents. It requires employers to provide current and former employees with a copy of their “personnel record” (as defined in the statute and summarized below) within five business days of a written request, at no cost to the employee.

Employers must also notify employees within 10 days of placing information in their personnel records that may

negatively affect their employment, promotion, transfer, compensation, or potential discipline. If an employee disputes information contained in the personnel record, the employee may submit a written statement to respond to such information.

Under the new law, to the extent employers create personnel records, they are required to maintain them from the date of employment through three years after termination. If an employer maintains a written personnel policy regarding the terms and conditions of employment, the policy must also be continuously maintained at the office where personnel matters are administered.

Employers are prohibited from retaliating against employees who exercise their rights under the law, including through immigration-related conduct targeting the employee or the employee's family or household members. Employers that fail to comply may face fines ranging from \$500 to \$2,500, which are enforced by the New York State Attorney General.

What Is a Personnel Record?

In the law's text, a personnel record is defined as a record maintained by an employer that "identifies an employee, to the extent that the record is used, or has been used, or may affect or be used relative to that employee's qualifications for employment, promotion, transfer, additional compensation, or disciplinary action."

The definition also extends to records maintained by third parties under contract with the employer. All personnel records must be kept in typewritten or printed form, or may be handwritten in indelible ink.

Covered personnel records include the following:

- Name, address, date of birth, job title, and job description
- Documents evidencing rate of pay and any other compensation
- Starting date of employment
- Job application for employee's position
- Resumes and other employment inquiries submitted in response to an employer advertisement
- Performance evaluations
- Written warnings of substandard performance
- Probationary-period information
- Waivers signed by the employee
- Dated termination notices
- "Any other documents relating to disciplinary action regarding the employee"

Notably, the law also contains a privacy carveout, confirming that a "personnel record" does not include information of a personal nature about someone other than the employee if disclosure of the information would constitute an unwarranted invasion of that other person's privacy.

On its face, this carveout could include certain investigation materials that contain statements by individuals other than the employee, and potentially be applied more expansively.

Employee Right to Review and Dispute Records

While employees will be permitted to review their personnel records twice in a calendar year, a review prompted by the placement of negative information in an employee's personnel record following notice to the employee will not count toward that annual limit.

Employees also have a right to challenge the information in their personnel records through a process established by the law. First, any disagreement over information in an employee's personnel file may be mutually removed or corrected by agreement between the employer and the employee.

If an agreement is not reached, the employee can submit a written statement explaining their position, which shall become part of the personnel record and shall accompany the disputed information when it is sent to a third party.

Disputed information may also be expunged through a collective bargaining agreement, applicable personnel procedures, or a judicial process where the employer knew or should have known that the information was false. The law does not supersede a collective bargaining agreement that provides employees with similar access rights to their personnel records.

Employers are prohibited from retaliating against an employee who exercises such rights under the law.

Potential Chapter Amendment

When Governor Hochul signed the Employee Access to Personnel Records bill into law, she also issued an approval memorandum identifying ambiguities she perceived in the legislation and indicating that these ambiguities would be addressed in a future legislative session.

As a result, any future chapter amendment is expected to clarify that:

- Employers are not required to create a personnel file or produce documents beyond those they already maintain; and
- Personnel records are defined to include only records or documents used to determine an employee's qualifications for hiring, retention, promotion, transfer, additional compensation, or disciplinary action.
- Review and update employee handbooks and personnel policies, as appropriate, to reflect new employee access, notice, and rebuttal rights.
- Monitor developments concerning the anticipated chapter amendment before and after the law's November 8 effective date.

Employer Considerations

Because this law will take effect in less than 60 days, employers should prepare to take the following actions to comply with its provisions:

- Review existing practices for creation and maintenance of personnel records to ensure retention as required by the law as well as ability to retrieve and produce such records within the statutory period.
- Establish procedures for notifying employees of negative information placed in personnel file and responding to requests within the applicable deadlines, including potential designation of personnel and/or processes to respond.
- Provide training to managers, human resources, and other personnel regarding the new requirements.

Related Content

Resource Kits

- [Departing Employees Resource Kit](#)
- [Employee Handbook Resource Kit](#)

Practice Notes

- [Personnel File Access for Employees State Law Survey](#)

Templates

- [Personnel File Access Policy \(with Acknowledgment\) \(NY\)](#)
- [Personnel File Access for Employees \(New York City\)](#)
- [Employee Handbook Supplement \(NY\)](#)

Checklists

- [Employee Handbook Review Checklist \(NY\)](#)

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Leni D. Battaglia is a seasoned litigator and trusted legal advisor, specializing in defending employers in courts and tribunals across the United States. He excels in developing litigation-avoidance strategies for clients in various industries, including financial services, technology, retail and e-commerce, hospitality, and entertainment. Leni collaborates with industry groups, trade associations, and employers to enact, modify, and challenge workplace-related laws and legislation. He serves as co-leader of the firm's fashion and luxury brands team and spearheads joint defense initiatives for retail and restaurant trade associations. His litigation knowledge encompasses wage and hour matters, as well as harassment, discrimination, disability, retaliation, and whistleblower claims. Additionally, Leni represents clients in contract, noncompete, and trade secret disputes.

In preventative practice, Leni advises on predictive scheduling and just cause laws, workplace misconduct and sexual harassment, classification and compensation, restrictive covenants, and employment policies. He conducts internal audits and guides employers through investigations by federal, state, and city agencies. Leni also provides training and collaborates with employers to foster safe, respectful, and inclusive workplaces. He is a frequent media commentator and author on these topics.

Leni earned his J.D. with honors from the University of Connecticut School of Law, where he served as notes and comments editor of the *Connecticut Law Review*, competed nationally for the Connecticut Moot Court board, and was on the executive board of the Public Interest Law Group. Before law school, Leni conducted social science research in Brazil as a recipient of the congressional David L. Boren Scholarship. He is conversant in Spanish and Portuguese.

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During law school, Alanna served on the University of Pennsylvania *Journal of Constitutional Law* and worked with the Democracy Law Pro Bono Project. She also worked as an extern for the Women's Law Project in Philadelphia in the fall of 2021.

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In law school, Alec was a notes editor for the *William & Mary Business Law Review* and was the senior training director for the Alternative Dispute Resolution Team. He also represented families in the Special Education Advocacy Clinic and served as a Constitutional Law teaching assistant.

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