

H B

86

SENATE STATE AFFAIRS COMMITTEE

BILL NUMBER HB 86

SPONSOR House L+C

BILL TITLE Employee access to personnel files.

DATE REFERRED 3-7-89

HEARING SCHEDULED 3-20-89

FISCAL NOTE PREPARED ✓

SPONSOR CONTACTED ✓ Ginger 4954 (Donnelly)

INTERESTED PARTIES CONTACTED

✓ ^{Vilgen Plate 2700} Tom Stuart, Dept Labor X2725

12236 Keystone, Eagle River 99577

✓ Dennis Doughty,

United Food Commercial Workers 276-2829

✓ Pat Smutz ^{AFL-CIO} 463-3738

DOA; Personnel Gotherer 2201

Jamie Belenbasky ACLU 276-2258

Ben Ward, ARCO 586-3680

state does release
problem is with
other st

OTHER

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

HB 86

House Judiciary

2/27/89

SENATE COMMITTEE REPORT

FURTHER

L&C

3/7/89

DATE TURNED INTO OFFICE 3-20-89

Mr. President:

STATE AFFAIRS

Committee considered HB 86

employers to permit employees and former employees to have access to their personnel files

and recommended

- replace with _____ CS _____) same title
- or adopt _____ CS _____) new title
- attached amendment(s) and technical title change (HB only)
- _____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

FISCAL NOTE(S) zero fiscal impact appropriation no FN
 new updated previous
 same as previous fiscal note(s) published _____

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Signature]

Tim Kelly - No Rec

[Signature]

Chairman signature and recommendation

Committee Backup attached

HB 86 EMPLOYEE ACCESS TO PERSONNEL FILES

NOTIFIED

REP. DONLEY, SPONSOR (GINGER BAIM)

PAT SMUTZ, AFL-CIO

TOM STUART, DEPT. LABOR

BEVERLY WARD, A.R.C.O.

— Dave Otto, Dept. Administration (Personnel)

F.Y.I.

STATE EMPLOYEES ALREADY HAVE ACCESS TO PERSONNEL FILES. HB 86 WOULD APPLY TO PRIVATE SECTOR ALSO.

INTENT: ENSURE THAT EMPLOYEE RECORDS PASSED FROM ONE EMPLOYER TO ANOTHER ARE ACCURATE.

BILL DOESN'T REQUIRE EMPLOYERS TO ESTABLISH PERSONNEL FILES. BUT IF DO HAVE THEM, MUST LET EMPLOYEES SEE THEM.

BEVERLY WARD (A.R.C.O.) TESTIFIED IN HOUSE -- NONE OF HER CONCERNS WERE ADDRESSED IN BILL:

no way!
— ARCO HAS 26,000 EMPLOYEES IN ALASKA. ADMINISTRATIVE BURDEN IF ALL DECIDE WANT TO SEE AND COPY THEIR FILES. FORMER EMPLOYEES' FILES ARE SENT TO A PERMANENT STORAGE LOCATION. HASSLE IF HAVE TO RETRIEVE THESE. FILES MAY CONTAIN PROPRIETARY INFORMATION. *salary pay scale info on other employees*

13 OTHER STATES AND WASHINGTON D.C. HAVE SIMILAR LAWS:

CONNECTICUT - EMPLOYEE MUST PAY COST OF SUPPLYING DOCUMENT, NOT JUST DUPLICATION COSTS. CAN ONLY VIEW 2 TIMES/YR. EMPLOYEE MUST REQUEST IN WRITING. SOME MATERIAL OFF-LIMITS EVEN IF IN FILE: MEDICAL RECORDS, BONUS PLAN RECORDS, LETTERS OF REFERENCE, ANYTHING TO DO WITH A CRIMINAL INVESTIGATION.

// CALIFORNIA - CAN'T ACCESS LETTERS OF REFERENCE, CRIMINAL INVESTIGATION RECORDS.

WASH. D.C. - ACCESS ONLY IN PRESENCE OF EMPLOYER. "CERTAIN INFORMATION" CAN'T BE DISCLOSED.

MASSACHUSETTS - CAN'T ACCESS INFORMATION OF A PERSONAL NATURE ON SOMEONE OTHER THAN THE EMPLOYEE.

DELAWARE, ILLINOIS, AND OTHERS ALSO LIMIT WHICH DOCUMENTS MAY BE ACCESSED.

MANY STATES ALSO ADDRESS WHAT AN EMPLOYEE CAN DO IF HE DISAGREES WITH WHAT'S IN HIS FILE.



An Affiliate of the American Civil Liberties Union

P.O. Box 201844
Anchorage, AK 99520-1844

Office Location:
310 K Street
Anchorage, Alaska
(907) 278-2268

To: Senate State Affairs Committee
From: Jamie Bollenbach, Alaska Civil Liberties Union
Re: Comments on HB 86
Date: March 21, 1989

Jamie Bollenbach
Executive Director

The Alaska Civil Liberties Union strongly supports HB 86. The Union is interested in this as an issue of fairness in employment within the private and public sectors. With the recent Alaska Supreme Court decision restricting the privacy rights of private sector employees under our state constitution, legislative action to grant employees the right to inspect and copy their own personnel file is laudable.

Employers as well as employees have an interest in this legislation. The accuracy of the information in the file may depend on an employee's ability to examine and review the contents of the file. Information contained in these files is often critical to an employee's career. An accurate file facilitates fair dealing for the employee and the employer's ability to properly evaluate. The recognition that information in files may not always be accurate was part of the reason the Freedom of Information Act grants individuals the right to inspect files kept on them by some federal agencies. Fairness in employment also requires that a person at least be entitled to know the reasons for adverse employment action.

An inaccurate and poorly kept personnel file can also follow an employee around when looking for other work. It is difficult and sometimes impossible for an employee to evaluate whether information traded between a former and a prospective employer is correct without the employee's ability to inspect the file. (The ACLU received several complaints during the last year on the trading of information in personnel files.) If the information is wrong and is harming their chances of employment, at present there is not much an employee can do about it. Some common law protections exist, but these tend to be libel and slander, defamation of character, or emotional distress claims. The conduct of the employer must usually be outrageous for such a claim to stand, and since many people in this situation are unemployed, their ability to sue is limited.

The simplest way to avoid many of these problems, and more lawsuits between employers and employees, would be to grant the right to inspect the personnel file. Most employers and employees are conscientious, and I believe that disputes over the accuracy of information would tend to work out informally. If not, and the inaccurate information remains, employees would at least know what to expect when seeking promotion or looking for other work.

As a matter of public interest, state and federal law limits inquiry into an employee's marital status, religious beliefs, race, sex, or national origin, and passage of HB 86 creates an additional check on discrimination in employment. An unscrupulous employer who kept files on a person's religious beliefs, for example, would risk the employee finding out and pursuing a legitimate discrimination claim.

At least seven states have similar statutes - California, Michigan, Connecticut, Maine, Oregon, Pennsylvania, and Wisconsin.

HB 86 would help keep the information in personnel files limited to legitimate business interests, contribute to the accuracy of that information, and promote fair dealing between employers and employees.

Please contact me anytime if you have questions or would like further comments.



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

May 31, 1988

MEMORANDUM

TO: Representative Dave Donley

FROM: Sandi Depue *Sandi*
Administrative Officer

RE: Other States' Legislation Allowing Private Sector Employees Access
to Personnel Files
Research Request 88.259

You asked this agency to determine whether other states allow private sector employees access to their own personnel files. In our effort to gather this information, we contacted the National Conference of State Legislatures (NCSL) and the Council of State Governments (CSG). Our findings are summarized in this memorandum and in the attached document.

Thirteen states, plus the District of Columbia, have statutes which allow private sector employees access to their personnel files. The pertinent states are California, Connecticut, Delaware, Illinois, Maine, Massachusetts, Michigan, Nevada, Oregon, Pennsylvania, Rhode Island, Washington, and Wisconsin. In some cases, the statutes also address photocopying of documents within a file and an employee's right to correct or add documents to his or her file.

Brenda Trolin, of NCSL, sent copies of pages from the Employment Coordinator which deal with worker privacy laws (attached). The first page of the information indicates: "...The absence of an entry for any particular state means that worker privacy issues are not expressly regulated in that state by legislation...." Besides covering drug and AIDS testing, and various other privacy issues, the document details those states that have legislation regarding employee access to personnel files and gives a short summation of the legislation. I have highlighted the relevant sections of each state's summary. State statute citations are noted; we did not, however, photocopy the actual statutes. If you would like copies of them, or those of a particular state, please let us know.

I hope you find this information useful. If you need further information, please contact this agency.


Attachment

¶ EP-21,851. Worker privacy.

Whether, and to what extent, employees have rights protecting them from employer intrusion into their privacy are questions governed primarily, and almost exclusively, by state law.

Other than the federal Privacy Act, which relates to *governmental* intrusion into individuals' freedom (¶ EP-35,651 et seq.), and some court decisions holding Title VII inapplicable to employers' use of lie detectors and other truth tests (¶ EP-21,852), the federal government has thus far left the question of worker privacy in the private sector to regulation by the state legislatures.

Many states have enacted privacy statutes that deal with some aspect of the issue. Some states regulate the process by which an employer gathers information about employees and prospective employees, as well as how an employer can use or disclose to third parties the information gathered. With respect to the gathering of information, a particularly prevalent form of legislation deals with the use of polygraph or other honesty tests. Another area of common legislative concern involves the means by which an employee can gain access to his personnel file and correct or remove information from that file.


 **Note to Personnel:** Statutory worker privacy requirements should be implemented in company personnel policies dealing with matters such as employee selection (¶ PM-10,001 et seq.), job evaluations (¶ PM-12,081 et seq.), performance appraisals (¶ PM-14,051 et seq.), employee assistance programs (¶ PM-14,801 et seq.), and counseling programs (¶ PM-14,831 et seq.).

The following divisions (¶ EP-21,855 et seq.) identify and describe the provisions of state privacy statutes,¹ which have been enacted in 33 states, as well as the District of Columbia. The absence of an entry for any particular state

means that worker privacy issues are not expressly regulated in that state by legislation.

¶ EP-21,852. Effect of Title VII on use of lie detector tests.

Under Title VII, employers' use of polygraph tests to assure employee honesty has been approved, at least where the tests are not shown to have been applied unequally to,² or to have a disproportionate impact on,³ minority persons.

 **Caution:** Even though using a lie detector may not violate Title VII, this doesn't necessarily mean employers may do so with impunity. A number of states have enacted statutes prohibiting the practice. For example, the California statute prohibits private employers from requiring applicants or employees to take a polygraph as a condition of employment or continued employment (¶ EP-21,861).

Under State Laws

Arizona

¶ EP-21,855. Under what conditions can consumer report information about employees be gathered.

