

HOUSE No. 1779

The Commonwealth of Massachusetts

PRESENTED BY:

Jonathan D. Zlotnik

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to Clarify the Personnel Records Statute.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

Jonathan D. Zlotnik

2nd Worcester

Stephen L. DiNatale

3rd Worcester

HOUSE No. 1779

By Mr. Zlotnik of Gardner, a petition (accompanied by bill, House, No. 1779) of Jonathan D. Zlotnik and Stephen L. DiNatale relative to the personnel record notifications. Labor and Workforce Development.

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act to Clarify the Personnel Records Statute.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Section 1. Said chapter 149 is hereby further amended by striking out section 52C, and
2 inserting in place thereof the following section:-

3 Section 52C Personnel records; review by employee; corrections; penalty

4 Section 52C. As used in this section, the following words shall, unless the context clearly
5 requires otherwise, have the following meanings:--

6 "Employee", a person currently employed or formerly employed by an employer;
7 provided, however, that for purposes of this section, persons who are employed, or were
8 formerly employed, by a private institution of higher education in positions which may lead to
9 tenure, are tenured, or which involve responsibilities similar to those in tenure-track positions,
10 shall not be considered employees.

11 "Employer", an individual, corporation, partnership, labor organization, unincorporated
12 association or any other legal business, public or private, or commercial entity including agents
13 of the employer.

14 "Personnel record", a written document or electronic record kept by an employer that (i)
15 identifies an employee, (ii) is used or has been used, or may affect or be used relative to that
16 employee's qualifications for employment, promotion, transfer, additional compensation or
17 disciplinary action, and (iii) is maintained in a central file in the ordinary course of business by
18 the employer's human resources or personnel department or employer's designee, or other
19 central repository for such records. A personnel record shall include a record in the possession of
20 a person, corporation, partnership or other association that has a contractual agreement with the
21 employer to keep or supply a personnel record as provided in this section. A personnel record
22 shall not include information of a personal nature about a person other than the employee if
23 disclosure of the information would constitute a clearly unwarranted invasion of such other
24 person's privacy. Without limiting the applicability or generality of the foregoing, all of the
25 following written information or documents to the extent prepared by an employer of twenty or
26 more employees regarding an employee shall be included in the personnel record for that
27 employee: the name, address, date of birth, job title and description; rate of pay and any other
28 compensation paid to the employee; starting date of employment; the job application of the
29 employee; resumes or other forms of employment inquiry submitted to the employer in response
30 to his advertisement by the employee; all employee performance evaluations, including but not
31 limited to, employee evaluation documents; written warnings of substandard performance; lists
32 of probationary periods; waivers signed by the employee; copies of dated termination notices;
33 any other documents relating to disciplinary action regarding the employee.

34 An employer shall notify a current employee within 45 days of the employer placing in
35 such employee's personnel record any written document or electronic record that has been used
36 or may be used, to negatively affect the employee's qualification for employment, promotion,
37 transfer, additional compensation or the possibility that the employee will be subject to
38 disciplinary action. An employer receiving a written request from an employee shall provide the
39 employee with an opportunity to review such employee's personnel record within 5 business
40 days of such request. The review shall take place at the place of employment and during normal
41 business hours. An employee shall be given a copy of the employee's personnel record within 5
42 business days of submission of a written request for such copy to the employer. An employer
43 shall not be required to allow an employee to review the employee's personnel record on more
44 than 2 separate occasions in a calendar year; provided, however, that the notification and review
45 caused by the placing of negative information in the personnel record shall not be deemed to be 1
46 of the 2 annually permitted reviews.

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48 If there is a disagreement with any information contained in a personnel record, removal
49 or correction of such information may be mutually agreed upon by the employer and the
50 employee. If an agreement is not reached, the employee may submit a written statement
51 explaining the employee's position which shall thereupon be contained therein and shall become
52 a part of such employee's personnel record. The statement shall be included when said
53 information is transmitted to a third party as long as the original information is retained as part of
54 the file. If an employer places in a personnel record any information which such employer knew
55 or should have known to be false, then the employee shall have remedy through the collective
56 bargaining agreement, other personnel procedures or judicial process to have such information

57 expunged. The provisions of this section shall not prohibit the removal of information contained
58 in a personnel record upon mutual agreement of the employer and employee for any reason.

59 An employer of twenty or more employees shall retain the complete personnel record of
60 an employee as required to be kept under this section without deletions or expungement of
61 information from the date of employment of such employee to a date three years after the
62 termination of employment by the employee with such employer. In any cause of action brought
63 by an employee against such employer of twenty or more employees in any administrative or
64 judicial proceeding, including but not limited to, the Massachusetts Office of Affirmative Action,
65 the Massachusetts Commission Against Discrimination, Massachusetts Civil Service
66 Commission, Massachusetts Labor Relations Commission, attorney general, or a court of
67 appropriate jurisdiction, such employer shall retain any personnel record required to be kept
68 under this section which is relevant to such action until the final disposition thereof.

69 If an employer of twenty or more employees elects to have a written personnel policy
70 regarding the terms and conditions of employment, such personnel policy, as the same may be
71 amended from time to time, shall be continuously maintained at the office of such employer
72 where personnel matters are administered.

73 Whoever violates the provisions of this section shall be punished by a fine of not less
74 than five hundred nor more than twenty-five hundred dollars. This section shall be enforced by
75 the attorney general.