

## BULLARD-PLAWECKI EMPLOYEE RIGHT TO KNOW ACT

### Act 397 of 1978

AN ACT to permit employees to review personnel records; to provide criteria for the review; to prescribe the information which may be contained in personnel records; and to provide penalties.

**History:** 1978, Act 397, Eff. Jan. 1, 1979

**Popular Name:** Right-to-Know

*The People of the State of Michigan enact:*

#### **423.501 Short title; definitions.**

##### Sec. 1.

(1) This act shall be known and may be cited as the "Bullard-Plawecki employee right to know act".

(2) As used in this act:

(a) "Employee" means a person currently employed or formerly employed by an employer.

(b) "Employer" means an individual, corporation, partnership, labor organization, unincorporated association, the state, or an agency or a political subdivision of the state, or any other legal, business, or commercial entity which has 4 or more employees and includes an agent of the employer.

(c) "Personnel record" means a record kept by the employer that identifies the employee, to the extent that the record is used or has been used, or may affect or be used relative to that employee's qualifications for employment, promotion, transfer, additional compensation, or disciplinary action. A personnel record shall include a record in the possession of a person, corporation, partnership, or other association who has a contractual agreement with the employer to keep or supply a personnel record as provided in this subdivision. A personnel record shall not include:

(i) Employee references supplied to an employer if the identity of the person making the reference would be disclosed.

(ii) Materials relating to the employer's staff planning with respect to more than 1 employee, including salary increases, management bonus plans, promotions, and job assignments.

(iii) Medical reports and records made or obtained by the employer if the records or reports are available to the employee from the doctor or medical facility involved.

(iv) Information of a personal nature about a person other than the employee if disclosure of the information would constitute a clearly unwarranted invasion of the other person's privacy.

(v) Information that is kept separately from other records and that relates to an investigation by the employer pursuant to section 9.

(vi) Records limited to grievance investigations which are kept separately and are not used for the purposes provided in this subdivision.

(vii) Records maintained by an educational institution which are directly related to a student and are considered to be education records under section 513(a) of title 5 of the family educational rights and privacy act of 1974, 20 U.S.C. 1232g.

(viii) Records kept by an executive, administrative, or professional employee that are kept in the sole possession of the maker of the record, and are not accessible or shared with other persons. However, a record concerning an occurrence or fact about an employee kept pursuant to this subparagraph may be entered into a personnel record if entered not more than 6 months after the date of the occurrence or the date the fact becomes known.

**History:** 1978, Act 397, Eff. Jan. 1, 1979

**Popular Name:** Right-to-Know

#### **423.502 Personnel record information excluded from personnel record; use in judicial or quasi-judicial proceeding.**

Sec. 2.

Personnel record information which was not included in the personnel record but should have been as required by this act shall not be used by an employer in a judicial or quasi-judicial proceeding. However, personnel record information which, in the opinion of the judge in a judicial proceeding or in the opinion of the hearing officer in a quasi-judicial proceeding, was not intentionally excluded in the personnel record, may be used by the employer in the judicial or quasi-judicial proceeding, if the employee agrees or if the employee has been given a reasonable time to review the information. Material which should have been included in the personnel record shall be used at the request of the employee.

**History:** 1978, Act 397, Eff. Jan. 1, 1979

**Popular Name:** Right-to-Know

**423.503 Review of personnel record by employee.**

Sec. 3.

An employer, upon written request which describes the personnel record, shall provide the employee with an opportunity to periodically review at reasonable intervals, generally not more than 2 times in a calendar year or as otherwise provided by law or a collective bargaining agreement, the employee's personnel record if the employer has a personnel record for that employee. The review shall take place at a location reasonably near the employee's place of employment and during normal office hours. If a review during normal office hours would require an employee to take time off from work with that employer, then the employer shall provide some other reasonable time for the review. The employer may allow the review to take place at another time or location that would be more convenient to the employee.

**History:** 1978, Act 397, Eff. Jan. 1, 1979

**Popular Name:** Right-to-Know

**423.504 Copy of information in personnel record; fee; mailing.**

Sec. 4.

After the review provided in section 3, an employee may obtain a copy of the information or part of the information contained in the employee's personnel record. An employer may charge a fee for providing a copy of information contained in the personnel record. The fee shall be limited to the actual incremental cost of duplicating the information. If an employee demonstrates that he or she is unable to review his or her personnel record at the employing unit, then the employer, upon that employee's written request, shall mail a copy of the requested record to the employee.

**History:** 1978, Act 397, Eff. Jan. 1, 1979

**Popular Name:** Right-to-Know

**423.505 Disagreement with information contained in personnel record; agreement to remove or correct information; statement; legal action to have information expunged.**

Sec. 5.

If there is a disagreement with information contained in a personnel record, removal or correction of that information 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 the employee's position. The statement shall not exceed 5

sheets of 8-1/2-inch by 11-inch paper and shall be included when the information is divulged to a third party and as long as the original information is a part of the file. If either the employer or employee knowingly places in the personnel record information which is false, then the employer or employee, whichever is appropriate, shall have remedy through legal action to have that information expunged.