A consumer reporting agency may furnish a consumer report to any person the agency believes will use the information for employment purposes.⁴

¶ EP-21,856. How an employer can use consumer report information in a personnel file.

An employer that makes an adverse employment decision with regard to an individual must, upon written request, disclose the name and address of any consumer reporting agency

1. The reader is cautioned that this treatment discusses state statutes and does not attempt to reflect the law in any jurisdiction as it has been modified by administrative regulations or judicial decisions. The reader should, therefore, consult a state's regulatory compilations and judicial reporters for elaboration.

2. *Ramirez v Omaha* (1982, CA8) 678 F2d 751, 30 BNA

FEP Cas 477, 29 CCH EPD ¶ 32698; EEOC Decision No. 76-12 (Aug 15, 1975) CCH EEOC Decisions ¶ 6607.

3. EEOC Decision No. 76-65 (Nov 21, 1975) CCH EEOC Dec ¶ 6649.

4. *Ariz RS* § 44-1692 subd 1(b).

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EMPLOYMENT COORDINATOR

81,851

THIS INFORMATION IS PROVIDED BY THE



National
Conference
of State
Legislatures

1050 17th Street
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Denver, Colorado 80265
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that has furnished a consumer report considered in making the determination.⁵

California

¶ EP-21,860. Under what conditions can consumer report information about employees be gathered.

An investigative consumer reporting agency may furnish an investigative consumer report to any person the agency believes will use the information for employment purposes.⁶ If an investigative consumer report is sought for employment purposes, the person procuring or causing the report to be made must, no later than three days after the date on which the report was first requested, notify the consumer in writing that an investigative consumer report will be made. However, this rule does not apply when the report is sought for purposes of promotion or reassignment,⁷ or to determine whether an employee is to be retained or is engaged in any criminal activity likely to result in a loss to the employer.⁸

¶ EP-21,861. How an employer can use polygraph, voice stress analysis, or similar tests.

No employer, other than the federal or state government, or an agency or local subdivision, may require any applicant or employee to submit to a polygraph, lie detector, or similar test as a condition of employment or continued employment.⁹ Furthermore, no employer can request that any person take or administer such a test without first advising the person, in writing, at the time the test is to be administered, that the employer does not have the right to demand or require that the test be taken.¹⁰ In addition, no system that examines or records the voice prints or other voice stress patterns of any person can be used to determine the truth or falsity of statements made, without express written consent given in advance.¹¹

¶ EP-21,862. How an employer can use information in a personnel file.

No employee may be discriminated against in terms or conditions of employment due to a refusal to sign an authorization to disclose medical information, though an employer is not prohibited from taking necessary action in the absence of medical information due to an employee's refusal to sign an authorization.¹²

It is also unlawful for a public service corporation to discipline or discharge any employee based on a report by a special agent, detective, or spotter that involves a question of integrity, honesty, or breach of an employer rule, unless the employer gives notice and accords a hearing upon the accused employee's request. At this hearing, the employer must state specific charges, and the accused employee has the right to furnish testimony in his own defense.¹³

¶ EP-21,863. How an employee can gain access to a personnel file.

If an applicant signs any instrument relating to the obtaining of employment, he must be given a copy upon request.¹⁴ However, this rule does not apply to employment applications filed with railroad common carriers that are subject to the Railway Labor Act.¹⁵

Upon request, at reasonable times and at reasonable intervals as determined by the Labor Commissioner, an employee is also entitled to inspect employer personnel files used to determine qualifications for employment, promotion, additional compensation, or termination or other disciplinary action.¹⁶ A copy of each employee's personnel file must be kept at the place the employee reports to work, or must be made available there within a reasonable time after the request is made.¹⁷ However, the right of inspection does not apply to records relating to the investigation of a possible criminal offense or to letters of reference.¹⁸

An employer that possesses an authorization to disclose medical information regarding an

5. Ariz RS § 44-1693 subd A(3).

6. Cal Deering's Civ C § 1786.12(d)(1).

7. Cal Deering's Civ C § 1786.16(a)(2).

8. Cal Deering's Civ C § 1786.16(b).

9. Cal Deering's Lab C § 432.2(a).

10. Cal Deering's Lab C § 432.2(b).

11. Cal Deering's Pen C § 637.3(a).

12. Cal Deering's Civ C § 56.20(b).

13. Cal Deering's Pub Util C § 8251.

14. Cal Deering's Lab C § 432.

15. Cal Deering's Lab C § 434.

16. Cal Deering's Lab C § 1198.5.

17. Cal Deering's Lab C § 1198.5.

18. Cal Deering's Lab C § 1198.5.

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employee must furnish a true copy of the authorization to the employee upon demand.¹⁹

¶ EP-21,864. How the state can gain access to signed applications.

If an applicant is required to sign an application for employment, a copy of the application form must be filed in the office of the Division of Labor Standards Enforcement.²⁰ However, this rule does not apply to employment applications filed with railroad common carriers subject to the Railway Labor Act.²¹

¶ EP-21,865. How an employer can disclose medical records to outsiders.

Each employer that receives medical information must establish appropriate procedures to ensure its confidentiality and protection from unauthorized use and disclosure.²² Although disclosure of employee medical information usually requires signed authorization, there are a number of exceptions, such as when disclosure is compelled by judicial or administrative process.²³ The exceptions do not apply, however, if an employer agrees in writing with one or more of its employees or maintains a written policy that provides that particular types of medical information must not be disclosed.²⁴

A disclosure of medical information pursuant to a required authorization must communicate any limitations in the authorization regarding the use of the information.¹ Cancellation or modification of an authorization is effective only after the employer actually receives written notice.²

Connecticut

¶ EP-21,870. Under what conditions can information about employees be gathered.

It is unlawful for an employer to operate any electronic surveillance device or system to record or monitor employee activities in areas designed for health or personal comfort or for safeguarding their possessions, such as rest-

rooms, locker rooms, or lounges.³ It is also unlawful to intentionally overhear or record a conversation or discussion pertaining to employment contract negotiations without the consent of all parties.⁴

¶ EP-21,871. How an employer can use polygraph tests.

No employer, including the state and any of its political subdivisions, but excluding any police department, except for civilian employees within the department,⁵ may request or require that any employee or prospective employee submit to a polygraph examination as a condition of obtaining or continuing employment.⁶ Furthermore, no employee may be dismissed or disciplined for failing or declining to submit to a polygraph examination.⁷

¶ EP-21,872. How an employee can correct or remove information from a personnel file.

If an employee disagrees with any of the information contained in his personnel file (¶ EP-21,874.1) or medical records (¶ EP-21,874.2), and the employee and employer cannot agree on removal or correction of the information, the employee may submit a written statement explaining his position. This statement must be maintained as part of the file or records and must accompany any transmittal or disclosure made to a third party.⁸

¶ EP-21,873. How an employee can gain access to a personnel file or medical records.

An employee is entitled to inspect his personnel file within a reasonable time after the employer receives a written request.⁹ Similarly, if an employee so requests, an employer must permit a physician chosen by the employee or with the employee's consent to inspect the employee's medical records within a reasonable time after receipt of the request.¹⁰ In addition, each employer must, within a reasonable time after receipt of a written request from an

19. Cal Deering's Civ C § 56.22.

20. Cal Deering's Lab C § 431.

21. Cal Deering's Lab C § 434.

22. Cal Deering's Civ C § 56.20(a).

23. Cal Deering's Civ C § 56.20(c).

24. Cal Deering's Civ C § 56.20(d).

1. Cal Deering's Civ C § 56.23.

2. Cal Deering's Civ C § 56.24.

3. Conn GS § 31-48b(b).

4. Conn GS § 31-48b(d).

5. Conn GS § 31-51g(d).

6. Conn GS § 31-51g(b)(1).

7. Conn GS § 31-51g(b)(1).

8. Conn GS § 31-128e.

9. Conn GS § 31-128b.

10. Conn GS § 31-128c.

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employee, provide the employee with a copy of all or part of the employee's personnel file or provide the employee's physician with a copy of the employee's medical records. However, a fee reasonably related to the cost of supplying requested document may be charged.¹¹

An employer is not required to permit inspection more than twice a calendar year.¹²

¶ EP-21,874. How an employer can disclose personnel or medical records to outsiders.

With certain exceptions, no individually identifiable information contained in the personnel file or medical records of any employee may be disclosed by an employer to any person or entity not employed by or affiliated with the employer, unless the employee authorizes the disclosure in writing. The exceptions to this rule permit disclosure:

(1) to a third party that maintains or prepares employment records or performs other employment-related services for the employer;

(2) under a lawfully issued administrative summons or judicial order, including a search warrant or subpoena, or in response to a government audit or the investigation or defense of personnel-related complaints against the employer;

(3) under a law enforcement agency's request for an employee's home address and dates of attendance at work;

(4) in response to an apparent medical emergency or to apprise the employee's physician of a medical condition of which the employee may not be aware;

(5) to comply with federal, state, or local laws or regulations;

(6) where the information is disseminated under the terms of a collective bargaining agreement; or

(7) where the information merely verifies the employee's dates of employment and gives his title or position and wage or salary.

If the authorization involves medical records, the employer must remind the employee of his right or his physician's right of inspection and correction, his right to withhold authorization,

and what effect withholding authorization will have on him.^{12.1}

¶ EP-21,874.1. What is a "personnel file."

A "personnel file" means papers, documents, and reports pertaining to a particular employee that are used or have been used by an employer to determine the employee's eligibility for employment, promotion, additional compensation, transfer, termination, discipline, or other adverse personnel action. It includes evaluations or reports on the employee's character, credit, and work habits, but not medical records (¶ EP-21,874.2), stock option or management bonus plan records, reference letters, materials the employer uses to plan for future operations, separately maintained security files (¶ EP-21,874.3), test information that would invalidate the test if disclosed, or documents prepared for use in civil, criminal, or grievance proceedings.^{12.2}

¶ EP-21,874.2. What are "medical records."

"Medical records" are all papers, documents, and reports prepared by a physician, psychiatrist, or psychologist that are in an employer's possession and are work-related or upon which the employer relies to make any employment-related decision.^{12.3} An employer may keep an employee's medical records separately and not as part of any personnel file.^{12.4}

¶ EP-21,874.3. What are "security files."

"Security files" are information relating to investigations of losses, misconduct, or suspected crimes, as well as investigative information maintained under government requirements. However, an employer must maintain this information separately and not use it to determine an employee's eligibility for employment to keep it from being considered part of an employee's personnel file (¶ EP-21,874.1).¹³

¶ EP-21,875. How an employer can use drug tests.

