Navigating New York’s Personnel File Law: What Employers Need to Know

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New York has long treated personnel files as employer property, unlike a number of states that provide employees a statutory right to review their own files. That’s about to change.

In the 2025–2026 legislative session, both houses of the New York Legislature passed Senate Bill S3460 (companion bill A2107), adding a new Section 210-b to the Labor Law. The bill, modeled after Massachusetts' Personnel Record Law, gives every New York employee (public and private) the right to access their personnel records, receive notice when negative information is added, and respond to it. It now heads to Governor Kathy Hochul's desk. If she signs, employers have only 60 days to comply.

Here’s what HR professionals, business owners, and managers need to know, assuming Governor Hochul signs and enacts the bill into law.

What Counts as a “Personnel Record”

S3460 defines a “personnel record” broadly: any record an employer keeps that identifies an employee and is used, or may be used, in decisions about that employee's qualifications for employment, promotion, transfer, additional compensation, or discipline. In plain terms, this is what most people already think of as the personnel file, but the bill goes further by listing specific documents that must be included, such as the employee's name and contact information, job title and description, rate of pay and other compensation, start date, job application and resume, all performance evaluations, written warnings, probationary period records, signed waivers, dated termination notices, and any other documents relating to disciplinary action.

Here’s the catch: this definition can potentially sweep in far more than a traditional HR folder. Emails, internal evaluations, investigation findings, disciplinary notes, and records kept by managers, payroll, or third-party HR platforms may all qualify if used in employment decisions. The bill even reaches records held by outside vendors under contract to keep or supply personnel records. (One built-in limit: a personnel record doesn’t include personal information about someone other than the employee if disclosure would clearly invade that person’s privacy.)

The Five-Day Clock to Produce Records

Once the law takes effect, an employer receiving a written request must provide a complete copy of the employee's personnel record, at no cost, within five business days. Employers can generally limit employees to two requests per calendar year, but a request triggered by newly added negative information doesn’t count toward that cap. This right also extends to former employees. There’s no

deadline for former employees to make a request, though employers only need to keep a complete record for three years after separation. For companies with multiple worksites, decentralized HR, or a mix of paper and electronic files, that five-day turnaround will be the hardest part to operationalize.

Notice of “Negative Information,” and the Right to Respond

This is the most significant, and most uncertain, change. Employers would have to notify an employee within 10 days of placing any information in the file that is, has been, or may be used to negatively affect the employee’s qualifications for employment, promotion, transfer, compensation, or discipline. That could include written warnings, performance improvement plans, negative reviews, emails regarding an employee’s poor performance, and disciplinary notices. The law doesn’t clearly define what it means to “negatively affect” an employee, and the word “may” suggests the notice obligation could be read very broadly. Until there’s guidance or litigation, it remains to be seen what the law will require.

After providing notice, the employee then gets a chance to respond. If the employee disagrees with anything in the file, both sides can mutually agree to correct or remove it; if not, the employee may submit a written statement that becomes part of the personnel file. That statement must travel with the personnel file whenever the information is shared with a third party. Employees can also go to court to expunge information the employer “knew or should have known to be false.” The bill leaves real ambiguity here.

Recordkeeping, Retaliation, and Penalties for Non-Compliance

The law requires employers to retain a complete personnel record, without deletions, from the date of hire through three years after separation. It also adds robust anti-retaliation protections: employers can’t discharge, threaten, penalize, or discriminate against an employee for exercising these rights. Enforcement authority rests with the New York Attorney General, who is authorized to bring actions and issue fines between $500 and $2,500.

What Employers Should Do Now

With just 60 days from the Governor’s signature, employers will not have much time to come into compliance. Here’s how to get ahead:

- **Inventory your records.** Identify what’s kept, where it lives, and who controls it, including manager inboxes, payroll systems, and third-party platforms. Ensure that all required documents are kept within personnel files.
- **Build a request process.** Designate where written requests go, who pulls the records, and how you will handle responding to employee requests within the five-business-day window.
- **Create a negative-information protocol.** Decide how you will flag negative information, send the 10-day notice, and file employee rebuttals.

For questions or guidance regarding New York Senate Bill S3460, please contact a member of Kelley Drye’s Labor and Employment team.