

EMPLOYMENT LAW UPDATE: Effective November 8, 2026, Employee Personnel Files Will No Longer Be For Employer's Eyes Only

By Danielé D. De Voe, Esq. and Hillary K. Massey, Esq.

A new state statute signed into law by Governor Hochul on September 9, 2026 will go into effect on November 8, 2026 as New York Labor Law ("NYLL") §210-b. This new statute (1) gives current and former employees the right to access and challenge information in their "personnel records"; (2) requires employees to be notified when information is placed in their personnel record that could negatively impact the employment relationship; and (3) sets strict penalties for non-compliance.

Although the law takes effect in early November, important provisions of the law are broad, unclear and, in some cases, contradictory. The Governor has already instructed legislators to address some of these issues in the 2027 legislative session by amending the law. However, Employers must prepare now to comply with the statute as enacted.

WHO IS COVERED?

The statute defines an "employee" as a person "currently employed or formerly employed by an employer." It defines an "employer" broadly to include individuals, corporations, partnerships, labor organizations, unincorporated associations, governmental entities, public employers, commercial entities, and their agents.

However, the law does not expressly define its geographic reach – leaving unanswered questions about employers located outside New York employing remote workers within the state, as well as New York-based employers with employees functioning elsewhere.

Existing NYLL precedent generally disfavors extraterritorial application except in limited circumstances. Accordingly, employers should assume that the law applies at least to employees who perform work in New York, regardless of the employer's location.

WHAT IS A "PERSONNEL RECORD"?

The definition of what constitutes a "personnel record" in the statute is overly broad and includes any record kept by an employer that identifies an employee and "is used or has been used, or may affect or be used relative to that employee's qualifications for employment, promotion, transfer, additional compensation or disciplinary action."

As presently written, the definition of "personnel record" does not limit itself to the more traditional paper personnel file kept in a Human Resources filing cabinet. As such, the new statute in its current form could include such things as emails, text messages, manager notes, and other informal communications if they could affect an employment decision related to an employee.

Governor Hochul's Approval Memorandum recognizes this concern and calls upon the Legislature to narrow the definition to more conventional personnel-file materials, such as resumes, compensation records, job descriptions, and performance evaluations. Until the statute is amended, however, employers should plan for the broader language to apply.

The definition of a “personnel record” states that it includes not only records maintained by the employer itself, but also includes records maintained by third parties that have “a contractual agreement with the employer to keep or supply a personnel record.” This means that an employer cannot simply contract with a third party vendor to manage their “personnel records” to avoid compliance with the new law.

The definition of “personnel record” also states that a “personnel record shall not include information of a personal nature about a person other than the employee if disclosure of the information would constitute a clearly unwarranted invasion of such other person's privacy.” However, the new law does not define what constitutes a “clearly unwarranted invasion of another person’s privacy.” The statute further does not explain how this exception applies to workplace investigations, witness statements, complaints, or other sensitive materials. Until there is further clarification, Employers should take particular care with documents that may identify complainants, witnesses, or other employees.

The last section of the definition of “personnel record” is clearly contradictory. It begins by stating that this section is limited to the extent that such a record exists – but then goes on to imply an affirmative obligation for an employer to create and maintain a “personnel record” for every employee with the use of the word “shall.”

More particularly, the latter portion of the definition section states that a personnel record “shall” include the following:

- Name, address, date of birth, job title, and job description
- Pay rate and other compensation
- Employment start date
- Job applications, resumes, and other employment inquiries
- Performance evaluations
- Written warnings concerning substandard performance
- Probationary-period lists
- Employee-signed waivers
- Dated termination notices
- Other documents relating to disciplinary action

The statute also states that “personnel records” must be maintained in typewritten or printed form, or handwritten in indelible ink.

Governor Hochul acknowledged the contradictory nature of this section in her Approval Memorandum and indicated that this provision needed to be amended to make clear that there was no affirmative obligation for an employer to create or maintain a “personnel record,” but rather this provision only applies to employers who have a practice of creating and maintaining “personnel records.”

However, such revision would be of nominal effect as the broad definition of what constitutes a personnel record in its present form results in virtually anything constituting a “personnel record” – thus resulting in essentially all employers being subject to this new law, regardless of whether a more formal HR Personnel File is maintained.

HOW OFTEN CAN AN EMPLOYEE REQUEST TO SEE HIS OR HER “PERSONNEL RECORD”?

NYLL §210-b(2) states that an employer is only required to provide an employee with access to “personnel records” twice in a calendar.

However, this section also comes with the requirement that an employee must be notified ***within 10 days*** of an employer placing any information in the employee’s “personnel record” that has been or may be used to negatively impact the employee’s qualifications for employment, promotion, transfer or compensation, or will subject the employee to disciplinary action. The law entitles the employee to access his or her “personnel record” after such notification and this access is in addition to, not counted against, the aforementioned twice-per-year provision.

Considering the overly broad definition of what constitutes a “personnel record” and the equally vague definition of what constitutes a triggering event requiring notice, the reality is that employees are entitled to access their “personnel records” *at least* twice per year and this number will likely be quantifiably more.