With one possible exception, an employer must use certain procedures in conducting any urinalysis drug test on employees or applicants to ensure the test's reliability (¶ EP-21,876) and

11. Conn GS § 31-128g.

12. Conn GS § 31-128h.

12.1. Conn GS § 31-128f.

12.2. Conn GS § 31-128a(3).

12.3. Conn GS § 31-128a(4).

12.4. Conn GS § 31-128c.

13. Conn GS § 31-128a(5).

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safeguard the confidentiality of testing information (¶ EP-21,877). The restrictions apply to any tests on employees that are used to determine eligibility for promotion, additional compensation, transfer, termination, or a disciplinary or other adverse personnel action.^{13.1}

An employer may require an employee to submit to a urinalysis drug test, only if one of the following conditions applies. First, an employer may require a test if it has a reasonable suspicion that the employee is under the influence of drugs or alcohol so that it adversely affects or could adversely affect his job performance.^{13.2}

Second, it may require a test on a random basis if:

- (1) the test is authorized by federal law;
- (2) the employee serves in an occupation that has been designated by regulations of the state's labor commissioner as a high risk or safety-sensitive occupation; or
- (3) the test is conducted as part of an employee assistance program sponsored or authorized by the employer in which the employee voluntarily participates.^{13.3}

Third, it may conduct medical screenings, with the express written consent of the employees, to monitor exposure to toxic or other unhealthy substances in the workplace or in the performance of job responsibilities if the tests are limited to the specific substances identified in the employee consent form.^{13.4}

Fourth, it may conduct a test under the supervision of the division of special revenue, within the department of revenue service, relative to jai alai players, jai alai court judges, jockeys, harness drivers, or stewards participating in activities upon which pari mutuel wagering is authorized by the state's statutes.^{13.5}

observation: The possible exception to the statute's various requirements involves the latter tests on participants in activities that are the subject of legalized gambling. While the law's provision concerning these tests does not use the term "exception" or "ex-

emption," its statement that nothing in the act restricts or prevents a urinalysis drug test program conducted under the supervision of the state agency regulating those activities appears to imply an exception.

An employer may not require an applicant to submit to a urinalysis drug test as a condition of employment, unless it notifies him in writing at the time of application of its intent to do so, and gives the applicant a copy of any positive result.^{13.6}

Liability for violations is discussed at ¶ EP-39,611 et seq.

observation: The law appears to regulate only the urinalysis method of drug testing. Other forms of testing, such as those that use blood, breath, or hair samples, are not expressly covered, although one might argue that the law implies a ban on any methods less reliable than those which it regulates.

¶ EP-21,876. How to administer drug tests.

Whenever an employer seeks to use a urinalysis drug test as the basis for making employment decisions, it must use a reliable methodology in an initial test, confirm any positive result from an initial test by a second and independent test that uses a reliable methodology, and again confirm with a separate third test utilizing a gas chromatography and mass spectrometry methodology or a methodology determined by the state's commissioner of health services to be at least as reliable.^{13.7}

Also, it is unlawful for an employer, or its representative, agent, or designee to observe an employee or prospective employee directly in the process of producing the urine specimen to be used in its drug testing program.^{13.8}

¶ EP-21,877. How an employer can disclose information obtained in drug tests.

With regard to any urinalysis drug test (¶ EP-21,875) on an applicant for employment, the employer can only disclose the results to an employee to whom the disclosure is necessary.^{13.9} Results of tests on employees are subject to the same privacy protections afforded

13.1. PA 87-551, § 2.

13.2. PA 87-551, § 6.

13.3. PA 87-551, § 7.

13.4. PA 87-551, § 8.

13.5. PA 87-551, § 10.

13.6. PA 87-551, § 3.

13.7. PA 87-551, § 2.

13.8. PA 87-551, § 4.

13.9. PA 87-551, § 3.

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other employee medical records (¶ EP-21,872-21,874).

The results of tests conducted by or on behalf of an employer are also inadmissible in any criminal proceeding.^{13.10}

¶ EP-21,878. Effect of the drug testing law on an employer's authority.

The drug testing law permits an employer to prohibit the use of intoxicating substances during work hours, and to discipline an employee for being under the influence of such substances during work.^{13.11}

Collective bargaining agreements are subordinate to the provisions of the drug testing law as to the privacy rights of any employee.^{13.12}

Delaware

¶ EP-21,880. How an employer can use polygraph, voice stress analysis, or similar tests.

It is unlawful to require or request, directly or indirectly, that any employee or prospective employee take a polygraph, lie detector, or

similar test or examination, including a voice stress analysis, as a condition of employment or continuation of employment.¹⁴

¶ EP-21,881. How an employee can gain access to a personnel file or medical records.

Every employer must, at reasonable times upon the request of an employee, permit that employee to inspect his own personnel file used to determine his or her qualifications for employment, promotion, salary increases, termination, or disciplinary action.^{14.1} More particularly, a personnel file includes employment applications, salary information, notices of commendations, warning, or discipline, authorization for a deduction or withholding of pay, fringe benefit information, leave records, employment history with the employer, and medical records. It does not include records relating to investigations of a possible criminal offense, reference letters, documents prepared for use in civil, criminal, or grievance procedures, information available to the employer under the Fair Credit Reporting Act, or material used by the employer for business operations.^{14.2}

13.10. PA 87-551, § 5.

13.11. PA 87-551, § 9.

13.12. PA 87-551, § 12.

14. 19 Del C § 704.

14.1. 19 Del C § 721.

14.2. 19 Del C 720(3).

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81,854B

3/21/89 EMPLOYMENT COORDINATOR

The employer must make personnel records available during the regular business hours of the office where the records are maintained. However, the employer may ask the employee to inspect his records on the employee's free time. At the employer's discretion, the employee may be required to file a written request describing either the purpose for the inspection or the particular parts of the record to be inspected.^{14.3}

The employer must allow the employee sufficient inspection time, and the employee may take notes. Employers are not required to permit employees to remove their personnel records from the place where the records are maintained, and, except for reasonable cause, the employer may limit inspections to one every calendar year.^{14.4}

¶ EP-21,882. How an employee can correct or remove information from personnel or medical records.

If an employee disagrees with any information contained in his personnel record, removal or correction of such information may be agreed on by the employee and his employer. If an agreement cannot be reached as to removal or correction, the employee may submit a written statement explaining his position, and the statement will become part of the employee's personnel record and must accompany any transmittal or disclosures of the record to third parties.^{14.5}

District of Columbia

¶ EP-21,885. How an employer can use polygraph tests.

No employer or prospective employer may administer, accept, or use the results of any lie detector test in connection with the employment of any individual. An employer or prospective employer also cannot have administered, inside the District of Columbia, any lie detector test to any employee, or to any potential employee whose employment, as contemplated at the time of administration of the test, would take place in whole or in part in the

14.3. 19 Del C § 721.

14.4. 19 Del C § 722.

14.5. 19 Del C § 723.

15. DC CA § 36-802(a).

District of Columbia.¹⁵ This rule does not apply to any criminal or internal disciplinary investigation conducted by the Metropolitan Police, the Fire Department, or the Department of Corrections.¹⁶

¶ EP-21,886. How an employee can correct or remove information from a personnel file.

Each employee has the right to present information immediately germane to any information contained in his official personnel record and to seek to have irrelevant, immaterial, or untimely information removed from the record.¹⁷

¶ EP-21,887. How an employee can gain access to a personnel file.

The official personnel record of a District of Columbia employee must be disclosed to the employee or any representative of his choice, though disclosure must be made in the presence of a representative of the agency having custody of the records, provided that certain information, such as criminal investigative reports, not be disclosed to any employee.¹⁸

¶ EP-21,888. How an employer can disclose personnel records to outsiders.

The mayor of the District of Columbia is authorized to issue rules and regulations governing the disclosure of official information contained in personnel records.¹⁹

Florida

¶ EP-21,888.5. How an employer can disclose medical records to outsiders.

No person may be compelled to identify or provide identifying characteristics which, if disclosed, would identify any individual who is the subject of serological tests. Any person who discloses the test results to another person, unless the disclosure is to the person receiving the test, is guilty of a first degree misdemeanor. This prohibition does not apply if:

(1) written consent is obtained from the test subject;

(2) the information is disclosed pursuant to the standard practice of medicine or public

16. DC CA § 36-802(b).

17. DC CA § 1-632.5(b).

18. DC CA § 1-632.5(a).

19. DC CA § 1-632.4.

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health, including consultation between physicians to determine diagnosis and treatment and communication of test results to an authorized facility; or

(3) test results are disclosed during medical or epidemiologic research without the individuals' names or identifying characteristics.^{16,1}

Georgia

¶ EP-21,889. How an employer can use polygraph tests.

Georgia forbids the use of polygraph examinations except as measures of stressful physiological responses. The use of a polygraph primarily to frighten or intimidate an examinee is prohibited.²⁰ Furthermore, a polygraph examiner may not use a preemployment polygraph examination as an accusatory interrogation to elicit a confession from the examinee.²¹

Any employee or applicant for employment who agrees to submit to a polygraph examination must sign a notification indicating that he

is consenting voluntarily to take the examination.²²

A polygraph examination consists of a complete pretest interview,²³ a chart examination,²⁴ and a post-test interview, if necessary, in which the examiner tells the employee his opinion of the test results and allows him to respond to those opinions.²⁵

A polygraph examiner may not ask a question during an examination unless he has previously submitted that question in writing to the employee.¹ Furthermore, a polygraph examiner specifically may not inquire into the following areas during preemployment or periodic employment examinations: 1) religious beliefs; 2) beliefs or opinions regarding racial matters; 3) political beliefs or affiliations; 4) beliefs, affiliations or lawful activities regarding unions or labor organizations; or 5) sexual preferences.² An employee must be allowed to tape record his examination if it concerns any matters directly relating to employment.³

19.1. Fla § 381.606.

20. Ga C § 43-36-1.

21. Ga C § 43-36-15(a)(3)(B).

22. Ga C § 43-36-15(a).

23. Ga C § 46-36-13(a)(1).

24. Ga C § 43-36-13(a)(2).

25. Ga C § 43-36-13(a)(3).

1. Ga C § 43-36-13(e).

2. Ga C § 43-36-14.

3. Ga C § 43-36-15(a)(3)(F).

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The information acquired from a polygraph examination may be disclosed only to: the employee or any other persons specifically designated in writing by him; the person, firm, corporation, partnership, business entity, or governmental agency that requested the examination; and any person named in a court order.⁴ Moreover, the examiner, upon written request by the employee must provide that employee with a copy of any opinion or conclusions concerning the polygraph examination.⁵

An employee who believes that an examination was improperly conducted may file a complaint with the State Board of Polygraph Examiners.⁶

An examinee's rights may not be waived, and the examiner may not request that an employee execute such a waiver.⁷ Georgia has created a state board of polygraph examiners and has guaranteed certain procedural rights for examinees. It has also instituted a qualification and licensing program for polygraph examiners. However, it has not specifically delineated the instances in which employers may use polygraph examinations.

Hawaii

¶ EP-21,890. Under what conditions can information about employees be gathered.

