Employment & Labor Law Alert

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New York Personnel File Law: What Employers Need to Know Before November 8



Beginning November 8, 2026, New York employers must provide current and former employees with copies of their personnel records within five business days of a written request and without charge. New York's new personnel file access law includes requirements regarding notice when negative information goes into those records, employee statements disputing negative information and requesting expungement, and postemployment recordkeeping. It also contains no express exception for pending disputes and prohibits employers from retaliating against employees who exercise their rights. Gov. Kathy Hochul has announced an agreement with the Legislature to clarify the law in ways that would narrow the records it covers but not change the effective date, deadlines or other obligations. Until an amendment is enacted, employers must comply with the statute as written.

Personnel file access laws are not new. California and Illinois have had them for decades, and New York's law is closely modeled on the Massachusetts personnel record law. New York's version, however, is one of the most demanding on several operational points. Signed into law on September 9, 2026, New York Labor Law Section 210-b gives current and former employees the right to obtain copies of their personnel records, requires employers to tell employees when negative information goes into those records and allows employees to submit a written statement disputing that information, and mandates that employers keep complete records for three years after employment ends. The law covers public and private employers, with no minimum number of employees.

The penalties written into the statute range from $500 to $2,500 per violation and are enforced by the New York attorney general. A personnel-record request gives an employee, or a former employee weighing a claim, quick and free access to the documents an employer would later point to when explaining an employment decision or defending against a claim. Under the law as written, those documents may be spread across HR systems, vendor platforms, manager files and email. How an employer locates them, tells employees about them, preserves them and responds to requests for them will shape both its compliance and its position in any later dispute. Notably, the law does not expressly create a private right of action for violations of its access, notice or retention requirements, but New York's retaliation and whistleblower statutes may supply private claims, as discussed below.

What Does New York's New Personnel File Law Require?

- **Free copies within five business days.** On written request, an employer must provide a copy of the employee's personnel record within five business days, without charge. The statute separately provides that an employer need not allow an employee to review the record more than twice per calendar year, although a review request prompted by notice that negative information has been added to a personnel file does

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not count toward that limit. The statute does not expressly say whether the two-review annual limit also applies to requests for copies.

- **Notice of negative information within 10 days.** An employer must notify an employee within 10 days after placing information in the personnel record that is, has been or may be used to negatively affect the employee's qualifications for employment, promotion, transfer or additional compensation or that indicates the possibility of discipline.
- **Employee statements and expungement.** If the employer and employee do not agree to correct or remove disputed information, the employee may submit a written statement explaining the employee's position. The statement becomes part of the personnel record and must be included whenever the disputed information is sent to a third party, for as long as the original information remains in the file. If the employer placed information in the record that it knew or should have known was false, the employee may seek to have it expunged through a collective bargaining agreement, through other personnel procedures or through "judicial process." The parties may also agree to remove information for any reason.
- **Three-year record retention after employment ends.** Employers must keep the complete personnel record, without deletions or expungement, from the start of employment until three years after employment ends.
- **Written personnel policies.** If an employer has a written personnel policy on terms and conditions of employment, it must keep that policy at the office where personnel matters are administered. The statute does not define "written personnel policy" or say whether the term includes employee handbooks.
- **Union agreements**. The law does not override a collective bargaining agreement that gives employees at least substantially similar access to their personnel records. The better reading of this provision is that it concerns access only and does not permit an agreement to shorten the employer's retention period, although the text does not say so expressly. Employers should not rely on a collective bargaining agreement to shorten record retention without further review.
- **Anti-retaliation protection.** Employers and others may not discharge, threaten, penalize or otherwise retaliate against an employee for exercising rights under the law. Retaliation under the statute expressly includes contacting or threatening to contact immigration authorities, and reporting or threatening to report the suspected citizenship or immigration status of an employee or an employee's family or household member.

Which Records Are Covered By New York's Personnel File Law?

The law defines "**employer**" broadly to include any individual, corporation, partnership, labor organization, unincorporated association, any other legal business or commercial entity, governmental entity or public employer, and agents of the employer. It defines "**employee**" to include anyone currently or formerly employed by the employer, with no time limit on former-employee status. A person who left more than three years ago may still request whatever covered records the employer continues to keep, even though the law does not require the employer to keep them indefinitely.

A personnel record is any record kept by the employer that identifies the employee and is used, has been used or "may affect or be used relative to" the employee's qualifications for employment, promotion, transfer, additional compensation or discipline. The law lists examples, including job applications, rates of pay, performance evaluations, written warnings, signed waivers, termination notices and other disciplinary documents. It also covers records held by an outside party that has a contract with the employer to keep or supply personnel records, such as a payroll provider or professional employer organization.

