

New York Joins Growing List of States Requiring Employee Access to Personnel Records

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After Governor Kathy Hochul signed [S.3460](#) into law on September 9, 2026, New York is now one of 18 states that require employers to provide employees access to their personnel records. The statute will apply in both public and private sectors employees and former employees, effective November 8, 2026.

Expanded Definition of “Personnel Record,” Record Retention Requirement

The new law defines "personnel record" as records that are used, have been used, or may be used in connection with decisions concerning an employee's qualifications for employment, promotion, transfer, compensation, or discipline. The definition also extends to records maintained by third-party vendors acting on behalf of an employer.

As a result, employers may need to evaluate not only the contents of formal personnel files, but also records maintained through payroll providers, HR platforms, and other personnel administration services. Employers will also have to determine whether manager working notes, internal communications regarding employee performance, draft evaluations, or portions of investigative files are subject to disclosure. Although the law excludes certain information that would constitute an “unwarranted invasion” of another individual's privacy, it provides limited guidance on how that exclusion should operate in practice when employers are balancing employee access rights against confidentiality concerns.

Employers must retain complete personnel records during an employee's employment and for three years following separation.

When Access and Notice Requirements are Triggered

The statute has a straightforward requirement for scenarios where an employee requests access to their file. Upon receiving a written request, employers will be required to furnish personnel records within five business days at no cost to the employee. Employees are entitled to review their personnel records twice in a calendar year.

But the statute creates an unclear requirement for scenarios where an employer adds items into the personnel file that could “negatively affect” the employee. Specifically, if there is any item added to the personnel file that could “negatively affect the employee's qualification for employment, promotion, transfer, additional compensation or the possibility that the employee will be subject to disciplinary action,” it must notify employees within 10 days.

In its current form, the law does not define what constitutes “negative” information, which will likely create substantial compliance questions. For example, it is unclear whether routine coaching memoranda, attendance records, customer complaints, investigatory materials, manager notes, performance improvement plans, or preliminary performance concerns trigger the notice obligation. Similarly, employers may struggle to determine whether information becomes “negative” only after

a disciplinary decision has been made or whether notice is required whenever a document could potentially influence a future employment decision.

Right to Respond to Information in File

The new law allows employees to submit written statements contesting information contained in their personnel records. If the employer and employee cannot agree on whether the challenged information should be removed from the personnel file, the employer will be required to include the employee's contention in their personnel file. The statute also provides employees with an avenue to expunge contested information through the "judicial process" with relatively little guidance regarding how disputes involving subjective performance evaluations or disputed factual conclusions should be resolved.

Government Entity in Charge of Enforcing Statute

The New York State Attorney General's Office is responsible for enforcing this new law. Violations of the statute may result in civil penalties ranging from \$500 to \$2,500. The law also prohibits retaliation against employees who exercise their rights under the statute.

As a result of the ambiguities surrounding what information constitutes a "personnel record," when information added to a personnel file "negatively affects" an employee, and the particular process an employee needs to follow in order to successfully "expunge" an item in their personnel record, the New York State Attorney General's Office may weigh in to provide guidance on how it plans to enforce this law. In the meantime, employers will be required to make judgment calls regarding the scope of the notice requirement until courts or regulators provide guidance.

Conclusion

With the November 8, 2026, effective date rapidly approaching, employers should begin reviewing personnel record practices, assessing the records maintained by third-party vendors, updating retention protocols, and developing procedures for responding to employee requests within the statute's five-business-day deadline. Employers should also consider training human resources personnel and managers regarding the law's notice requirements, particularly given the uncertainty surrounding what information may be considered "negative."

While the law clearly reflects New York's intent to expand employee access to personnel information, many of its most consequential provisions remain open to interpretation. As employers prepare for implementation, the greatest compliance challenge may not be producing personnel records, but determining when the statute requires notice of information that could be viewed as having a negative impact on an employee's career. Until additional guidance emerges, employers should take a cautious approach and closely monitor developments surrounding this significant change to New York employment law.