

Client Alert | September 17, 2026

New York Employers Will Soon Face New Personnel Record Obligations; Requirements to Provide Employee Access

New York has enacted a new law that gives New York employees the right to access their personnel records and creates new employer obligations related to the retention of personnel records, placement of certain “negative information” in personnel records, and employee disputes related to such records. Governor Hochul signed S3460 into law on September 9, 2026, which will go into effect on November 8, 2026, thereby adding Section 210-b to the New York Labor Law. In doing so, New York becomes one of the growing number of states who provide mandatory access to employees’ personnel files.

What Must Be Included in an Employee’s Personnel Record?

The new law broadly defines a personnel record as “any record kept by an employer that identifies an employee, to the extent 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.” It further identifies specific written information or documents pertaining to the employee which **must** be included in a personnel record, such as:

- The employee’s name, address, and date of birth
- The employee’s job application, resumes and other inquiries submitted in response to the employer’s job posting
- The employee’s date of hire, job title and description
- The employee’s rate of pay and other forms of compensation
- All performance evaluations, evaluation documents, written warnings and all documents related to disciplinary actions taken against the employee
- Lists of any probationary periods applicable to the employee
- Waivers signed by the employee
- Termination notices

Under the new law, a personnel record includes documents or information that are in the possession of a third party that is under a contractual agreement with the employer to keep or supply such personnel record. The law also provides that a personnel record shall not include “information of a personal nature” about third parties if disclosure would constitute “a clearly unwarranted invasion of such other person’s privacy.”

In her Approval Memorandum, Governor Hochul indicated that this new law still contains ambiguities that need to be resolved, “including clarifying that employers are not required to create a personnel file or produce new documents beyond the records they currently maintain, and that personnel files only include records or documents used to determine an employee’s qualifications for hiring, retention, promotion, transfer, additional compensation, or disciplinary action.” Based on this, it does not appear to be the Legislature’s intent for Labor Law Section 210-b to require employers to create new records that it does not already keep for the purpose of complying with this law. Whether this includes such relevant documents as formal performance evaluations remains to be seen and will likely be the subject of new clarifications yet to come.

Notice Requirement When “Negative Information” Is Placed in the Personnel Record

Under the new law, employers must provide notice to employees ***within ten (10) days*** of placing information in their personnel record that “is, has been used or may be used, to negatively affect the employee’s qualification for employment, promotion, transfer, additional compensation or the possibility that the employee will be subject to disciplinary action.” This would, among other things, potentially include warning notices which reference actual or potential disciplinary action as well as performance assessments or evaluations which note the need for improvement in an employee’s performance as well as any other writing which calls into question an employee’s performance or ability to achieve increased responsibilities or promotion. It is unclear based on the statute’s current language whether an email stream, *e.g.*, between the employee and their supervisor noting performance deficiencies, might also be classified as “negative information” required to be placed in an employee’s personnel file or trigger notice to such employee of the existence of “negative information,” and it is equally unclear whether this is the type of issue which will be resolved in the upcoming legislative session. The law does not currently specify what language that must be included in such notice.

Employee Access to Their Personnel Record

Upon request from a current or former employee to access their personnel record, an employer must provide the employee with a copy of their personnel record, at no cost, ***within five (5)*** business days of the request. Employers must also permit an employee to review their personnel record up to two times in a given calendar year. However, there is no limit to the number of times an employee may be permitted to review their personnel record in connection with the placement of “negative information” in the record.

Dispute Process

The new law sets forth a process that an employer must undergo when an employee disagrees with information contained in their personnel record. First, Labor Law Section 210-b states that the “removal or correction of such information [that the employee disagrees with] may be mutually agreed upon by the employer and the employee,” thus arguably creating an obligation for an employer to attempt to resolve such disputes with an employee.

If an agreement cannot be reached, then the law provides a mechanism for the employee to submit a written statement explaining their position, which must be kept as part of their personnel record and included in any transmission of the personnel record to third parties. Many employers already provide a mechanism for an employee to respond to material in the employee’s file, so this new provision merely formalizes this employer obligation.

To the extent that information is placed in an employee’s personnel record that their employer “knew or should have known to be false,” the new law states that an employee shall have a remedy to have such information expunged. While the law provides that such remedy shall be provided “through the collective bargaining agreement, other personnel procedures or judicial process,” it does not provide any additional information regarding this remedy, such as how it will function if provided through judicial means, whether employees will have a private right of action, or whether employers must create a procedural remedy.

Three-Year Retention Period

Under this new law, employers must maintain an employee’s complete personnel record without any deletions or expungement of information from an employee’s date of hire to a point three years after their termination of employment.

Remedies

The new Labor Law Section 210-b provides that violations of the law will be punishable by a penalty of no less than \$500 and no more than \$2,500 and enforced by the Attorney General.

Anti-Discrimination and Anti-Retaliation Provision

Similar to other laws providing employees with specified legal rights, new Section 210-b includes an anti-discrimination and anti-retaliation provision, under which employers are prohibited from discriminating or retaliating against any employee who exercises rights under the law.

As currently written, however, the law does not expressly include a private right of action for employees who experience discrimination or retaliation under the law. However, the New York Legislature has expressed its intent that “[i]ndividual employees who face illegal discrimination or retaliation for exercising their rights under the statute may also bring a claim.” This may be a point that is clarified through future amendments to the law.

Next Steps for Employers

In anticipation of the new law’s November 8, 2026 effective date, employers should ensure they are prepared to comply with the new requirements of this law, including by:

- Training Human Resources or other professionals regarding what information must be regularly maintained in personnel records and what constitutes “negative information” that would trigger notice obligations under this new law
- Preparing the notice that will be issued to employees upon placement of negative information in their personnel record
- Considering whether to update their document retention policies

Key Contacts

Our [Labor & Employment Law team](#) is available to assist employers in attaining compliance with all New York Labor Laws, including new Section 210-b, as it may be amended, as well as responding to related complaints and investigations, in addition to any other employment law issues.

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