

Publications

Illinois Expands Employee Access to Personnel Records

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On January 1, 2025, the Illinois amendments to the state's Personnel Records Review Act (PRRA) took effect. The amendments expand the type of documents employees have access to but increase the requirements requesting employees must meet to access them.

The Existing Law

The PRRA applies to any individual or entity that employs five or more employees. It provides employees with access to documents used or intended to be used to determine employment actions (hiring, promotion, etc.), discipline, or compensation. Employees must satisfy certain basic requirements in their requests, including a limit of two requests per year, making requests only at "reasonable intervals," and paying the cost of the duplication, if required by the employer.

The PRRA also provides for the time to comply (within seven working days of receiving the request, with an additional seven calendar days if the initial deadline cannot be met), location and timing of the inspection (near the employee's place of employment and during normal work hours), emailing or mailing the record on request, and exempting certain records from review (e.g., test documents, letters of reference, and investigatory records relevant to suspected criminal conduct).

New Categories of Available Records

The most notable change for employers under the amended PRRA is the addition of three new categories of documents available to employees on request: (1) employment-related contracts or agreements that bind the employee, (2) employee handbooks that apply or applied to the employees, and (3) written employer policies or procedures that apply or applied to the employees. The amendments also expand the existing category of documents to include documents used or intended to be used to determine benefits.

As far as exempted documents, the amendments add employers' trade secrets, client lists, sales projections, and financial data to the list of documents employees may not review.

New Requirements for the Request and Inspection Processes

Employees must now make their requests in writing, which includes email. The requests must also be made to someone responsible for maintaining the records and the request must contain the following specific information: the records requested, the action requested (inspect, copy, or receive copies), the format requested (hard copy or electronic), who will perform inspection (employee or representative), and if applicable, a signed waiver to release medical information.

If the employer does not maintain records in a requested category, it may notify the employee of that fact in writing. Additionally, if the records are already accessible to the employee, the employer may respond with instructions on how to access them. The amendments also clarify that the cost charged to the employee may not include imputed costs of time spent, copying machinery, or software licenses, among other examples.

New Enforcement Requirements

The existing enforcement methods include allowing employees to file complaints with the Illinois Department of Labor or an action in state court, if the department's conciliation efforts fail. The amendments clarify the requirement that the employee must exhaust their complaint with the department and either wait 180 days or obtain a certification that the department is unlikely to be able to resolve the complaint within 180 days before filing in state court.

The amendments do not change the existing penalties, which include actual damages, costs of bringing enforcement, and, if willful, a \$200 penalty and attorneys' fees.

Takeaways for Employers

Employers who do business in Illinois should review their current recordkeeping practices and record request policies to ensure compliance with the new requirements. Contact your Vorys lawyer with questions regarding Illinois' personnel records requirements or similar requirements in other jurisdictions.