It is an unfair labor practice for an employer to employ any person to spy on employees or their representatives with respect to their exercise of any protected right.⁸

¶ EP-21,891. How an employer can use polygraph tests.

It is unlawful for any employer to require an employee to submit to a polygraph or lie detector test as a condition of employment or continued employment.⁹

Idaho

¶ EP-21,895. How an employer can use polygraph or similar tests.

No polygraph test or other lie detector test

may be required as a condition of employment or continued employment.¹⁰ However, this restriction does not apply to any law enforcement agency of the United States, the state of Idaho, or any political subdivision or governmental entity.¹¹

Illinois

¶ EP-21,900. How an employer can use polygraph, voice stress analysis, or similar tests.

Every examiner licensed to administer detection of deception examinations must use an instrument that meets state standards and must make the results of the test known to the person examined within five days of receipt of a written request.¹²

¶ EP-21,900.3. How an employer can use AIDS tests.

Under Illinois' AIDS Confidentiality Act, no person may perform an HIV test, a test for the presence of the AIDS virus, unless the test's subject or his legally authorized representative gives written, informed consent.^{12.1} A proper consent form must include an explanation of the test's (1) purpose, (2) potential uses, (3) limitations, (4) possible results and their meanings, and (5) procedures. The procedures must describe the voluntary nature of the test, the right to withdraw consent at any time, anonymity with respect to participation in the test and disclosure of test results, and confidential treatment of information identifying the subject and the test's results.^{12.2}

Because the right to anonymity effectively allows any employee or job applicant to deny identifiable test information to any employer,^{12.3} the Act severely restricts the usefulness of any workplace AIDS-testing program. However, the Act's restrictions do not apply to any

4. Ga C § 43-36-15(a)(4).
5. Ga C § 43-36-13(c)(4).
6. Ga C § 43-36-15(a)(1)(G).
7. Ga C § 43-36-15(b).
8. Haw RS § 377-6(10).
9. Haw RS § 378-21.

10. Ida C § 44-903.
11. Ida C § 44-904.
12. Ill. RS c 111 § 2403.
12.1. L 1987, PA 85-679, § 4.
12.2. L 1987, PA 85-679, § 3(d).
12.3. L 1987, PA 85-679, § 6.

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insurer regulated under the Illinois Insurance Code.¹²⁴ Also, the rule as to informed consent does not apply if a person is specifically required by law to be tested.¹²⁵

¶ EP-21,900.4. How an employer can disclose information obtained from AIDS tests.

No person may disclose or be compelled to disclose the identity of anyone who is the subject of an HIV test (¶ EP-21,900.3), or disclose test results in any way that permits the test's subject to be identified. However, this rule does not apply to any disclosure made to the test subject, his legally authorized representative, any person designated in a legally effective release of the test results signed by the subject or his representative, an agent of a health facility or health care provider that has authority to obtain the test results to assure the safety of donated blood or other fluids or tissues, or a person allowed access to the record by a court order.¹²⁶

¶ EP-21,901. Under what conditions can information about nonemployment activities be gathered.

An employer cannot gather or keep a record of an employee's associations, political activities, publications, communications, or nonemployment activities, unless the employee submits the information in writing or authorizes the employer in writing to keep or gather the information. However, employers are permitted to keep a record of the following employee activities:

(1) activities that occur on the employer's premises or during the employee's working hours that interfere with the performance of the employee's duties or the duties of other employees;

(2) activities, regardless of when and where they occur, that constitute criminal conduct or may reasonably be expected to harm the employer's property, operations, or business or could by the employee's action cause the employer financial liability.¹³

12.4. L 1987, PA 85-679, § 15.1.

12.5. L 1987, PA 85-679, § 11.

12.6. L 1987, PA 85-679, § 9.

13. Ill RS c 48 § 2009.

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¶ EP-21,902. How an employee can gain access to a personnel file.

Employers, upon an employee's request, which may be in writing on a form supplied by the employer, must permit the employee to inspect any personnel records intended to be used in making employment decisions.¹ The employee's request to inspect personnel records must be complied with within seven working days. However, an employer may have an additional seven days to comply, if reasonable cause can be shown. An employee may, at reasonable intervals, request two inspection opportunities in a calendar year, unless otherwise provided in a collective bargaining agreement.

The inspection should take place at a location reasonably near the employee's workplace, and should occur during normal working hours, unless another time or place is more convenient for the employee. If an employee demonstrates that he is unable to review his personnel record at this location, the employer shall, upon the employee's written request, mail a copy of the requested record to the employee.²

The right of the employee to inspect his personnel record does not apply to:

- (1) letters of reference;
- (2) any portion of a test document, except a cumulative total test score;
- (3) material used by the employer for management planning for work;
- (4) personal information about third parties that would constitute a clearly unwarranted invasion of privacy;
- (5) an employer that does not maintain any personnel records;
- (6) records concerning a claim between the employer and employee that may be discovered in a judicial proceeding; or
- (7) investigatory or security records maintained by an employer to investigate criminal conduct or other harmful activity by an employee, unless and until the employer takes adverse personnel action based on information in such record.³

An employer may charge a fee for providing

a copy of the employee's personnel files; however, the fee shall be limited to the actual cost of duplicating the information.⁴

¶ EP-21,902.1. How an employee can correct or remove information from a personnel file.

If an employee disagrees with any information contained in the personnel file, the removal or correction of that information may be mutually agreed on by the employer and the employee. However, if no agreement can be reached, the employee may submit a written statement explaining his position. The employer must attach this statement to the disputed portion of the personnel record and include the statement whenever that disputed portion is released to a third party, as long as the disputed record is a part of the file. The inclusion of any written statement attached in the record, without further comment or action by the employer, will not imply or create any presumption of employer agreement with its contents. If either the employer or the employee knowingly places false information in the personnel record, the appropriate party will have a remedy through legal action to have that information expunged.⁵

¶ EP-21,903. How an employer can use information in personnel records.

Personnel information that was not included in the employee's personnel record, but should have been included, may not be used by an employer in a judicial or quasi-judicial proceeding. If, however, in the opinion of the judge in a judicial proceeding or the hearing officer in a quasi-judicial proceeding, the personnel record information was not intentionally excluded from the personnel record, it may be used by the employer in the proceeding if the employee agrees or has been given a reasonable time to review the information. Material that should have been included in the personnel record may be used at the request of the employee.⁶

¶ EP-21,904. How an employer can disclose personnel records to outsiders.

An employee who is involved in a current grievance against an employer may designate in

1. IL RS c 48 § 2002.

2. III RS c 48 § 2002.

3. III RS c 48 § 2010.

4. III RS c 48 § 2003.

5. III RS c 48 § 2006.

6. III RS c 48 § 2004.

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writing a representative to inspect any personnel records that may have a bearing on the resolution of the grievance. The representative may be a member of the employee's union or collective bargaining unit. The employer must allow the designated representative to inspect the employee's personnel record in the same manner as he would the employee himself.⁷

Before releasing personnel records to a third party, an employer must review it and delete disciplinary reports, letters of reprimand, or other records of disciplinary action that are more than four years old. However, where the release is ordered to a party in a legal action or arbitration, such records must be disclosed.⁸

An employer or former employer cannot disclose a disciplinary report, letter of reprimand, or other disciplinary action to third parties, including a party who is not a part of the employer's organization or a party who is not part of a labor organization representing the employee, without providing written notice to the employee. The notice must be by first-class mail to the employee's last known address and should be mailed on or before the date the information is disclosed. However, the employer may disclose information without notice if:

- (1) the employee has specifically waived written notice as part of a written, signed employment application with another employer;
- (2) the disclosure is ordered to a party in a legal action or arbitration; or
- (3) information is requested by a government agency as a result of a claim or complaint by an employee, or as a result of a criminal investigation by such agency.⁹

Iowa

¶ EP-21,905. How an employer can use polygraph tests.

An employer cannot require an applicant for employment or a current employee to take a polygraph examination as a condition of employment.¹⁰

7. Ill RS c 48 § 2005.

8. Ill RS c 48 § 2008.

9. Ill RS c 48 § 2007.

10. Iowa CA § 730.4.

1. Kan SA 44-808(6).

Kansas

¶ EP-21,910. Under what conditions can information about employees be gathered.

It is unlawful for an employer to employ any person to spy on employees or their representatives with respect to their exercise of any right created or approved by the statute governing employer-employee relations.¹

Maine

¶ EP-21,915. Under what conditions can consumer report information about employees be gathered.

If a consumer reporting agency furnishes a consumer report to an employer for use in determining eligibility or suitability for employment, promotion, reassignment, or retention as an employee,² the employer must give statutory notice to the individual.³

¶ EP-21,916. How an employer can use polygraph tests.

Polygraph examinations may not be used or referred to for hiring or employment purposes, with the exception of employees of or applicants for employment with law enforcement agencies. An employee may, however, voluntarily request a polygraph examination provided that the result is not used against the employee, the employee is given a copy of the statute governing polygraph examinations at the time the examination is requested, and either the examination is recorded or a witness of the employee's choice is present during the examination, or both, as the employee requests.⁴

¶ EP-21,917. How an employer can use consumer report information in a personnel file.

Denial of a benefit by an employer based wholly or partly on information contained in a consumer report or investigative consumer report from a consumer reporting agency must be disclosed in writing to the individual against whom the adverse action has been taken.⁵

¶ EP-21,918. How an employee can gain access to a personnel file.

When permitted or required by statute, records containing state employee personal infor-

2. 10 Me RSA § 1313 subd 3.

3. 10 Me RSA § 1314.

4. 32 Me RSA § 7166.

5. 10 Me RSA § 1320 subd 1.

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mation, such as performance evaluations, may be examined by the employee to whom they relate.⁶ Upon written request, an employee, or former employee, must be provided with an opportunity to review his personnel file.⁷ The review must take place during normal office hours, and the time spent by an employee in reviewing his file is not considered to be work time.⁸

A private or former employee is also entitled to review his personnel file, if any, upon written request to his employer.⁹ The review takes place where the personnel files are maintained, during normal office hours. However, the employer has discretion to allow the review at a time and place more convenient for the employee.¹⁰

Transcripts, recommendations, and other documents submitted in support of an application for teacher certification and maintained in the office of the Commissioner of Education and Cultural Services may be made available to individuals and their representatives who request to examine their own records.¹¹ Individuals requesting copies of their records must bear the costs of copying them.¹²

A consumer reporting agency may not prohibit an employer that obtains a consumer report or investigative consumer report from disclosing the content of the report, other than medical information and sources of information, to the individual to whom it relates.¹³

¶ EP-21,919. How an employer can disclose personnel records to outsiders.

