New York's New Personnel File Law

Managing Records and Responding to Requests

Scott P. Horton
Horton Law PLLC

HORTON
Management Law

NY Labor Law § 210-b

- New employee “personnel record” rights
- Based on long-time Massachusetts law
- Access, notice, and rebuttal provisions
- Recordkeeping and anti-retaliation obligations
- Preserves CBA provisions allowing substantially similar access

Timing

- Effective November 8, 2026
- Governor’s agreement for legislative clarifications of “ambiguities”
- Nothing formally delays effective date at this point

Anticipated Amendments

- “Employers are not required to create a personnel file or produce new documents beyond the records they currently maintain”
- “Personnel files only include records or documents used to determine an employee’s qualifications for hiring, retention, promotion, transfer, additional compensation or disciplinary action”

Covered Employers

- Private and public employers
- No employee-count threshold
- Applies to current and former employees

“Personnel Record”

- “[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.
- Applications, evaluations, warnings, and termination records
- Includes records held by contracted recordkeepers
- Exclusion for certain third-party personal information “if disclosure of the information would constitute a clearly unwarranted invasion of such other person’s privacy.”

Included

- Name, address, DOB
- Job title and description
- Rate of pay and other compensation
- Waivers
- Applications
- Evaluations
- Warnings
- Disciplinary Notices
- Termination Records

Probably Not Included

- Medical records
- I-9 and Tax forms
- Insurance documents

Negative Information

- Information potentially affecting employment, pay, advancement, or discipline
- Notice within 10 days of placement
- No employee request required
- Resulting review outside the annual review limit

Employee Objections

- Correction or removal by mutual agreement
- Employee statement when disagreement remains
- Employee statement must accompany any subsequent disclosure of disputed information to a third party
- Procedures may be available for employee to seek removal of information employer knew, or should have known, was false

Access Requests

- Written request; copies within 5 business days
- No charge to employee
- Generally two reviews per calendar year
- Additional reviews following negative-information notices

Managing Records

- Retention throughout employment and 3 years after termination
- Coordination with other retention obligations and litigation holds
- Consistent handling across HR, supervisors, and vendors
- Review before deletion, correction, or disclosure

Enforcement & Penalties

- Attorney General enforcement
- Statutory fines: $500–$2,500
- Protection against retaliation
- Employee remedies concerning false information

Biggest Employer Risks

- Overlooking records outside the official personnel file
- Missing request or notification deadlines
- Disclosing third-party confidential information
- Inconsistent documentation or retaliatory responses

What to Review Now

- File contents, locations, and recordkeepers
- Evaluation and disciplinary documentation practices
- Retention schedules and deletion settings
- Existing policies, CBAs, and vendor arrangements

New Procedures

- Central contact for requests and deadline tracking
- Collection, review, and secure delivery process
- Negative-information notices and employee responses
- Supervisor training and escalation to counsel

Key Takeaways

1. Personnel records extend beyond the HR folder
2. Access requests and negative-information notices are separate obligations
3. Need consistent documentation and response procedures
4. Prepare now, but monitor legislative changes and regulatory developments

Questions?



scott@hortonpllc.com
(716) 508-7748