Where a document is stored and what it is called do not necessarily determine whether it is covered by the statute. Depending on how they are kept and used, covered records may sit in HR and payroll systems, vendor platforms, shared drives, email attachments, performance-management tools, investigation files and manager notes. Legal authority under California's long-standing access law suggests that keeping a document outside the official personnel file may not exclude it if the document is used, or made available, for an employment decision.

California courts have also recognized limits, holding under a comparable statute that a supervisor's private memory aid that no one else saw was not covered. New York courts have not yet interpreted Section 210-b, and its "may affect" language is broader than the California formulations, particularly for informal materials that have not yet been used in a decision.

The definition excludes personal information about someone other than the employee when disclosure would be a clearly unwarranted invasion of that person's privacy. The law does not describe how employers should redact that information, so employers will need to review records carefully within the five-business-day production window.

The Governor's Memorandum: A Narrower Definition Is Expected but Has Not Yet Been Enacted

When Gov. Hochul approved the bill, the approval memorandum stated that the bill contained ambiguities that needed to be resolved, including two specific clarifications. First, employers would not be required to create a personnel file or produce new documents beyond the records they already maintain. Second, personnel files would include only records or documents "used to determine" an employee's qualifications for hiring, retention, promotion, transfer, additional compensation or discipline. The memorandum states that the governor reached an agreement with the Legislature to address those concerns in the upcoming legislative session and signed the bill on that basis.

While the first of the two clarifications primarily impacts recordkeeping, the second clarification has significant substantive, legal and compliance impact. The law as enacted reaches records that are used in, have been used in or "may affect or be used relative to" an employment decision. The memorandum's "used to determine" wording leaves out that broader "may affect" language. If an amendment adopts that wording, it would narrow the law, especially for informal documents an employer has not relied on. If the amendment adopts it without any forward-looking clause, New York's definition would end up narrower on this point than Illinois' law, which also reaches documents an employer intends to use.

Because the memorandum introduces the clarifications with the word "including," they may not be the only changes the Legislature takes up. Both identified clarifications concern what counts as a personnel record and what an employer must produce. The memorandum does not suggest any change to the 10-day notice period, the five-business-day production deadline, the three-year retention period, the employee's right to submit a written statement, the anti-retaliation protections or the penalties. Every record that remains covered after any amendment will be subject to the same deadlines and obligations, so the memorandum gives employers no reason to delay building the processes needed to meet them.

An approval memorandum records the governor's understanding and a political agreement; it does not change the statute. Any amendment requires further legislative action, so employers should plan to operate under the enacted text when the law takes effect on November 8.

Why the Risk Extends Beyond the Statutory Fine

Retaliation and Whistleblower Claims

Section 210-b prohibits retaliation but does not expressly give employees a right to sue. Exposure instead runs through other New York statutes, and it turns on a distinction the new law does not specifically address: whether the employee only requested the personnel record or also complained that the employer broke the law.

A request on its own. Labor Law Section 215, New York's general anti-retaliation provision, expressly protects an employee who "has otherwise exercised rights protected under this chapter." Because Section 210-b is part of the Labor Law, that language supports treating a personnel-record request as protected activity. No court has yet decided that question, and reported Section 215 decisions have generally involved complaints about violations rather than requests to exercise a right. Section 215 remedies include liquidated damages of up to $20,000 per employee, lost compensation, reinstatement or front pay, and attorneys' fees. Claims may be filed within two years, and the employee must serve notice of the action on the attorney general. Employers should treat a request or a written statement as protected activity and independently review any later adverse action.

A request that comes with a complaint. If a request comes with a specific complaint about conduct the employee reasonably believes is unlawful, the employee may also have a claim under Labor Law Section 740, New York's whistleblower law. Section 740 remedies include reinstatement, lost wages and benefits, attorneys' fees, a civil penalty of up to $10,000, and for willful, malicious, or wanton violations, punitive damages. The employee must still show a materially adverse employment action, although Section 740 also reaches threats and actions that would harm a former employee's current or future employment. Health care employers should also consider the parallel protections of Labor Law Section 741. Public employers are covered by Section 210-b, but the available retaliation remedies may differ, because Section 215 excludes employees of New York State and its municipal subdivisions, and Civil Service Law Section 75-b separately protects certain disclosures by public employees.

Documentation and Preservation

The notice requirement also creates a timeline that did not exist before. Once the law takes effect, each negative entry in a personnel record should be matched by a notice sent within 10 days. In a later discrimination or retaliation case, a missing or late notice may weaken the employer's ability to show that a document was prepared when the employer says it was and reflects the reason the employer actually relied on. A timely notice, on the other hand, creates contemporaneous proof that the employee knew of the concern when it arose. Any written statement from the employee will sit in the same file. Employers should build the notice into their evaluation and discipline workflows now.