An employer that obtains a consumer report or investigative consumer report from a consumer reporting agency is prohibited from disseminating the report to any person other than the individual who is the subject of the report, with the exception of information contained in its own files as a result of its direct experience with the individual.¹⁴

Papers relating to examinations or evaluations of applicants for public employment, and records containing employee personal information, such as performance evaluations, are confidential and not open to public inspection. However, if disciplinary action is taken, the final written decision relating to that action is no longer confidential after it is completed.¹⁵

Transcripts, recommendations, and other documents submitted in support of an application for teacher certification and maintained in the office of the Commissioner of Education and Cultural Services must be confidential and may be made available only to school boards, superintendents, and authorized Department of Education and Cultural Services personnel.¹⁶

Maryland

¶ EP-21,926. What an employer can ask an applicant.

An employer may not require an applicant to answer any written or oral questions pertaining to any physical, psychological, or psychiatric illness, disability, handicap, or treatment that does not bear a direct and timely relationship to the applicant's fitness or capacity to properly perform the activities or responsibilities of the desired position.¹⁷ However, a proper medical evaluation by a physician for the purpose of assessing an applicant's ability to perform a job is not prohibited.¹⁸

¶ EP-21,927. How an employer can use polygraph or similar tests.

An employer, other than the federal government or its agencies, may not demand or require any applicant for employment or any employee to submit to a polygraph, lie detector, or similar test or examination as a condition of employment or continued employment.¹⁹

All applications for employment must con-

6. 5 Me RSA § 554.

7. 5 Me RSA § 638 (state employees).
30 Me RSA § 64 subd 2 (county employees).
30 Me RSA § 2257 subd 2 (municipal employees).

8. 5 Me RSA § 638 (state employees).
30 Me RSA § 64 subd 2 (county employees).
30 Me RSA § 2257 subd 2 (municipal employees).

9. 26 Me RSA § 631.

10. 26 Me RSA § 631.

11. 20-A Me RSA § 13004 subd 2.C.

12. 20-A Me RSA § 13004 subd 3.

13. 20 Me SA § 1320 subd 3.

14. 20 Me RSA § 1320 subd 3.

15. 5 Me RSA § 554 (state government classified service).
30 Me RSA § 64 subd 1 (county employees).
30 Me RSA § 2257 subd 1 (municipal employees).

16. 20-A Me RSA § 13004 subd 2.

17. Md AC Art 100 § 95A(a).

18. Md AC Art 100 § 95A(b).

19. MD AC Art 100 § 95(b).

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tain a statutory notice regarding polygraph examinations set out in bold face upper case type and separately acknowledged by the signature of the applicant.²⁰

Massachusetts

¶ EP-21,930. Under what conditions can consumer report information about employees be gathered.

An employer that procures or causes the preparation of an investigative consumer report on any individual must give statutory disclosure to the individual.²¹

A consumer reporting agency may furnish a consumer report to any person the agency believes will use the information for employment purposes.²²

¶ EP-21,931. How an employer can use polygraph tests.

It is unlawful for any employer to subject any employee or applicant, including any person applying for employment as a police officer, to a lie detector test, or to request, directly or indirectly, that a lie detector test be taken. Moreover, all applications for employment in Massachusetts must contain a clearly legible notice regarding the unlawful character of lie detector tests in the state. A lie detector test means any test utilizing a polygraph or any other device, mechanism, instrument or written examination, that is operated or the results of which are used or interpreted by an examiner for the purpose of detecting deception.²³

¶ EP-21,931.5. How an employer can use tests for AIDS.

It is unlawful for an employer to require HTLV-III antibody or antigen (AIDS) tests as a condition of employment.^{23.1}

¶ EP-21,932. How an employer can use consumer report information in a personnel file.

Disclosure is required if employment is denied or terminated wholly or partly because of information contained in a consumer credit report.²⁴

¶ EP-21,933. How an employee can gain access to consumer or medical reports.

Within a reasonable period of time after an individual receives disclosure that an employer has procured or caused the preparation of an investigative consumer report on the individual, a complete and accurate disclosure of the nature and scope of the investigation requested may be obtained.²⁵ The individual may also obtain from a consumer reporting agency clear and accurate disclosure of any consumer report on the individual that the agency has furnished for employment purposes within two years preceding the request.¹

If an employer requires a physical examination of an employee, the employee is entitled, upon request, to be furnished with a copy of the medical report following the examination.²

¶ EP-21,934. How an employee can correct or remove information from a personnel file.

If there is a disagreement between an employee and his employer over any information contained in the employee's personnel record, the employer and employee may mutually agree on a removal or correction of the information. If they cannot agree, the employee may submit a written statement explaining the employee's position, and that statement becomes a part of the employee's personnel record. The employer must include that statement whenever it transmits information in that personnel record to a third party as long as the original information remains part of the file. If an employer places in a personnel record any information that it knew or should have known to be false, the employee has a right through procedures authorized by a collective bargaining agreement, other personnel procedures, or judicial process to have that information deleted from the record.^{2.1}

¶ EP-21,934.3. How an employee can gain access to personnel records.

An employer must provide any employee who makes a written request to review his personnel record with an opportunity for such a review. The review must occur at the place of

20. MD AC Art 100 § 95(c).

21. Mass ALM c 93 § 53(a).

22. Mass ALM c 93 § 51(3)(b).

23. Mass ALM c 149 § 19B.

23.1. Mass ALM c 111 § 70(F).

24. Mass ALM c 93 § 62(a).

25. Mass ALM c 93 § 53(b).

1. Mass ALM c 93 § 56.

2. Mass ALM c 149 § 19A.

2.1. Mass ALM c 149 § 52C.

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employment during normal business hours. Also, the employer must provide the employee with a copy of his personnel record if the employee submits a written request for it. In this context, a "personnel record" does not include information of a personal nature on someone other than the employee, if disclosure of the information would constitute a clearly unwarranted invasion of the other person's privacy.^{2,2}

Michigan

¶ EP-21,935. Under what conditions can information about an employee's nonemployment activities be gathered.

An employer must not gather or keep a record of an employee's associations, political activities, or other nonemployment activities, unless the information is submitted in writing by or authorized to be kept or gathered, in writing, by the employee to the employer, or the activities occur on the employer's premises or during the employee's working hours and interfere with the employee's duties or duties of other employees.³ If a record of such nonemployment activities is kept as permitted, it must be part of the personnel record.⁴

However, when an employer has reasonable cause to believe that an employee is engaged in criminal activity that may result in loss or damage to the employer's property or disruption of the employer's business operation, and the employer is engaged in an investigation, a separate file of information relating to the investigation may be kept. Upon completion of the investigation, or after two years, whichever comes first, the employee must be notified of the investigation. Upon completion of the investigation, if disciplinary action is not taken, the investigative file and all copies of the material in it must be destroyed.⁵

If an employer is a criminal justice agency involved in the investigation of an alleged criminal activity or the violation of an agency rule by an employee, a separate confidential file must be kept, and, upon completion of the

investigation, if disciplinary action is not taken, the employee must be notified.⁶ If the investigation reveals that the allegations are unfounded or unsubstantiated, or if disciplinary action is not taken, the separate file must contain a notation of the final disposition of the investigation.⁷

¶ EP-21,936. How an employer can use polygraph, voice stress analysis, or similar tests.

The opportunity to refuse to take polygraph, psychological stress evaluation, or similar tests in employment situations is a civil right.⁸ Furthermore, the use of polygraph examinations as a condition of employment, promotion, or change in status of employment, or as an express or implied condition of a benefit or privilege of employment, is prohibited.⁹

¶ EP-21,937. How an employee can correct or remove information from a personnel file.

If there is a disagreement with information contained in a personnel record, removal or correction may be mutually agreed upon by the employer and the employee. If an agreement is not reached, the employee may submit a written statement explaining his position.¹⁰

¶ EP-21,938. How an employer can use personnel record information.

It is unlawful to discipline or discharge a railroad employee based on the report of a special agent, detective, or spotter that involves a question of integrity, honesty, or breach of any employer rule, unless the employer gives notice to the employee and grants a hearing upon request. At the hearing, the employer must state specific charges, and the accused employee has the right to cross-examine the person making the report and to employ counsel.¹¹

If the investigation by a criminal justice agency of an alleged criminal activity or violation of an agency rule by an employee reveals that the allegations are unsubstantiated, or if disciplinary action is not taken, information in the separate confidential file relating to the investigation must not be used in any future

2.2. Mass ALM c 149 § 52C.

3. Mich LA § 423.508(1).

4. Mich LA § 423.508(2).

5. Mich LA § 423.509(1).

6. Mich LA § 423.509(2).

7. Mich LA § 423.509(2).

8. Mich LA § 37.2102(1).

9. Mich LA § 37.203.

10. Mich LA § 423.505.

11. Mich LA § 750.519.

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consideration for promotion, transfer, additional compensation, or disciplinary action.¹²

Personnel record information that was not included in the record, but that should have been included, may not be used by an employer in a judicial or quasijudicial proceeding, unless, in the opinion of the judge or hearing officer, the information was not intentionally excluded. Furthermore, the employee must agree to such use or have been given a reasonable time to review the information.¹³ Material that should have been included must be used at the request of the employee.¹⁴

¶ EP-21,939. How an employee can gain access to personnel records.

An employee is entitled to review his personnel record, upon written request at reasonable intervals, at a location reasonably near his place of employment and during normal office hours.¹⁵ Review may be allowed at a time or location more convenient to the employee. Where review during normal office hours would require time off, some other reasonable time must be provided.¹⁶ If an employee demonstrates an inability to review the personnel record at the employing unit, the employer must mail a copy of the requested record to the employee, upon written request.¹⁷ After the review, the employee may obtain a copy of information, but an employer may charge a fee for providing the copy, limited to the actual cost of duplicating the information.¹⁸

¶ EP-21,940. How an employer can disclose personnel records to outsiders.

An employer or former employer must not divulge a disciplinary report, letter of reprimand, or other disciplinary action to a third party, to a party who is not a part of the employer's organization, or to a party who is not a part of a labor organization representing the employee, without prior written notice to the employee by first-class mail to his last known address. However, this requirement does not apply if the employee has specifically

waived written notice as part of a written, signed employment application with another employer, the disclosure is ordered in a legal action or arbitration, or information is requested by a government agency as a result of a claim or complaint by the employee.¹⁹

An employer must review a personnel record before releasing information to a third party and must delete disciplinary reports, letters of reprimand, or other records of disciplinary action that are more than four years old, unless the release is ordered in a legal action or arbitration.²⁰

If an employee submits a written statement explaining disagreement with information contained in a personnel record, the statement must be included when the record is divulged to a third party, as long as the original information is part of the file.²¹

Minnesota

¶ EP-21,945. Under what conditions can medical information about employees be gathered.

An employer, employment agency, or labor organization can, with the consent of the employee, obtain additional medical information for the purposes of establishing an employee health record.²²

¶ EP-21,946. How an employer can use polygraph, voice stress analysis, or similar tests.

