

MAINE STATE LEGISLATURE

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STATE OF MAINE
SENATE
115TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT " A" to S.P. 322, L.D. 878, Bill, "An Act to Clarify the Confidentiality of Public Employee Disciplinary Records"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'Sec. 1. 5 MRSA §7070, sub-§2, ¶E, as enacted by PL 1985, c. 785, Pt. B, §38, is amended to read:

E. Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action shall is no longer be confidential after it the decision is completed, and.

For purposes of this paragraph, "final written decision" means:

(1) The final written administrative decision that is not appealed pursuant to a grievance arbitration procedure; or

(2) If the final written administrative decision is appealed to arbitration, the final written decision of a neutral arbitrator.

A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final written decision of the neutral arbitrator is not issued and released before the expiration of the 120 days;

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Sec. 2. 30-A MRSA §503, sub-§1, ¶B, as amended by PL 1989, c. 104, Pt. C, §§8 and 10, is further amended to read:

B. County records containing the following:

- (1) Medical information of any kind, including information pertaining to the diagnosis or treatment of mental or emotional disorders;
- (2) Performance evaluations and personal references submitted in confidence;
- (3) Information pertaining to the ~~credit-worthiness~~ creditworthiness of a named employee;
- (4) Information pertaining to the personal history, general character or conduct of members of an employee's immediate family; and
- (5) Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after ~~it~~ the decision is completed, ~~and.~~

For purposes of this subparagraph, "final written decision" means:

- (a) The final written administrative decision that is not appealed pursuant to a grievance arbitration procedure; or
- (b) If the final written administrative decision is appealed to arbitration, the final written decision of a neutral arbitrator.

A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final written decision of the neutral arbitrator is not issued and released before the expiration of the 120 days; and

Sec. 3. 30-A MRSA §2702, sub-§1, ¶B, as amended by PL 1989, c. 104, Pt. A, §25 and Pt. C, §§8 and 10, is further amended to read:

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2 B. Municipal records pertaining to an identifiable employee
and containing the following:

4 (1) Medical information of any kind, including
information pertaining to diagnosis or treatment of
6 mental or emotional disorders;

8 (2) Performance evaluations and personal references
submitted in confidence;

10 (3) Information pertaining to the ~~credit-worthiness~~
12 creditworthiness of a named employee;

14 (4) Information pertaining to the personal history,
general character or conduct of members of an
16 employee's immediate family; and

18 (5) Complaints, charges or accusations of misconduct,
replies to those complaints, charges or accusations and
20 any other information or materials that may result in
disciplinary action. If disciplinary action is taken,
22 the final written decision relating to that action is
no longer confidential after ~~it~~ the decision is
24 completed. The decision shall must state the conduct
or other facts on the basis of which disciplinary
26 action is being imposed and the conclusions of the
acting authority as to the reasons for that action, ~~and~~.

28 For purposes of this subparagraph, "final written
30 decision" means:

32 (a) The final written administrative decision
that is not appealed pursuant to a grievance
34 arbitration procedure; or

36 (b) If the final written administrative decision
is appealed to arbitration, the final written
38 decision of a neutral arbitrator.

40 A final written administrative decision that is
appealed to arbitration is no longer confidential 120
42 days after a written request for the decision is made
to the employer if the final written decision of the
44 neutral arbitrator is not issued and released before
the expiration of the 120 days; and'

46 **STATEMENT OF FACT**

48 This amendment replaces the bill. The amendment defines the
50 term "final written decision," as it applies to public employee
discipline, for the purposes of releasing it to the public. This

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2 amendment provides that the final written decision is the final
written administrative decision that is not appealed to a
4 grievance arbitration procedure. Employment contracts contain
the requirements of grievance arbitration procedures, which are
6 specific to each contract. If the final administrative decision
is appealed through every grievance procedure step to
8 arbitration, the neutral arbitrator's final written decision is
the final written decision, which becomes public. If the final
10 administrative decision is appealed to arbitration, the final
written administrative decision is no longer confidential 120
12 days after any person makes a written request for the decision to
the employer.

Reported by Senator Berube for the Committee on Judiciary.
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(5/1/91) (Filing No. S-114)