

E2SHB 1320 - S COMM AMD
By Committee on Labor & Commerce

NOT CONSIDERED 05/17/2023

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature intends to codify,
4 modify, and clarify certain current laws and administrative
5 requirements regarding access to personnel files to:

6 (1) Increase transparency and knowledge for both employers and
7 employees;

8 (2) Provide greater consistency across all employment settings;
9 and

10 (3) Encourage more equitable compliance with and enforcement of
11 the law across all employment settings.

12 **Sec. 2.** RCW 49.12.250 and 1985 c 336 s 2 are each amended to
13 read as follows:

14 (1) ~~((Each))~~ Within 15 business days of a request by an employee,
15 former employee, or their attorney, agent, or fiduciary, each
16 employer ~~((shall make such file(s) available locally within a~~
17 ~~reasonable period of time after the employee requests the))~~ must
18 furnish to the employee or former employee a complete electronic or
19 paper copy of the employee's personnel file(s) as the contents of the
20 file(s) exist at the time of the request at no cost to the employee
21 or former employee.

22 (2) An employee annually may petition that the employer review
23 all information in the employee's personnel file(s) ~~((that are~~
24 ~~regularly maintained by the employer as a part of his business~~
25 ~~records))~~ or that are subject to reference for information given to
26 persons outside of the company. The employer shall determine if there
27 is any irrelevant or erroneous information in the file(s), and shall
28 remove all such information from the file(s). If an employee does not
29 agree with the employer's determination, the employee may at his or
30 her request have placed in the employee's personnel file a statement
31 containing the employee's rebuttal or correction. Nothing in this

1 subsection prevents the employer from removing information more
2 frequently.

3 (3) A former employee shall retain the right of rebuttal or
4 correction for a period not to exceed two years.

5 (4) Every employer shall, within 14 calendar days of receiving a
6 written request from a former employee, or their attorney, agent, or
7 fiduciary, furnish a signed written statement to the former employee
8 stating the effective date of discharge, whether the employer had a
9 reason for the discharge, and if so, the reasons.

10 (5) Five calendar days after giving notice of intent to sue, an
11 employee or former employee may enforce this section through a
12 private cause of action in superior court, without exhausting any
13 administrative remedies, and for each violation will be entitled to
14 equitable relief, statutory damages, and reasonable attorney fees and
15 costs. The notice of intent to sue must reference that the employee
16 or former employee has the right to bring a legal action under
17 Washington state law. The statutory damages for each violation are:
18 \$250 if the complete file, statement, or redaction log is not
19 provided within the respective due date provided in this section for
20 providing the file, statement, or redaction log; \$500 if the complete
21 file, statement, or redaction log is not provided within seven
22 calendar days after the respective due date provided in this section
23 for providing the file, statement, or redaction log; and \$1,000 if
24 the complete file, statement, or redaction log is provided later than
25 14 calendar days after the respective due date provided in this
26 section for providing the file, statement, or redaction log. The
27 statutory damages for any other violations shall be \$500.

28 (6) For the purposes of this section, "personnel file" includes
29 the following records, regardless of the labels of the files or
30 folders in which they are maintained:

31 (a) All job application records;

32 (b) All performance evaluations;

33 (c) All disciplinary records;

34 (d) All medical, leave, and reasonable accommodation records,
35 which an employer should maintain separately from other personnel
36 records for medical privacy;

37 (e) All payroll records;

38 (f) All employment agreements; and

1 (g) All other records the employer actually included and
2 maintained in a personnel or employment file for that employee,
3 however the file is designated.

4 (7) (a) This section may not be construed to create a retention
5 schedule for records or to entitle an employee to an employer's
6 protected legal file.

7 (b) This section does not require an employer to create personnel
8 records; rather the employer must furnish the records that the
9 employer has already created and included in a personnel file.

10 (8) Agents and fiduciaries must provide the document evidencing
11 their legal authority to represent the employee or former employee at
12 the time of any request.

13 (9) (a) An employer that is a health care provider may redact
14 patient information before sending the copy of the personnel file
15 only to the extent required by the federal health insurance
16 portability and accountability act of 1996. Within 14 calendar days
17 after furnishing the file, such employer must identify what
18 information is redacted and the specific provision of the federal
19 health insurance portability and accountability act of 1996 requiring
20 the redaction. The health care provider employer bears the burden of
21 proving that the redactions were required by law and that it provided
22 the redaction log as required. The health care provider employer is
23 subject to liability under this section for bad faith redaction or
24 failure to provide the redaction log.

25 (b) Upon receiving a request for an employee's or former
26 employee's own personnel file, unless the request specifies that it
27 is made under chapter 42.56 RCW, a public employer must treat the
28 request as made under this section and the request is not subject to
29 the requirements of, or exemptions to, chapter 42.56 RCW. However, a
30 public employer must apply the redactions required under RCW
31 42.56.250(6). The public employer must treat requests for any other
32 records that accompany the request for the personnel file as requests
33 made under chapter 42.56 RCW. The public employer bears the burden of
34 proving that it redacted only such information as required and is
35 subject to liability under this section for bad faith redaction.

36 (c) An employer that is a postsecondary educational institution
37 must redact the personal identifying information of the complainant
38 and any witnesses from any substantiated findings of sexual
39 misconduct committed by the employee while the employee was employed
40 with the postsecondary educational institution that are included in

1 the employee's personnel file or employment records. The institution
2 bears the burden of proving that it redacted only such personal
3 identifying information and is subject to liability under this
4 section for bad faith redaction.

5 (10) (a) The department must develop and furnish to each employer
6 information which describes an employer's obligations and an
7 employee's rights under this section.

8 (b) The department must provide this information to employers at
9 least annually, which may include being provided with other annual
10 notices.

11 (c) The employment security department must provide this
12 information to employers, as defined by RCW 50A.05.010, at least
13 annually, which may include being provided with other annual notices.

14 (d) Failure to provide the information does not relieve an
15 employer of its obligations under this section.

16 (11) If a conflict exists between this section and a collective
17 bargaining agreement in existence on the effective date of this act,
18 nothing in this section requires the parties to the agreement to
19 reopen negotiations of the agreement or to apply any of the rights
20 and responsibilities under this section unless and until the existing
21 agreement is reopened or renegotiated by the parties or expires.

22 (12) For purposes of this section:

23 (a) "Agent" means an attorney-in-fact granted authority under a
24 durable or nondurable power of attorney.

25 (b) "Fiduciary" means an original, additional, or successor
26 personal representative, guardian, or trustee.

27 NEW SECTION. Sec. 3. This act takes effect January 1, 2024."

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28 On page 1, line 1 of the title, after "records;" strike the
29 remainder of the title and insert "amending RCW 49.12.250; creating a
30 new section; prescribing penalties; and providing an effective date."

EFFECT: (1) Changes the due date for personnel files to 15
business days, from 14 calendar days. Modifies the damages to reflect
the due date change.

(2) Requires an employee or former employee to provide five days' notice of intent to sue, which must include a reference that the person has the right to bring a legal action under Washington state law.

(3) Removes provisions that the personnel file must be unredacted unless redaction is required under the statute.

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