It is unlawful to directly or indirectly solicit or require a polygraph, voice stress analysis, or any test purporting to test the honesty of any employee or prospective employee. It is also unlawful to sell or interpret a test that has been unlawfully solicited or required. If an employee requests a polygraph test, the employer or agent administering the test must inform him that taking the test is voluntary.²³ Results of a polygraph test taken at an employee's request may be disclosed only to persons authorized by the employee.²⁴

The state Supreme Court has held that the

12. Mich LA § 423.509(2).

13. Mich LA § 423.502.

14. Mich LA § 423.502.

15. Mich LA § 423.503.

16. Mich LA § 423.503.

17. Mich LA § 423.504.

18. Mich LA § 423.504.

19. Mich LA § 423.506.

20. Mich LA § 423.507.

21. Mich LA § 423.505.

22. Minn SA § 363.02 subd 1(7)(ii).

23. Minn SA § 181.75 subd 1.

24. Minn SA § 181.76.

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above statute does not violate the Constitution.²⁵

Montana

¶ EP-21,950. How an employer can use polygraph, voice stress analysis, or similar tests.

No person or business entity may require any person to take a polygraph test or any form of a mechanical lie detector test as a condition for employment or continuation of employment.¹

¶ EP-21,951. How an employer can use drug or alcohol tests.

No person or business entity may require any person to submit to a blood or urine test as a condition for employment, except employment in hazardous work environments or in jobs the primary responsibility of which is security, public safety, or fiduciary responsibility.^{1,1} Similarly, no person or business entity may require any employee to submit to a blood or urine test as a condition for continuation of employment, unless the employer has reason to believe that the employee's faculties are impaired on the job as a result of alcohol consumption or illegal drug use.^{1,2}

Also, prior to the administration of a drug or alcohol test, the employer must adopt a written testing procedure and make it available to all persons subject to testing. This procedure must call for:

(1) collection of each blood or urine specimen in a manner that minimizes invasion of personal privacy while ensuring the integrity of the collection process;

(2) collection of a quantity of specimens sufficient to ensure the administration of several tests;

(3) collection, storage, and transportation of the specimens in tamper-proof containers;

(4) adoption of chain-of-custody documentation procedures identifying how each specimen was handled and tested;

(5) verification of test results by two or more

different testing procedures before judging a test positive; and

(6) prohibition of the release of test results, except as authorized by the person tested or as required by a court.^{1,3}

An employer may not take any adverse action against a subject of a drug or alcohol test if that person presents a reasonable explanation or medical opinion indicating that the results of the test were not caused by alcohol consumption or illegal drug use.^{1,4}

¶ EP-21,952. How the subject of a drug or alcohol test can gain access to the test's results and an opportunity to supply other test results.

Any employer that conducts a drug or alcohol test on an employee or applicant must give a copy of the test results to the person tested and provide him the opportunity, at the expense of the person requiring the test, to obtain a confirmative test by an independent laboratory selected by the person tested. Also, the person tested must be given an opportunity to rebut or explain the results of either or both tests.^{1,5}

Nebraska

¶ EP-21,955. Under what conditions can medical information about employees be gathered.

When an employer requests an applicant for employment to submit to a medical examination, the employer must pay the cost of the examination.² However, this rule does not apply to the state or any subdivision of the state.³

¶ EP-21,956. How an employer can use polygraph, voice stress analysis, or similar tests.

No employer or prospective employer may require, as a condition of employment or continued employment, that a person submit to a truth and deception examination, unless the employment involves public law enforcement.⁴ This does not prohibit an employer from asking an employee or applicant to submit to a truth and deception examination if all of certain

25. State v Century Camera, Inc., (1981, Minn) 309 NW2d 735.

1. Mont CA 39-2-304(1)(a).

1.1. Mont CA 39-2-304(1)(b).

1.2. Mont CA 39-2-304(1)(c).

1.3. Mont CA 39-2-304(2).

1.4. Mont CA 39-2-304(4).

1.5. Mont CA 39-2-304(3).

2. Neb RS § 48-221.

3. Neb RS § 48-223.

4. Neb RS § 81-1932.

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conditions, such as that questions be job-related, are met.⁵

Nevada

¶ EP-21,960. How an employer can use polygraph tests.

A person or governmental entity that possesses the results of a polygraph examination or information obtained during a polygraph examination required to permit the examinee to obtain or retain employment must not release the results or information without written consent, unless ordered by a court of competent jurisdiction or as otherwise provided by law.⁶

¶ EP-21,960.1. How an employee can gain access to a personnel file.

An employee is entitled upon request, to inspect records containing both information used by an employer to determine the employee's qualifications, and information regarding any disciplinary action taken against the employee. However, an employee is not entitled to review confidential reports by previous employers or investigative agencies or information concerning the investigation, arrest or conviction of the employee for a violation of law.^{6.1}

In addition, a discharged employee has the right to inspect his personnel records within 60 days after his termination. An employer must therefore furnish the employee, upon request,

with a copy of these personnel records. The employee may be required to pay a fee equal to the actual cost of providing access to any copies of those records.

However, an employer is not required to furnish any copies of records to an employee or former employee unless the employee was employed for more than 60 days.^{6.2}

¶ EP-21,960.2. How an employee can correct or remove information from a personnel file.

An employee who believes that any information contained in his personnel records is inaccurate or incomplete, must notify his employer in writing of his contention. If the employer finds that the employee's contention is correct, the employer must change the file accordingly.^{6.3}

¶ EP-21,961. How an employer can use information in a personnel file.

It is unlawful to discipline or discharge any employee based on a report by a special agent, detective, or spotter that involves a question of integrity, honesty, or a breach of employer rules, unless the employer gives notice and a hearing to the accused employee, upon request. At this hearing, the accused employee must have the opportunity to be confronted with the person making the report and to furnish testimony in his defense.⁷

5. Neb. RS § 81-1932.

6. Nev. RS § 648A.260.

6.1. Ch 387, L. 1985 § 2(1).

6.2. Ch. 387, L. 1985 § 2 (2), (3), (4).

6.3. Ch. 387, L. 1985 § 3.

7. Nev. RS § 613.160 subd 1.

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New Hampshire

¶ EP-21,965. Under what conditions can consumer report information about employees be gathered.

The New Hampshire Fair Credit Reporting Act provides that a consumer reporting agency may furnish a consumer report to any person the agency believes will use the information for employment purposes.⁸ An employer may not procure or cause to be prepared an investigative consumer report on any individual, unless clear and accurate disclosure of that fact is made to the individual.⁹

¶ EP-21,966. How an employer can use consumer report information in a personnel file.

Disclosure is required when employment is denied, wholly or partly based on information contained in a consumer report from a consumer reporting agency.¹⁰

¶ EP-21,967. How an employee can gain access to consumer report contents and recipients.

Within a reasonable period of time after disclosure by an employer that an investigative consumer report has been procured or prepared on any individual, the individual may obtain a complete and accurate disclosure of the nature and scope of the investigation requested.¹¹ The individual is also entitled to obtain clear and accurate disclosure from any consumer reporting agency regarding the recipients of any consumer report on the individual furnished for employment purposes within the two-year period preceding the request for disclosure.¹²

New Jersey

¶ EP-21,970. How an employer can use polygraph tests.

It is unlawful for an employer, other than one authorized to manufacture, distribute, or dispense narcotics or controlled dangerous substances, to require an employee to take or submit to a lie detector test as a condition of employment or continued employment.¹³

8. NH RSA 359-B:4 subd I(c)(2).
9. NH RSA 359-B:6 subd I.
10. NH RSA 359-B:15 subd I.
11. NH RSA 359-B:6 subd 2.
12. NH RSA 359-B:9 subd I(c)(1).
13. NJ SA 2C:40A-1.
14. NM SA § 56-3-4.

New Mexico

¶ EP-21,975. Under what conditions can credit information about employees be gathered.

In order to obtain information from a credit bureau, an employer must certify that inquiries are made only for the purposes of bona fide business transactions, such as the evaluation of the qualifications of present or prospective employees.¹⁴

New York

¶ EP-21,980. Under what conditions can information about employees be gathered.

It is an unfair labor practice for an employer to spy on or keep under surveillance any activities of employees or their representatives in the exercise of their protected rights.¹⁵ Furthermore, an employer may not request a consumer report, other than an investigative consumer report, in connection with an employment application, unless the applicant is first informed.¹⁶ If the notice to the applicant indicates that subsequent consumer reports may be requested or utilized, no additional notice is required at the time the subsequent report is requested.¹⁷ In addition, no investigative consumer report on any employee may be procured or caused to be prepared by an employer, other than the employee's present employer, unless notice is given and authorization is obtained from the employee.¹⁸ Refusal to execute the authorization is grounds for declining to grant employment.¹⁹

Under the New York Fair Credit Reporting Act, a consumer reporting agency may furnish a consumer report to any person the agency believes will use the information for employment purposes.²⁰

¶ EP-21,981. How an employer can use a psychological stress evaluator test.

No employer may require, request, or knowingly permit any employee or prospective em-

15. NY CLS Labor Law § 704 subd 1.
16. NY CLS Gen Bus Law § 380-b(b).
17. NY CLS Gen Bus L § 380-b(c).
18. NY CLS Gen Bus L § 380-c.
19. NY CLS Gen Bus L § 380-c(d).
20. NY CLS Gen Bus L § 380-b(a)(3)(II).

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ployee to submit to a psychological stress evaluator examination, and no employer may administer or use the results of such a test for any reason whatsoever.²¹ Furthermore, it is unlawful for any individual to knowingly administer or participate in the administration of a psychological stress evaluator examination of an employee or prospective employee.²² In addition, a psychological stress evaluator examination may not be administered within the state to any individual seeking employment outside the state or for the purpose of continuing employment outside the state.²³

No employee may be discharged, disciplined, or discriminated against in any manner for filing a complaint or testifying in any proceeding or action involving violations of the statute regarding psychological stress evaluators.²⁴

¶ EP-21,982. How an employee can gain access to the names of recipients of a consumer report.

Any employee may obtain from any consumer reporting agency the names of recipients of any consumer report on the employee that it has furnished for employment purposes within the two-year period preceding the request, upon request and proper identification.²⁵

¶ EP-21,983. How an employer can disclose consumer reports to outsiders.

No employer may disseminate a consumer report or an investigative consumer report to any other person unless the other person has a legitimate business need for the information in connection with a business transaction involving the individual concerned in the report.¹

Ohio

¶ EP-21,985. Under what conditions can medical information about employees be gathered.

An employer may not require any prospective employee or applicant for employment to

pay the cost of a medical examination required by the employer as a condition of employment.²

¶ EP-21,986. How an employee can gain access to medical records maintained by an employer.

A copy of any medical report pertaining to an employee or former employee must be furnished to the employee upon request, provided that if a physician concludes that presentation of the employee's medical record directly to the employee will result in serious medical harm to the employee, the copy be given to a physician designated in writing by the employee.³ The employer may charge up to \$.25 for each page of a report furnished to an employee.⁴

Oregon

¶ EP-21,990. How an employer can use polygraph, voice stress analysis, or similar tests.