Illinois addresses incomplete records directly. Its statute generally bars an employer from using, in a judicial or quasi-judicial proceeding, information that should have been in the personnel record but was not. The New York law has no comparable provision. The same outcome may arise in New York, but through spoliation arguments, credibility challenges and the court's discretion, which makes the outcome less predictable for both sides.

Retention should be managed together with litigation holds, not on a separate track. During the three-year period, the statute itself requires the complete record to exist, so a gap in the file will be harder to attribute to ordinary records management, whatever its cause. Once litigation is reasonably anticipated, a separate preservation duty may require keeping records even longer.

Does New York's Personnel File Law Apply During Pending Litigation?

California and Illinois both keep their access laws from becoming a shortcut around discovery. California suspends its principal access right while a related lawsuit is pending. Illinois excludes records relevant to another pending claim between the employer and employee that may be obtained through discovery. Section 210-b contains no comparable limitation.

As a result, a personnel-record request in New York may function as an early informal look at the employer's documentation, available on a five-business-day timeline and without a discovery demand. A threatened claim or pending lawsuit should not be assumed to suspend the production obligation. Employers should route requests tied to an existing or reasonably anticipated dispute to counsel immediately so they can address scope, completeness, third-party privacy, privilege and preservation without missing the deadline.

Section 210-b does not expressly address attorney-client privilege or attorney work product. Employers should preserve applicable objections and review investigation materials carefully. A California appellate court construing a comparable access law held that it does not override privilege. Illinois shields certain investigation files only until the employer takes adverse action based on them, so a file is most exposed precisely when the employer relies on it. New York has no comparable exclusion. Before withholding investigation materials, an employer should consider whether it expects to defend a related claim by showing it investigated and took appropriate corrective action, as in a harassment case, because that defense can waive privilege and work product protection.

Questions the Law Leaves Open

Until an amendment, guidance or litigation resolves them, employers may be faced with uncertainty on the following questions.

- **What counts as negative information.** The law does not define when information "negatively affect[s]" an employee or prescribe the form or contents of the required notice.
- **How the 10-day period is counted.** The production deadline is stated in business days, but the notice period is stated simply as 10 days. Employers should plan around calendar days.
- **How to handle correction requests.** The law sets no deadline for responding to a request to correct or remove information and does not require the employer to explain a refusal. Employers should adopt a consistent internal practice.
- **What attaching a statement signifies.** Illinois expressly provides that including an employee's statement in the file does not imply the employer agrees with it. New York's law contains no such provision, so employers should document internally that attaching a statement reflects compliance, not agreement.
- **Electronic records.** The law states that personnel records must be maintained in typewritten or printed form or handwritten in indelible ink, but it does not expressly address electronic-only recordkeeping.
- **Separation agreements.** An Illinois court held that a general release did not bar a later request under that state's access law. New York courts have not addressed the issue, and employers should not assume a release forecloses a later request.

How New York Compares With California and Illinois

California and Illinois have had personnel record access laws for decades, which makes them the most useful guides to how New York's law may work in practice.

What Is Similar

All three states give employees a right to obtain personnel records and can reach records beyond the document formally labeled as the personnel file. California, like New York, requires employers to keep personnel records for three years after employment ends. Illinois, like New York, reaches records held by vendors under contract, allows employees to submit a written statement that travels with disputed information, and excludes personal information about others when disclosure would be a clearly unwarranted invasion of privacy.

What Is Different

New York is more demanding on several operational points. It has the shortest production deadline of the three and requires free copies. It has no employee-count threshold or former-employee time limit, both of which the Illinois statute has. New York has no express litigation exception and fewer categorical exclusions. Both California and Illinois exclude letters of reference and certain investigation records.

New York also lacks several tools California gives employers to manage requests. California caps the number of requests from employee representatives, lets employers designate who receives requests and allows an employer to offer an alternative to on-site review for a former employee terminated for harassment or workplace violence. California also allows employers to redact the names of nonsupervisory employees before production. Section 210-b contains none of these.

The enforcement picture runs the other way. California lets employees recover a statutory penalty and sue to compel compliance, along with attorneys' fees. Illinois allows employees to file a complaint with its Department of Labor and, if the complaint is not resolved within 180 days, to sue. New York commits enforcement of Section 210-b's fines to the attorney general, although New York's retaliation and whistleblower statutes may supply private claims.

