

Privilege and Privacy Concerns with New York's New Personnel Records Law

As previously discussed [here](#), starting November 8, 2026, New York employers will be required to maintain certain personnel records for its employees and to provide current and former employees with access to their personnel records. The new law contains an expansive definition of “personnel record” that raises potential concerns around the inclusion of information that is privileged or subject to third-party privacy rights in employees’ personnel files, as well as the inadvertent production of such information when producing an employee’s personnel file. Employers should be prepared to anticipate such issues in order to avoid the risks associated with inadvertent disclosure of privileged information or private third-party information.

Under this new law, New York Labor Law section 210-B, a personnel record is defined as “any record kept by an employer that identifies an employee, to the extent the record is used or has been used or may affect or be used relative to that employee’s qualifications for employment, promotion, transfer, additional compensation or disciplinary action.” Based on this definition, underlying communications about an employee’s performance or misconduct that later inform an employer’s decision to take disciplinary action or other personnel actions against an employee may constitute a personnel record. The inclusion of such underlying communications in an employee’s personnel file may implicate privilege and third-party privacy concerns when these communications contain privileged or private third-party information.

For example, employers may discuss an employee’s performance or conduct concerns with their in-house or outside counsel and rely on such communications in making an adverse employment decision. Employers may also first become aware of an employee’s performance or conduct issues through a report or complaint made by another employee. To the extent that an employer then places such communications in an employee’s personnel record, a request for the employee’s personnel file will require the employer to take steps to avoid the inadvertent production of privileged communications or information that could implicate third-party privacy rights.

New York Labor Law section 210-B recognizes the potential of third-party privacy concerns and seeks to address these concerns by providing that “information of a personal nature about a person other than the employee if disclosure of the information would constitute a clearly unwarranted invasion of such other person’s privacy” shall not be included in a personnel record. However, the law does not provide examples of what types of private third-party information should be excluded from a personnel record or what would “constitute a clearly unwarranted invasion of such other person’s privacy.” Absent further clarification, employers may consider relying on generally recognized principles of third-party privacy, such as personally identifiable information, in assessing what information to exclude from a personnel record on third-party privacy grounds. This does not exclude the possibility that there may be other defensible positions with respect to what third-party information should also be excluded.

With respect to privilege considerations, New York Labor Law section 210-B does not address concerns regarding attorney-client privileged communications in a personnel record, but such privileges may provide an additional basis to withhold certain information to a requesting former or current employee. Importantly, the inadvertent production of privileged communications could result in the potential waiver of the applicable privilege, so it’s important to navigate these issues carefully. Employers will need to consider and be mindful of these issues when determining discipline and assembling and providing access to an employee’s personnel file.

To avoid risks, employers should ensure that the appropriate staff are adequately trained on how to evaluate what information should be placed in a personnel file, equipped to identify privileged communications and private third-party information, and understand when to raise potential concerns to the appropriate channels, including outside employment counsel.

Key Contacts

Our [Labor & Employment Law team](#) is available to assist employers with any questions they have regarding their obligations under New York Labor Law Section 210-b or any other employment-related legal issue.

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