It is unlawful to require any person or employee to take a breathalyzer test, polygraph test, or any other form of lie detector test as a condition for employment or continuation of employment,⁵ or to directly or indirectly subject any employee or prospective employee to any breathalyzer test, polygraph examination, or psychological stress test.⁶ However, an employee may consent to administration of a breathalyzer test, and if the employer has reasonable grounds to believe that an employee is under the influence of intoxicating liquor, the employer may require the administration of a blood alcohol content test by a third party or a breathalyzer test as a condition for employment or continuation of employment. The employee, though, may not be required to pay the cost of any such test.⁷

A polygraph examination can be given to an individual who consents to it during the course of a criminal or civil judicial proceeding in which the person is a party or witness, or during the course of a criminal investigation conducted by a law enforcement agency, a district attorney, or the Attorney General.⁸

21. NY CLS Labor Law § 735 subd 1.

22. NY CLS Labor Law § 734 subd 1.

23. NY CLS Labor Law § 737.

24. NY CLS Labor Law § 736.

25. NY CLS Gen Bus L § 380-d.

1. NY CLS Gen Bus L § 380-i(c).

2. Ohio RC § 4113.21.

3. Ohio RC § 4113.23(A).

4. Ohio RC § 4113.23(b).

5. Ore RS 659.225(1).

6. Ore RS 659.227(1).

7. Ore RS 659.225(1), 659.227(5).

8. Ore RS 659.227(4).

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¶ EP-21,991. How an employee can gain access to a personnel file.

At the request of an employee, his employer must provide a reasonable opportunity to inspect, at the place of employment or work assignment, those personnel records used to determine qualification for employment, promotion, additional compensation, or employment termination or other disciplinary action, and must furnish a certified copy of the records.⁹ A certified copy of personnel records of a terminated employee must be provided to the employee if a request is made within 60 days after termination.¹⁰ An employer may make only such charge as is reasonably calculated to recover the actual cost of providing the service.¹¹

¶ EP-21,992. How long an employer should retain the personnel file of a terminated employee.

An employer must keep a terminated employee's personnel records for no less than 60 days after termination.¹²

Pennsylvania

¶ EP-21,995. How an employer can use polygraph, voice stress analysis, or similar tests.

It is unlawful to require that an employee or other individual, other than those in the field of public law enforcement or who dispense or have access to narcotics or dangerous drugs, be required to take a polygraph test or any form of a mechanical or electrical lie detector test as a condition for employment or continuation of employment.¹³ Furthermore, it is unlawful to use a psychological stress evaluator, audio stress monitor, or similar device to judge the truth or falsity of oral statements without the consent of the person whose statements are being tested.¹⁴

¶ EP-21,996. How an employee can gain access to a personnel file.

An employee is entitled to inspect his personnel file upon request at reasonable times to

determine his own qualifications for employment, promotion, additional compensation, termination, or disciplinary action.¹⁵

Puerto Rico

¶ EP-21,998. How an employer can use information obtained on an employee's support obligations.

An employer may not reveal, publicize, or instigate the use of any information obtained from an employee for purposes of complying with the local law on income withholding for support.^{15,1}

Rhode Island

¶ EP-22,000. Under what conditions can information about employees be gathered.

It is an unfair labor practice for an employer to spy on any activities of employees or their representatives in the exercise of protected rights.¹⁶

Whenever any employer requires a physical examination prior to employment, the cost of the examination must be paid by the employer, whether or not the prospective employee is hired.¹⁷

An employer may not obtain a patient's confidential health care information without the written consent of the patient or his authorized representative.¹⁸

¶ EP-22,001. How an employer can use polygraph tests.

It is unlawful for an employer or its agent, orally or in writing, to request, require, or subject any employee to a lie detector test as a condition of employment or continued employment.¹⁹ However, this rule does not apply to lie detector tests administered by law enforcement agencies in the performance of their official duties.^{19,1}

¶ EP-22,002. How an employer can use medical information in a personnel file.

An individual whose employment application

9. Ore RS 652.750(2).

10. Ore RS 652.750(3).

11. Ore RS 652.750(4).

12. Ore RS 652.750(3).

13. 18 Pa CS § 7321.

14. 18 Pa CS § 7507.

15. 43 P Pa SA §§ 1322-1323.

15.1. 1985, No. 106, § 4.

16. RI GS § 28-7-13(1).

17. RI GS § 28-62-1.

18. RI GS § 5-37.3-4(a).

19. RI GS § 28-6.1-1.

19.1. RI GS § 28-6.1-2.

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is denied or whose employment is terminated based solely or partly on confidential health care information is entitled, upon written request, to have copies of the information transferred to a physician designated in the request, though the employer may require payment of its actual cost of retrieval, duplication, and forwarding of the information.²⁰

¶ EP-22,002.5. How an employee can gain access to a personnel file.

Beginning January 1, 1987, an employer must permit an employee to inspect certain personnel files under certain conditions. The employee must make a written request to inspect at least seven days in advance (excluding Saturdays, Sundays, and holidays). Also, he has a right to inspect only at a reasonable time other than his work hours and only twice in a calendar year. He may not remove or copy the files, but the employer must supply copies of requested documents at a reasonable fee. The employer or its designee has a right to be present during the inspection.

The right to inspect applies to the personnel files used to determine the requesting employee's qualifications for employment, promotion, additional compensation, termination, or disciplinary action but not to any: (1) records related to investigation of a possible criminal offense; (2) records prepared for use in any civil, criminal, or grievance proceedings; (3) letters of reference; (4) medical records; (5) recommendations; (6) managerial records kept or used only by the employer; (7) confidential reports from previous employers; or (8) managerial planning records.^{20.1}

¶ EP-22,003. How an employer can disclose medical records to outsiders.

An employer that receives and retains confidential health care information must establish certain security procedures, such as limiting access to the information.²¹

South Dakota

¶ EP-22,005. How a state employee can gain access to a personnel file.

Any records required or maintained by the

20. RI GS § 5-37.3-5(a).

20.1. RI GS § 28-6.4-1.

21. RI GS § 5-37.3-4(c).

22. SD CL 3-6A-31.

Bureau of Personnel, including performance appraisals, that pertain to an employee in the executive branch of state government must be available and open to inspection by the employee during normal business hours.²²

Tennessee

¶ EP-22,010. How an employee can gain access to a personnel file.

Any certificated or professional school employee is entitled to access to his personnel file at any reasonable time and to a copy of specified documents, on request and on payment of reasonable compensation.²³

Any state employee, regardless of position or classification, is entitled to have access to his personnel files at any reasonable time and must be furnished copies of any material contained in his file upon request and payment of the cost of reproduction.²⁴

¶ EP-22,011. How an employer can use polygraph tests.

An employer may not take any personnel action based solely on the results of a polygraph examination.^{24.1}

Utah

¶ EP-22,015. How an employer can use polygraph, voice stress analysis, or similar tests.

It is unlawful to conduct a deception detection examination by polygraph, voice stress equipment, or other similar device in a surreptitious manner, without the physical presence of the subject and without the subject being aware of the examination. Furthermore, it is unlawful to use a refusal to submit to such an examination as the basis for denying or terminating employment.²⁵

¶ EP-22,016. How a public employee can gain access to a personnel file.

Upon receipt of a written request from a public employee to examine his personnel file, the employer must produce the file for inspection.

23. Tenn CA § 49-2-301(f)(28).

24. Tenn CA § 8-50-108.

24.1. Tenn CA § 62-27-128.

25. Utah CA 34-37-2(5), 34-37-16.

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tion and copying.²⁶ The cost of copying must be paid by the employee.²⁷ However, the right to examine and copy documents does not extend to those classified as "confidential" under the Utah Information Practices Act.²⁸

¶ EP-22,017. How an employer can use drug or alcohol tests.

An employer may test employees or prospective employees for the presence of drugs or alcohol as a condition of hiring or continued employment. However, the employer and management in general must themselves submit to testing on a periodic basis.¹

Observation: Although the statute's language suggests that drug and alcohol testing of an employer and its managerial staff is mandatory, it is likely that the statute's intent was to require that they be tested only if they impose a testing requirement on rank-and-file employees.

To ensure reliability in the testing procedure, the employer may designate the type of sample to be used for testing, may require samples from his employees and prospective employees, and may require them to present reliable identification to the person collecting the samples.² For current employees, the testing must be scheduled for some time during or immediately after the regular work period.³

All sample collection and testing must be:

- (1) performed under reasonable and sanitary conditions;
- (2) conducted with due regard for the privacy of the individual being tested;
- (3) reasonably calculated to prevent substitutions or interference with the samples;
- (4) documented by the labelling of samples to prevent erroneous identification of test results;
- (5) conducted with an opportunity for the employee or prospective employee to provide any information that he considers relevant to the test, including the identity of any prescription or nonprescription drugs he recently used or other relevant medical information;

(6) performed in a manner that reasonably precludes sample contamination or adulteration during collection, storage, and transportation; and

(7) conducted in conformity with scientifically accepted methods and procedures, including verification of any positive test result by gas chromatography, gas chromatography-mass spectroscopy, or other comparably reliable method, before any test results may be used as a basis for any adverse action by the employer.⁴

An employer may carry out a testing or retesting program for the presence of drugs or alcohol only within the terms of a written policy that has been distributed to employees and is available for review by prospective employees.⁵

This policy may require testing for:

- . . . investigation of an individual employee's possible impairment;
- . . . investigation of workplace accidents or thefts;
- . . . maintenance of safety for employees or the general public;
- . . . maintenance of productivity, quality of products or services, or security of property or information.⁶ Specifically, the testing need not be limited to circumstances where there are indications of individual, job-related impairment.⁶

If the employer receives a verified positive drug or alcohol test result indicating a violation of its written policy or if the employee or prospective employee refuses to provide a sample, the employer may:

- . . . require the employee to enroll in an employer-approved rehabilitation, treatment, or counseling program, that may include additional drug or alcohol testing, as a condition of continued employment;
- . . . suspend the employee with or without pay for a period of time;
- . . . terminate the employee;

26. Utah CA 67-18-3.

27. Utah CA 67-18-4.

28. Utah CA 67-18-5.

1. Utah CA 34-38-3.

2. Utah CA 34-38-4.

3. Utah CA 34-38-5(1).

3.1. Utah CA 34-38-6.

3.2. Utah CA 34-38-7(1).

3.3. Utah CA 34-38-7(2).

3.4. Utah CA 34-38-7(3).

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However, there are exceptions to the proscriptions against requiring lie detector tests. For example, employees that may require an applicant for employment to submit to a polygraph examination under the law are:

(1) the department of public safety, municipal police departments and county sheriffs, with respect to sworn police officers and deputy sheriffs;

(2) any employer whose primary business is the wholesale or retail sale of precious metals, gems or jewelry;

(3) any employer whose business includes the manufacture or the wholesale or retail sale of regulated drugs provided, however, that the tests are limited to employees who come in contact with such regulated drugs; and

(4) any employer authorized or required under federal law or regulation to administer polygraph examinations.^{5,6}

An employer may not discriminate against an employee for his having filed a complaint or otherwise participated in a proceeding regarding the polygraph prohibition.^{5,7}

Virginia

¶ EP-22,025. Under what conditions can information about employees be gathered.