Issue	New York	California	Illinois
Production deadline	5 business days after a written request	30 calendar days, or up to 35 by written agreement	7 working days, plus up to 7 more calendar days if the employer shows it needs them
Cost to employee	None	Actual cost of reproduction	Actual cost of duplication only
Former employees	ONo time limit; retention duty ends 3 years after separation	No time limit; generally one request per year	Generally only those who left within the prior year
Pending litigation	No express exception	Access right suspended while a related lawsuit is pending	Records relevant to a pending claim are excluded
Excluded records	Only personal information about others whose disclosure would be a clearly unwarranted invasion of privacy	Several categories, including criminal-investigation records and letters of reference	Several categories, including letters of reference, test documents, certain investigation files until adverse action is taken, and trade secrets
Retention	Complete record, from hire through 3 years after separation	3 years after termination	No general period; discipline more than 4 years old generally removed before release to third parties
Enforcement	Attorney General enforces fines of $500 to $2,500; no express private action for access, notice, or retention violation	$750 penalty recoverable by the employee or Labor Commissioner; employee may sue for compliance and recover attorneys' fees	Department of Labor complaint; employee may sue if unresolved after 180 days; actual damages, plus $200 and attorneys' fees for willful and knowing violations

Remote and Multistate Workforces

Section 210-b says nothing about where an employee must live or work. Unlike the New York State Human Rights Law, which contains express language reaching certain conduct outside the state, the Labor Law provisions discussed here contain no comparable language, and no court has addressed how Section 210-b applies to employees who neither live nor work in New York. Multistate employers should decide which employee groups their New York process will cover based on where employees work, where their records are kept and where personnel decisions are made, rather than assuming that work location alone resolves the question.

What Should Employers Do Now To Comply With New York's Personnel File Law?

As the November 8 effective date approaches, employers will need to identify the universe of records and locate them, and build compliance protocols for receiving, routing and handling employee requests and implementing the 10-day notice into existing HR and workplace processes. Employers should also consider the following additional steps:

1. **Build an escalation path for dispute-related requests.** Because the law has no express litigation exception, route requests from represented employees, former employees who have threatened a claim or anyone already in a dispute with the employer to counsel as soon as they arrive. Within the five-business-day window, confirm the production is complete, address third-party privacy, identify privileged material and put any necessary hold in place. Before withholding investigation materials as privileged, the employer should decide whether it expects to rely on the investigation to defend a related claim, such as a discrimination or harassment claim, because doing so may waive the privilege.

2. **Prepare for the amendment without waiting for it.** Comply with the current definition, but tag records that are being produced only because of the broader "may affect" language. If the Legislature adopts the narrower "used to determine" wording, the employer can identify those records and adjust its procedures without rebuilding the program. Track the legislation and any guidance as it develops.
3. **Decide which workforce the New York process covers.** Rather than assuming that work location settles the question, identify where employees work, where their records are kept and where personnel decisions are made. Then decide group by group which employees the New York process will cover. Employers with California or Illinois operations should consider whether one process built around New York's shorter deadline and free copies can serve all three states, while keeping state-specific features such as California's litigation suspension and Illinois' exclusions where they apply.
4. **Find the records before someone asks for them.** Inventory where covered information lives, including HR and payroll systems, performance-management tools, email, shared drives, investigation files, manager notes and vendor platforms. Confirm that vendor contracts and systems allow existing records to be retrieved fast enough to meet the five-business-day deadline, and set up a single intake point for written requests that tracks deadlines and the two-review limit. Because the statute runs the deadline from submission of a written request to the employer, train managers to forward requests immediately; an internal intake point does not delay the five-business-day clock.
5. **Make notices and written statements part of the system.** Configure evaluation, warning and performance-improvement workflows to prompt the 10-day notice whenever negative information is added. When an employee submits a written statement disputing information in the personnel record, store the statement with the disputed information wherever that information is kept so the two cannot be separated. The law requires that the statement be included whenever the disputed information is sent to a third party, such as in response to a reference check or background screening or in an unemployment proceeding. Adopt a consistent practice for reviewing correction requests and document internally that attaching a statement reflects compliance, not agreement.
6. **Put retention, privacy and litigation holds on one schedule.** Stop the routine deletion of records for anyone who left within the past three years. Treat the statutory retention period as the business reason for keeping covered records, apply appropriate access, storage and transmission controls, continue minimizing sensitive information that falls outside the personnel record and keep records longer when a litigation hold applies.
7. **Address union and office requirements.** For unionized workforces, determine whether existing agreements provide substantially similar access and identify any provision requiring the destruction or expungement of records that may conflict with the retention requirement. For multisite or remote operations, identify the office where personnel matters are administered and keep current written policies there.
8. **Treat requests as protected activity.** Train HR personnel and managers on what counts as a personnel record, including that informal notes may be covered, and on the notice, production and anti-retaliation requirements. Before taking adverse action against an employee who recently made a request or submitted a written statement, confirm that the reasons were documented beforehand and would have led to the same decision.

Loeb & Loeb's Employment & Labor group is available to help employers prepare for the November 8 effective date and assess how the law applies to their workforces, including multistate workforces.

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