**History:** 1978, Act 397, Eff. Jan. 1, 1979

**Popular Name:** Right-to-Know

#### **423.506 Divulging disciplinary report, letter of reprimand, or other disciplinary action; notice; exceptions.**

##### **Sec. 6.**

(1) An employer or former employer shall 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 written notice as provided in this section.

(2) The written notice to the employee shall be by first-class mail to the employee's last known address, and shall be mailed on or before the day the information is divulged from the personnel record.

(3) This section shall not apply if any of the following occur:

(a) The employee has specifically waived written notice as part of a written, signed employment application with another employer.

(b) The disclosure is ordered in a legal action or arbitration to a party in that legal action or arbitration.

(c) Information is requested by a government agency as a result of a claim or complaint by an employee.

**History:** 1978, Act 397, Eff. Jan. 1, 1979

**Popular Name:** Right-to-Know

#### **423.507 Review of personnel record before releasing information; deletion of disciplinary reports, letters of reprimand, or other records; exceptions.**

##### **Sec. 7.**

An employer shall review a personnel record before releasing information to a third party and delete disciplinary reports, letters of reprimand, or other records of disciplinary action that are more than 4 years old. This section does not apply to any of the following circumstances:

(a) The release is ordered in a legal action to a party in that legal action.

(b) The release is ordered in an arbitration to a party in that arbitration.

(c) The release is part of a record regarding the reason or reasons for, and circumstances surrounding, a separation of service under section 5 of the law enforcement officer separation of service record act, 2017 PA 128, MCL 28.565.

(d) The release is requested by the Michigan commission on law enforcement standards, a law enforcement training academy, or a law enforcement agency for the purpose of determining compliance with licensing standards and procedures under the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.615.

**History:** 1978, Act 397, Eff. Jan. 1, 1979 ;-- Am. 2018, Act 521, Eff. Mar. 28, 2019

**Popular Name:** Right-to-Know

#### **423.508 Gathering or keeping certain information prohibited; exceptions; information as part of personnel record.**

Sec. 8.

(1) An employer shall not gather or keep a record of an employee's associations, political activities, publications, or communications of nonemployment activities, except if the information is submitted in writing by or authorized to be kept or gathered, in writing, by the employee to the employer. This prohibition on records shall not apply to the activities that occur on the employer's premises or during the employee's working hours with that employer that interfere with the performance of the employee's duties or duties of other employees.

(2) A record which is kept by the employer as permitted under this section shall be part of the personnel record.

**History:** 1978, Act 397, Eff. Jan. 1, 1979

**Popular Name:** Right-to-Know

**423.509 Investigation of criminal activity by employer; separate file of information; notice to employee; destruction or notation of final disposition of file and copies; prohibited use of information; release of information to certain law enforcement agencies.**

Sec. 9.

(1) If an employer has reasonable cause to believe that an employee is engaged in criminal activity that might 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, then the employer may keep a separate file of information relating to the investigation. Upon completion of the investigation or after 2 years, whichever comes first, the employee must be notified that an investigation was or is being conducted of the suspected criminal activity described in this section. 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.

(2) An employer that is a criminal justice agency and that is involved in the investigation of an alleged criminal activity or the violation of an agency rule by an employee shall maintain a separate confidential file of information relating to the investigation. Upon completion of the investigation, if disciplinary action is not taken, the employee must be notified that an investigation was conducted. 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 and information in the file must not be used in any future consideration for promotion, transfer, additional compensation, or disciplinary action. The employer may release information in the separate file to a prospective employing law enforcement agency if the information is part of a record regarding the reason or reasons for, and circumstances surrounding, a separation of service under section 5 of the law enforcement officer separation of service record act, 2017 PA 128, MCL 28.565. The employer shall release information in the separate file to the Michigan commission on law enforcement standards upon the request of the Michigan commission on law enforcement standards.

**History:** 1978, Act 397, Eff. Jan. 1, 1979 ;— Am. 2018, Act 521, Eff. Mar. 28, 2019

**Popular Name:** Right-to-Know

**423.510 Right of access to records not diminished.**

Sec. 10.

This act shall not be construed to diminish a right of access to records as provided in Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws, or as otherwise provided by law.

**History:** 1978, Act 397, Eff. Jan. 1, 1979

**Popular Name:** Right-to-Know

**423.511 Violation; action to compel compliance; jurisdiction; contempt; damages.**

Sec. 11.

If an employer violates this act, an employee may commence an action in the circuit court to compel compliance with this act. The circuit court for the county in which the complainant resides, the circuit court for the county in which the complainant is employed, or the circuit court for the county in which the personnel record is maintained shall have jurisdiction to issue the order. Failure to comply with an order of the court may be punished as contempt. In addition, the court shall award an employee prevailing in an action pursuant to this act the following damages:

(a) For a violation of this act, actual damages plus costs.

(b) For a wilful and knowing violation of this act, \$200.00 plus costs, reasonable attorney's fees, and actual damages.

**History:** 1978, Act 397, Eff. Jan. 1, 1979

**Popular Name:** Right-to-Know

**423.512 Effective date.**

Sec. 12.

This act shall take effect January 1, 1979.

**History:** 1978, Act 397, Eff. Jan. 1, 1979

**Popular Name:** Right-to-Know