Equally problematic is the new law’s use of the word “placing” to trigger the employer’s obligation to provide notice within ten (10) days. In this current digital world that we live in, employers often do not maintain more conventional paper personnel files. Instead, managers often maintain communications regarding personnel issues on their own individual computer or in text messages on their personal cellular phones. The law is silent as to whether hitting “send” on an email or text to another member of management discussing a personnel issue constitutes “placing” negative information in an employee’s “personnel record.”

The law further provides no guidance on what type of notice is required or the contents thereof.

It is also important to be reminded that the definition of “Employee” under this new law includes both current and former employees. This definition coupled with the affirmative obligation to maintain a “personnel record” for a period of three years after termination means that former employees also have the right (1) to access their “personnel record” *at least* twice per year for a period of three years after termination **and** (2) to be provided notice within ten business days of any negative information being placed in their “personnel record” even after the employment relationship is terminated, voluntarily or involuntarily.

HOW DOES AN EMPLOYER NEED TO PROVIDE SUCH ACCESS?

The new law is also contradictory about the type of access that must be granted with some sections requiring that an employee be provided “with a copy” of their “personnel record” at no cost, while a continuation of this same section merely requires that an employee be allowed “to review the employee’s personnel record.” The law is also silent as to whether a digital copy is sufficient or a paper copy must be provided.

HOW LONG DOES AN EMPLOYER HAVE TO PROVIDE AN EMPLOYEE WITH ACCESS TO THEIR “PERSONNEL RECORD”?

NYLL §210-b(2) requires that an employer provide an employee with access to their “personnel record” within five (5) **business** days of receipt of a written request.

WHAT HAPPENS IF AN EMPLOYEE DISPUTES SOMETHING PUT IN THEIR “PERSONNEL RECORD”?

NYLL §210-b(3) permits an employee to dispute any information contained in a “personnel record” and ask that such information be removed or corrected.

The employer can thereafter agree to voluntarily remove such information – but if the employer declines, the employee is entitled to submit a written statement that must be added to the “personnel record” and included with any third-party request for the employee’s file.

While NYLL §210-b(4) provides that an employer must preserve a personnel record – without deletions or expungement – during employment and for three years after termination of employment, NYLL §210-b(3) permits deletion of contested information upon mutual agreement.

DOES THIS NEW LAW SUPERSEDE A COLLECTIVE BARGAINING AGREEMENT?

Not necessarily. In fact, NYLL §210-b(6) explicitly provides that the new law does not supersede the terms of a collective bargaining agreement (“CBA”) **so long as** such agreement provides at least substantially similar rights to an employee.

If an existing CBA provision does not meet the law’s minimum access requirement, then it needs to be amended to provide unionized employees with such rights.

WHAT IS THE PENALTY FOR NONCOMPLIANCE?

NYLL §210-b(7) provides that the penalty for non-compliance shall be not less than \$500.00 and not more than \$2,500.00 **per violation**. It further provides that this section shall be enforced by the New York State Attorney General, which leads to the reasonable conclusion that there is no private right of action for an employee to sue an employer for non-compliance with this new statute’s record retention and access requirement.

However, the next section, NYLL §210-b(8), makes it unlawful for an employer to retaliate against an employee for requesting access to their “personnel record”. Thus, while an employee may not sue an employer for not complying with the record retention and access aspect of the law, it is reasonable to conclude that an employee has a private right of action to sue an employer for retaliating against the employee for requesting access to their “personnel records” under NYLL §§210-b(8) and 215.

WHAT SHOULD EMPLOYERS DO NOW?

Employers should not stop documenting performance, discipline, and other employment decisions because careful, accurate documentation remains essential to defending litigation and, particularly, a retaliation claim made under NYLL §§210-b(8) and 215.

Bearing the foregoing in mind, employers should assume going forward that employment-related written communications are not private communications among management and that everything they put into writing may be reviewed by the affected employee.

Employers should adopt disciplined, consistent documentation practices accordingly and members of management should be trained on proper document-retention policies.

It is important for employers with employees who perform work in New York State to act now to ensure that policies and procedures are put in place before the new law goes into effect on November 8, 2026. As such, employers should:

- Identify all locations where personnel-related records are stored, including HR systems, manager files, email, messaging platforms, shared drives, and third-party vendor systems;
- Determine which documents may qualify as “personnel records” under the statute’s broad language as now written;
- Create a written process for receiving, documenting, tracking, reviewing, redacting, and responding to written requests within five business days;
- Create a process for providing employees with timely notice of potentially negative information placed in their “personnel records” within ten business days;
- Develop protocols to protect confidential information and the privacy of complainants, witnesses, and other employees;
- Train HR personnel and managers on the new law, including appropriate documentation and escalation procedures;
- Review vendor agreements to ensure that personnel-file providers can support timely retrieval, preservation, and production of relevant records;
- Review handbooks, personnel-file policies, records-retention policies, and CBAs to ensure compliance with the new law; and
- Establish a retention process for “personnel records” during employment and for at least three years after termination.

Because the statute is expected to be amended in 2027, employers should monitor legislative developments closely. If you need assistance with complying with this new law, please reach out to one of our qualified labor law professionals today.