



SPONSOR: Sen. Sturgeon & Rep. K. Williams  
Sens. Gay, Hansen, Hoffner, Sokola; Reps. Cooke,  
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Phillips

DELAWARE STATE SENATE  
152nd GENERAL ASSEMBLY

SENATE BILL NO. 229

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO AN EMPLOYEE'S RIGHT TO  
INSPECT PERSONNEL FILES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 731, Title 19 of the Delaware Code by making deletions as shown by strike through and  
insertions as shown by underline as follows:

§ 731. Definitions.

~~As used in~~ For purposes of this subchapter:

(1) a. "Employee" means any person currently employed, laid an individual who is any of the following:

1. Currently employed.

2. Laid off with reemployment rights or on rights.

3. On a leave of absence. The term "employee" shall

4. Previously employed.

b. "Employee" does not include applicants for employment or designated agents.

(2) "Employer" ~~shall mean~~ includes any individual, person, partnership, association, corporation, and the  
State, State or any of its political subdivisions or subdivisions, including any agency, authority, board board, or  
commission created by them. commission.

(3) a. "Personnel file" means, files" means any of the following, if maintained by the employer, any  
application employer:

1. Application for employment, wage employment.

2. Wage or salary information, notices information.

3. Notices of commendations, warning or discipline, authorization commendation, warning, or  
discipline.

4. Authorization for a deduction or withholding of pay, fringe pay.

5. Fringe benefit information, leave records, employment information.

22                   6. Leave records.

23                   7. Employment history with the employer, including salary information, job title, dates of changes,  
24                   retirement record, attendance records, medical records, performance ~~evaluations and medical records.~~ The  
25                   ~~term "personnel file" shall~~ evaluations, qualifications for employment, promotion, additional compensation,  
26                   termination, and disciplinary action.

27                   8. Service letters under § 708 of this title.

28                   9. Employment information disclosed under § 709 of this title.

29                   b. "Personnel files" does not include records any of the following:

30                   1. Records of an employee relating to the investigation of a possible criminal offense, letters of  
31                   ~~reference, documents which~~ offense.

32                   2. Documents that are attorney work product or the employer drafts that are being developed or  
33                   prepared for use in civil, ~~criminal~~ criminal, or grievance ~~procedures or materials which are~~ procedures.

34                   3. Letters of reference.

35                   4. Materials used by the employer to plan for future operations or information operations.

36                   5. Information available to the employee under the Fair Credit Reporting Act ~~[15 U.S.C. §§ 1681-~~  
37                   ~~1681t].~~ Act, 15 U.S.C. §§ 1681-1681t.

38                   Section 2. Amend § 732, Title 19 of the Delaware Code by making deletions as shown by strike through and  
39                   insertions as shown by underline as follows:

40                   § 732. Inspection of personnel files.

41                   ~~An employer shall, at a reasonable time, upon request of an employee,~~ (a)(1) Upon the request of an employee, an  
42                   ~~employer shall permit that employee to inspect that the employee's own personnel files used to determine that employee's~~  
43                   ~~own qualifications for employment, promotion, additional compensation, termination or disciplinary action.~~ files.

44                   (2) If the request under paragraph (a)(1) of this section is from an individual who was previously  
45                   employed, the employer shall permit that employee to inspect the employee's own personnel files that exist at the  
46                   time of the employee's request.

47                   (b) The employer shall make these records the employee's personnel files available to the employee during the  
48                   regular business hours of the office where these records are usually and ordinarily maintained, when sufficient time is  
49                   available during the course of a regular business day to inspect the personnel ~~files in question.~~ files. The employer may  
50                   require ~~the requesting~~ that a current employee to inspect their personnel files outside of the employee's scheduled work

51 ~~hours. such records on the free time of the employee. At the employer's discretion, the employee may be required to file a~~  
52 ~~written form to request access to the personnel file. This form is solely~~

53 (c)(1) An employer may require that an employee use a form to make a request under subsection (a) of this  
54 section, however, this form may only require the information necessary for the purpose of identifying the requesting  
55 individual making the request to avoid disclosure of personnel files to ineligible individuals.

56 (2) To assist the employer in providing the correct records to meet the employee's need, a form under  
57 paragraph (c)(1) of this section may ask, but may not require, that the employee shall indicate in the written request  
58 either the purpose for which the inspection is requested or the if there are particular parts of the employee's personnel  
59 record which files that the employee wishes to inspect.

#### SYNOPSIS

This Act extends the right of employees to inspect their own personnel files to former employees. Under this Act, an employer must permit a former employee to inspect the employee's own personnel files that exist at the time of the request. This Act does not create or change any requirements regarding the length of time that an employer must retain personnel files of former employees.

This Act also updates the specific information included in personnel files that an employee may inspect and makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Author: Senator Sturgeon