It is unlawful for any employer to require any employee or applicant for employment to pay the cost of a medical examination or the cost of furnishing any medical records required by the employer as a condition of employment.⁸

Washington

¶ EP-22,030. How an employer can use polygraph or similar tests.

It is unlawful for any person, business, or the state of Washington, its political subdivisions or municipal corporations, to require any employee or prospective employee to take a lie detector or similar test as a condition of employment or continued employment. This rule

does not apply, however, to persons making an initial application for employment with any law enforcement agency, or an initial application for employment or the continued employment of persons who work in manufacturing, distributing, or dispensing controlled substances, or persons in sensitive positions directly involving national security.⁷

¶ EP-22,031. How an employee can gain access to a personnel file.

An employer must make all of an employee's personnel files available locally, at least once a year, within a reasonable time after receipt of an employee's request.^{7,1}

An employee is not entitled to review personal records relating to the investigation of a possible criminal offense, or records compiled in preparation for an impending lawsuit if they would not be available under the rules of pretrial discovery in state court.^{7,2}

¶ EP-22,032. How an employee can correct or remove information from a personnel file.

Once a year, an employee may request that the employer review all information in the employee's personnel file that is regularly maintained as a business record or that is subject to reference for information given to persons outside of the business.^{7,3} An employer, at his own discretion, may remove any irrelevant or erroneous information from the employee's personnel file. If an employee disagrees with his employer's determination, he may submit a statement of rebuttal or correction to be placed in his file.^{7,4} A former employee retains the right to rebut or correct information in his personnel file for two years.^{7,5}

West Virginia

¶ EP-22,035. How an employer can use polygraph or similar tests.

No employer, other than one authorized to manufacture, distribute, or dispense drugs (excluding ordinary drugs), law enforcement agencies, or state military forces, may require or

5.6. 21 Vt SA § 494b.

5.7. 21 Vt SA § 494d.

6. Va C § 40.1-28.

7. RC Wash 49.44.120.

7.1. Ch. 336, L. 1985 § 1, 2.

7.2. Ch 336, L. 1985 § 3.

7.3. Ch. 336, L. 1985 § 2(2).

7.4. Ch 336, L. 1985 § 2.

7.5. Ch. 336, L. 1985 § 2(3).

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request, either directly or indirectly, that any employee or prospective employee submit to a polygraph, lie detector, or similar test. In addition, no employer may knowingly allow the results of any such test administered outside the state to be used to determine whether to employ a prospective employee or to continue the employment of an employee in the state. However, the results of any examination that is authorized may be used solely for the purpose of determining whether to employ or to continue to employ any person exempted.⁸

Wisconsin

¶ EP-22,040. Under what conditions can information about employees be gathered.

It is an unfair labor practice for an employer to employ any person to spy on employees or their representatives with respect to the exercise of any protected rights.⁹

¶ EP-22,041. How an employer can use polygraph, voice stress analysis, or similar tests.

No employer may directly or indirectly require or administer a polygraph, voice stress analysis, psychological stress evaluator, or any similar test purporting to test the honesty of any employee or prospective employee. Further, no person may sell to or interpret for an employer a test known to have been solicited or required by an employer. An employee that requests such a test must be informed that taking the test is voluntary.¹⁰ However, these rules do not apply to the use of an instrument that, at a minimum, is capable of recording visually, permanently, and simultaneously indications of a person's cardiovascular pattern and its changes and a person's respiratory pattern and its changes.¹¹ Finally, any agreement offering employment or any pay or job benefit in return for taking a test is void.¹²

If a permitted test is given, statutory procedures, such as informing the test subject of all his rights, must be followed.¹³ No disciplinary action may be taken or employment decision made that is based on the results of a permitted

test, unless the employer has relevant evidence or information, obtained independently from the permitted test, tending to support the test results, or based on the refusal of the employee to take the test.¹⁴

In the absence of a valid and voluntary written agreement, any person can refuse to disclose any oral or written communication during, or any result of, an examination using an honesty-testing device.¹⁵ Such a test may not be given, and the giving of the test may not be disclosed, without prior written informed consent.¹⁶

¶ EP-22,042. How an employee can correct or remove information from a personnel file.

If an employee disagrees with information contained in personnel records, a removal or correction of that information may be mutually agreed on by the employer and employee. However, if no agreement can be reached, the employee may submit a written statement explaining his position. This statement will be attached to the disputed portion of the employee's personnel record.¹⁷

¶ EP-22,043. How an employee can gain access to personnel records.

Upon the request of an employee, which the employer may require to be made in writing, every employer must permit the employee to inspect any personnel documents used in determining the employee's qualifications for employment, promotion, transfer, additional compensation, termination, or other disciplinary action. At least two requests must be granted in a calendar year in the manner required by statute, unless otherwise provided in a collective bargaining agreement.¹⁸ An employee involved in a current grievance may designate in writing a representative of a union, collective bargaining unit, or other representative to inspect the employee's personnel records that may have a bearing on the resolution of the grievance.¹⁹

The right to inspect personnel records in-

8. W Va C 21-5-5b.

9. Wisc SA 111.06(j).

10. Wisc SA 111.37(1)(a).

11. Wisc SA 111.37(1)(b).

12. Wisc SA 111.37(2).

13. Wisc SA 111.37(3).

14. Wisc SA 111.37(4).

15. Wisc SA 905.065.

16. Wisc SA 942.06.

17. Wisc SA 103.13(4).

18. Wisc SA 101.13(2).

19. Wisc SA 103.13(3).

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cludes medical records concerning the employee, though if the employer believes that disclosure of medical records would have a detrimental effect on the employee, the medical records may be released to the employee's physician or through a physician designated by the employee. In that case, the physician may release the medical records to the employee or his immediate family.²⁰

The right to inspect personnel records does not apply in certain instances, such as letters of reference or records relating to the investigation of possible criminal offenses,²¹ but does

include the right to copy or receive a copy of records, provided the employer may charge a reasonable fee not to exceed the actual cost of reproduction.²²

¶ EP-22,045. How an employer can disclose personnel records to outsiders.

If an employee submits a written statement explaining his position in regard to any disputed portion of his personnel record, the statement must be attached to the disputed portion of the record and included whenever it is released to a third party for as long as it is a part of the file.²³

20. Wisc SA 103.13(5).

21. Wisc SA 103.13(6).

22. Wisc SA 103.13(7).

23. Wisc SA 103.13(4).

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Bill No. House Bill 86

Date January 30, 1989

Title "An Act requiring employers to permit employees and former employees to have access to their personnel files."

Contact: Tom Stuart
264-2452
Eileen Plate
465-2700

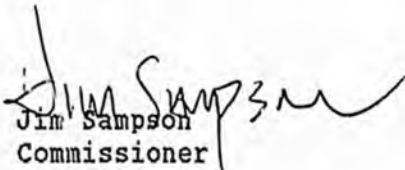
House Bill 86 requires employers to provide an employee or former employee access to his or her respective personnel records and to permit the employee to make copies of the records. The employer may charge the employee for the costs of duplicating the records.

Employees should have access to employer kept personnel records as provided in this bill. The accuracy of such records may have a direct bearing on a worker's employability should a prospective employer contact the worker's current or former employer as a reference. Under the provisions of this bill, a worker would have an opportunity to at least be aware of any discrepancies in the employer's personnel records.

The Department supports the provisions of this bill which provide workers a right to access and copy employer kept personnel records.

House Bill 86 would not have a fiscal impact on the Department of Labor.

APPROVED


Jim Sampson
Commissioner

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HB 86
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Labor
Title: "An Act requiring employers to
permit ...access to ...personnel files." BRU: Labor Standards & Safety
Sponsor: House Labor & Commerce Components: Wage & Hour
Requestor: House Labor & Commerce

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Tom Stuart, Director Phone: 465-2725
Division: Labor Standards & Safety Date: 1/26/89
Approved by Commissioner: Jim Sampson Date: 1/26/89
Agency: Department of Labor

Distribution (by preparer) :
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STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 13, 1989

SUBJECT: Scope of HB 86
(Access to personnel files)

TO: Representative Dave Donley

FROM: Teresa B. Cramer *JBC*
Legislative Counsel

You have asked whether HB 86 requires an employer to keep personnel files on employees. In my opinion, the answer is no. Under subsection (a), if an employer maintains personnel files, the employer must allow access to the information. There is nothing that affirmatively requires that the information be maintained in the first place.

If I may be of further assistance, please advise.

TC:kb
wkk1/119

Alaska State Legislature

Sen. Pat Pourchot, Chairman

Sen. Jan Faiks, Vice Chairman
Sen. Al Adams
Sen. Tim Kelly
Sen. Rick Uehling



P.O. Box V
State Capitol
Juneau, Alaska 99811

907-485-3712

Senate State Affairs Committee

MEMORANDUM

TO: Senate State Affairs Committee
FROM: Senator Pat Pourchot, Chairman
RE: March 20 Committee Meeting
DATE: March 20, 1989

Today at 1:30 p.m. in the Beltz Room the Senate State Affairs Committee will hear the following bills:

SB 173, An Act relating to municipal petitions and elections, and to appointments to fill certain municipal offices

SB 173 makes a number of clarifications to the statutes governing municipal petitions and elections. The bill was developed at the request of the Alaska Municipal League.

In general, SB 173 standardizes petition procedures, requires that a prime sponsor be designated on petitions, establishes a 30-day registration requirement for voting in municipal elections, provides special initiative requirements for ordinances that affect only part of a municipality, and prohibits appointment of a recalled official to fill the vacancy created by the recall.

The Community and Regional Affairs Committee adopted a committee substitute containing two changes recommended by the Division of Elections. Specifically, Sec. 7 of the CS amends the voter qualification statute to conform with the requirement in Sec. 8 that a voter be registered at a residence address within the municipality 30 days prior to a municipal election. Sec. 9 of the CS authorizes a municipality to require that a voter whose registration has been cancelled for non-activity reregister before voting.

HB 86, An Act requiring employers to permit employees and former employees to have access to their personnel files

HB 86 would require both private and public employers to provide employees access to their personnel records. Employees could make copies of their records and would pay for the cost of copying. HB 86 would not supersede any collective bargaining agreements.

According to House Research, 13 other states and the District of Columbia have similar statutes.