

CHAPTER 181

EMPLOYMENT; WAGES, CONDITIONS, HOURS,
RESTRICTIONS

181.960	Definitions.	181.963	Use of omitted personnel record.
181.961	Review of personnel record by employee.	181.964	Retaliation prohibited.
181.962	Removal or revision of information.	181.965	Remedies.
		181.966	Additional right of access to records.

181.960 DEFINITIONS.

Subdivision 1. **Applicability.** For purposes of sections 181.960 to 181.966, the following terms have the meanings given in this section.

Subd. 2. **Employee.** "Employee" means a person who performs services for hire for an employer, provided that the services have been performed predominately within this state. The term includes any person who has been separated from employment for less than one year. The term does not include an independent contractor.

Subd. 3. **Employer.** "Employer" means a person who has 20 or more employees. Employer does not include a state agency, statewide system, political subdivision, or advisory board or commission that is subject to chapter 13.

Subd. 4. **Personnel record.** "Personnel record," to the extent maintained by an employer, means: any application for employment; wage or salary history; notices of commendation, warning, discipline, or termination; authorization for a deduction or withholding of pay; fringe benefit information; leave records; and employment history with the employer, including salary and compensation history, job titles, dates of promotions, transfers, and other changes, attendance records, performance evaluations, and retirement record. The term does not include:

(1) written references respecting the employee, including letters of reference supplied to an employer by another person;

(2) information relating to the investigation of a violation of a criminal or civil statute by an employee or an investigation of employee conduct for which the employer may be liable, unless and until:

(i) the investigation is completed and, in cases of an alleged criminal violation, the employer has received notice from the prosecutor that no action will be taken or all criminal proceedings and appeals have been exhausted; and

(ii) the employer takes adverse personnel action based on the information contained in the investigation records;

(3) education records, pursuant to section 513(a) of title 5 of the Family Educational Rights and Privacy Act of 1974, United States Code, title 20, section 1232g, that are maintained by an educational institution and directly related to a student;

(4) results of employer testing, except that the employee may see a cumulative total test score for a section of the test or for the entire test;

(5) information relating to the employer's salary system and staff planning, including comments, judgments, recommendations, or ratings concerning expansion, downsizing, reorganization, job restructuring, future compensation plans, promotion plans, and job assignments;

(6) written comments or data of a personal nature about a person other than the employee, if disclosure of the information would constitute an intrusion upon the other person's privacy;

(7) written comments or data kept by the employee's supervisor or an executive, administrative, or professional employee, provided the written comments or data are kept in the sole possession of the author of the record;

(8) privileged information or information that is not discoverable in a workers'

compensation, grievance arbitration, administrative, judicial, or quasi-judicial proceeding;

(9) any portion of a written or transcribed statement by a coworker of the employee that concerns the job performance or job-related misconduct of the employee that discloses the identity of the coworker by name, inference, or otherwise; and

(10) medical reports and records, including reports and records that are available to the employee from a health care services provider pursuant to section 144.335.

History: 1989 c 349 s 1

181.961 REVIEW OF PERSONNEL RECORD BY EMPLOYEE.

Subdivision 1. Right to review; frequency. Upon written request by an employee, the employer shall provide the employee with an opportunity to review the employee's personnel record. An employer is not required to provide an employee with an opportunity to review the employee's personnel record if the employee has reviewed the personnel record during the previous six months; except that, upon separation from employment, an employee may review the employee's personnel record only once at any time within one year after separation.

Subd. 2. Time; location; condition. The employer shall comply with a written request pursuant to subdivision 1 no later than seven working days after receipt of the request if the personnel record is located in this state, or no later than 14 working days after receipt of the request if the personnel record is located outside this state. The personnel record or an accurate copy must be made available for review by the employee during the employer's normal hours of operation at the employee's place of employment or other reasonably nearby location, but need not be made available during the employee's working hours. The employer may require that the review be made in the presence of the employer or the employer's designee.

Subd. 3. Good faith. The employer may deny the employee the right to review the employee's personnel record if the employee's request to review is not made in good faith. The burden of proof that the request to review is not made in good faith is on the employer.

History: 1989 c 349 s 2

181.962 REMOVAL OR REVISION OF INFORMATION.

Subdivision 1. Agreement; failure to agree; copy; position statement. (a) If an employee disputes specific information contained in the employee's personnel record:

(1) upon the written request of the employee, the employer shall provide a copy of the disputed information, and may charge a fee for the copy not to exceed the actual cost of making and compiling the copy;

(2) the employer and the employee may agree to remove or revise the disputed information; and

(3) if an agreement is not reached, the employee may submit a written statement specifically identifying the disputed information and explaining the employee's position.

(b) The employee's position statement may not exceed five written pages. The position statement must be included along with the disputed information for as long as that information is maintained in the employee's personnel record. A copy of the position statement must also be provided to any other person who receives a copy of the disputed information from the employer after the position statement is submitted.

Subd. 2. Defamation actions prohibited. (a) No communication by an employee of information obtained through a review of the employee's personnel record may be made the subject of any action by the employee for libel, slander, or defamation, unless the employee requests that the employer comply with subdivision 1 and the employer fails to do so.

(b) No communication by an employer of information contained in an employee's

personnel record after the employee has exercised the employee's right to review pursuant to section 181.961 may be made the subject of any common law civil action for libel, slander, or defamation unless:

(1) the employee has disputed specific information contained in the personnel record pursuant to subdivision 1;

(2) the employer has refused to agree to remove or revise the disputed information;

(3) the employee has submitted a written position statement as provided under subdivision 1; and

(4) the employer either (i) has refused or negligently failed to include the employee's position statement along with the disputed information or thereafter provide a copy of the statement to other persons as required under subdivision 1, or (ii) thereafter communicated the disputed information with knowledge of its falsity or in reckless disregard of its falsity.

(c) A common law civil action for libel, slander, or defamation based upon a communication of disputed information contained in an employee's personnel record is not prohibited if the communication is made after the employer and the employee reach an agreement to remove or revise disputed information and the communication is not consistent with the agreement.

History: 1989 c 349 s 3

181.963 USE OF OMITTED PERSONNEL RECORD.

Information properly belonging in an employee's personnel record that was omitted from the personnel record provided by an employer to an employee for review pursuant to section 181.961 may not be used by the employer in an administrative, judicial, or quasi-judicial proceeding, unless the employer did not intentionally omit the information and the employee is given a reasonable opportunity to review the omitted information prior to its use.

History: 1989 c 349 s 4

181.964 RETALIATION PROHIBITED.

An employer may not retaliate against an employee for asserting rights or remedies provided in sections 181.960 to 181.965.

History: 1989 c 349 s 5

181.965 REMEDIES.

Subdivision 1. **General.** In addition to other remedies provided by law, if an employer violates a provision of sections 181.960 to 181.964, the employee may bring a civil action to compel compliance and for the following relief:

(1) for a violation of sections 181.960 to 181.963, actual damages only, plus costs; and

(2) for a violation of section 181.964, actual damages, back pay, and reinstatement or other make-whole, equitable relief, plus reasonable attorney fees.

Subd. 2. **Limitations period.** Any civil action maintained by the employee under this section must be commenced within one year of the actual or constructive discovery of the alleged violation.

History: 1989 c 349 s 6

181.966 ADDITIONAL RIGHT OF ACCESS TO RECORDS.

Sections 181.960 to 181.965 do not prevent an employer from providing additional rights to employees and do not diminish a right of access to records under chapter 13.

History: 1989 c 349 s 7