

Client Alert **Employment and Labor**

New York Enacts Personnel Records Access Law Which Provides Employees with Expanded Rights and Creates New Obligations for Employers

On September 9, 2026, Governor Hochul signed into law [Section 210-b of the New York Labor Law](#). Effective November 8, 2026, this new law gives both current and former employees, in both the private and public sectors, the right to inspect and obtain copies of their personnel records. Critically, the new law requires employers to notify employees of negative information about the employee being added to the employee's record. The new law also outlines employer obligations regarding the maintenance, disclosure, and retention of personnel records, and creates significant employee rights, including the right to access, dispute, and seek correction of personnel file information.

Key Employer Obligations

The new law defines "personnel records" extremely broadly, as "a record kept 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 new law provides a list of examples of what must be kept in a personnel file, to the extent that the documents were prepared by an employer regarding an employee. However, this list comes with the caveat that it is not intended to limit the definition of "personnel records." This means that the types of records required to be maintained may be more extensive than the examples given:

- Name, address, and date of birth
- Job title and description
- Rate of pay and any other compensation paid to the employee
- Start date

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2026

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- Job application
- Resumes or other employment inquiries submitted by the employee in response to the employer's advertisement
- All employee performance evaluations, including but not limited to, employee evaluation documents
- Written warnings of substandard performance
- Lists of probationary periods
- Waivers signed by the employee
- Copies of dated termination notices
- Any other documents relating to disciplinary action regarding the employee

The employee's personnel record must be maintained in typewritten or printed form or may be handwritten in indelible (i.e. permanent) ink. According to the new law, a "personnel record" does not include information about a person other than the employee that is of a personal nature and would constitute "a clearly unwarranted invasion of such other person's privacy." However, the law does not provide guidance on what would constitute "a clearly unwarranted invasion of such other person's privacy."

Importantly, an employer must notify an employee within ten (10) days of placing any information in the employee's personnel record that is, has been, or may be used to "negatively affect the employee's qualification for employment, promotion, transfer, additional compensation, or the possibility that the employee will be subject to disciplinary action."

The other significant obligations for employers related to these "personnel records" include:

- **Retaining Complete Personnel Records:** Employers must retain the complete personnel record of each employee, without deletions or expungement, from the date of employment and for three (3) years after the termination of employment.
- **Providing Personnel Records on Request:** Employers must provide a complete copy of the employee's personnel record, at no cost to the employee, within five (5) business days of receiving a written request. Employees may make up to two (2) requests per calendar year to review their personnel file. However, if an employer places negative information in the employee's file, the employee may review the file without that review counting toward the two (2) annual requests.
- **Maintaining Written Personnel Policies:** If an employer chooses to have a written personnel policy regarding the terms and conditions of employment, that policy must be continuously maintained at the office where personnel matters are administered. However, the new law does not provide a definition of the term "personnel policy."

Additional Employee Rights Under the New Law

- **Right to Dispute:** If an employee disagrees with any information in their personnel record, the employer and employee may mutually agree to remove or correct the information. If the employer and employee cannot agree, the employee may submit a written statement explaining their position. That statement then becomes a part of the personnel record. If the employee's personnel record is ever transferred to a third party, the employee's position statement must be included with the file, as long as the original information is retained as a part of the file.
- **Right to Seek Removal of False Information:** If an employer puts information in a personnel record that the employer knew (or should have known) was false, the employee can have remedies "through [a] collective bargaining agreement if applicable, other personnel procedures, or judicial process," to have the information expunged.

Anti-Retaliation Protections

The law prohibits employers or any other person from discharging, threatening, penalizing, or in any other manner discriminating or retaliating against any employee who exercises their rights explained above under the statute. In addition to the above, the anti-retaliation provision prohibits "threatening to contact or contacting United States Immigration authorities or otherwise reporting or threatening to report an employee's suspected citizenship or immigration status or the suspected citizenship or immigration status of an employee's family or household member."

Penalties and Enforcement

Violations of the new law are punishable by fines of \$500 to \$2,500, which the New York Attorney General is responsible for enforcing.

Labor Considerations: Collective Bargaining Agreement Interplay

The law does not supersede the terms of a collective bargaining agreement ("CBA"), as long as the CBA provides at least substantially similar access by an employee to their personnel records.

Takeaways

Many questions remain about the new law's terms, requirements, and its interactions with existing law. For example, the broad definition of "personnel record" seemingly implicates supervisor performance notes, especially if those notes are relied upon or reviewed by the supervisor for completing performance reviews, evaluating whether further coaching, an improvement plan, or employment action is warranted. For many employers, materials such as supervisor performance notes may not be collected, centrally located, or made part of what most traditionally believe constituted a "personnel file." Moreover, there is remaining uncertainty about whether this law requires the creation of new employment records, what qualifies as "negative information" in a personnel

record under the law, how the document retention periods for personnel records interact with separate retention requirements, and how this obligation to maintain personnel files will be interpreted by the courts in discrimination and retaliation cases.

As the effective date of November 8, 2026 is swiftly approaching, employers are encouraged to work with their management team to ensure that there is a protocol in place to collect “personnel records” and to consider centralizing the records to facilitate complying with employee requests. Employers are further encouraged to review current personnel file contents against the law’s mandatory inclusion list to ensure that required documents are maintained, update internal record retention policies, and develop plans for responding to personnel file requests from employees and for notifying employees of “negative information” being placed in their file. Moreover, it is recommended that employers ensure that supervisors and those working in Human Resources are aware of these new obligations, as well as the anti-retaliation provision of the new law. This new law is yet another reason that we recommend employers review existing personnel policies and handbooks yearly to ensure that they are up to date. For those employers with union employees, we recommend assessing how this new law aligns with any existing collective bargaining agreements.

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