

Recently, the legislature amended the Massachusetts Personnel Records Law, G.L. c. 149 § 52C, requiring employers to provide employees with notice of certain negative information placed in personnel files within ten (10) days of placing the information in the file. The change to the personnel records law became effective as of August 1, 2010, essentially a surprise amendment located amidst the 134 page Economic Development Reorganization Bill signed into law by Governor Deval Patrick in early August. St. 2010 c. 240 § 148. The new section of Section 52C requires an employer to notify employees when placing in their personnel file “any information to the extent that the information 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.” Employees who are provided notice under this amended paragraph of Section 52C have a right to review their personnel file each time they receive such notice within five (5) days of providing written notice to their employer. This right of review for employees is independent of the right to review their personnel file twice a year that already existed in Section 52C prior to its amendment.

Notably, unlike other state employment laws like the Massachusetts Wage Act, the new amendment does not give an employee a private cause of action for any alleged violation of this new requirement. Employees are limited to seeking redress through the Attorney General, which enforces Section 52C generally. Section 52C permits the Attorney General to impose fines of \$500 to \$2500 for violations of the statute.

The new law is somewhat ambiguous as to what materials about employees need to be filed as personnel records. Prior to the amendment of Section 52, the best practice for employers has been to document issues of employee poor performance as soon as possible after they take place and place such documentation in personnel files. Doing so provided evidentiary support for the employer in the event the performance issues became chronic and resulted in the employee's termination. Compliance with the newly amended Section 52C, however, may negatively impact the employer-employee relationship over issues that are relatively minor by requiring the employer to take the additional step of notifying the employee that such documentation has been placed in his or her file. Employers should evaluate their record-keeping policies and procedures to ensure compliance with the new law while educating their employees regarding these new requirements to avoid unnecessary antagonism.

Please contact me should you have any questions or concerns in this regard.