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**SECOND SUBSTITUTE HOUSE BILL 1320**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** House Appropriations (originally sponsored by Representatives Reed, Berry, Ortiz-Self, Ramel, Pollet, and Fosse)

AN ACT Relating to access to personnel records; amending RCW 49.12.250; creating a new section; prescribing penalties; and providing an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

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

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

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

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

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

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

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

(5) An employee or former employee may enforce this section through a private cause of action in superior court, without exhausting any administrative remedies, and for each violation will be entitled to equitable relief, statutory damages, and reasonable attorney fees and costs. The statutory damages for each violation shall be: $250 if the complete file, statement, or redaction log is not provided within 14 calendar days from the due date; $500 if the complete file, statement, or redaction log is not provided within 28 calendar days from the due date; and $1,000 if the complete file, statement, or redaction log is provided later than 28 calendar days from the due date. The statutory damages for any other violations shall be $500.

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

(a) All job application records;

(b) All performance evaluations;

(c) All disciplinary records;

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

(e) All payroll records;

(f) All employment agreements; and

(g) All other records the employer actually maintained in a personnel or employment file for that employee, however designated.

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

(b) This section does not require an employer to create personnel records; rather the employer must furnish the records that the employer has already created.

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

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

(b) Upon receiving a request for an employee's or former employee's own personnel file, unless the request specifies that it is made under chapter 42.56 RCW, a public employer must treat the request as made under this section and the request is not subject to the requirements of, or exemptions to, chapter 42.56 RCW. However, a public employer must apply the redactions required under RCW 42.56.250(6). The public employer must treat requests for any other records that accompany the request for the personnel file as requests made under chapter 42.56 RCW.

(c) An employer that is a postsecondary educational institution must redact the personal identifying information of the complainant and any witnesses from any substantiated findings of sexual misconduct committed by the employee while the employee was employed with the postsecondary educational institution that are included in the employee's personnel file or employment records. The institution bears the burden of proving that it redacted only such personal identifying information and is subject to liability under this section for bad faith redaction.

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

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

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

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

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

(12) For purposes of this section:

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

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

NEW SECTION. **Sec.**  This act takes effect January 1, 2024.

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