

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 883

H.P. 660

House of Representatives, February 20, 2003

An Act Regarding an Employee's Access to Personnel Files

Reference to the Committee on Labor suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative MILLS of Farmington.

Cosponsored by Representatives: HATCH of Skowhegan, SMITH of Van Buren.

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3 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 26 MRSA §631**, as amended by PL 1999, c. 235, §1, is
5 further amended to read:

6 **§631. Employee right to review personnel file**

7
8 The employer shall, upon written request from an employee or
9 former employee, provide the employee, former employee or duly
10 authorized representative with an opportunity to review and copy
11 the employee's personnel file if the employer has a personnel
12 file for that employee. The reviews and copying must take place
13 at the location where the personnel files are maintained and
14 during normal office hours unless, at the employer's discretion,
15 a more convenient time and location for the employee are
16 arranged. The cost of copying is paid by the person requesting
17 the copy. For the purpose of this section, a personnel file
18 includes, but is not limited to, any formal or informal employee
19 evaluations and reports relating to the employee's character,
20 credit, work habits, compensation and benefits and nonprivileged
21 medical records or nurses' station notes relating to the employee
22 that the employer has in the employer's possession. Records in a
23 personnel file may be maintained in any form including paper,
24 microfiche or electronic form. The employer shall take adequate
25 steps to ensure the integrity and confidentiality of these
26 records. An employer maintaining records in a form other than
27 paper shall have available to the employee, former employee or
28 duly authorized representative the equipment necessary to review
29 and copy the personnel file. Any employer who, following a
30 request pursuant to this section, without good cause fails to
31 provide an opportunity for review and copying of a personnel
32 file, within 10 days of receipt of that request, is subject to a
33 civil--forfeiture penalty of \$25 for each day that a failure
34 continues. The total forfeiture penalty may not exceed \$500.
35 The court shall award any penalty levied and collected under this
36 section to the employee or former employee whose records were
37 withheld in violation of this section. An employee, former
38 employee or the Department of Labor may bring an action in the
39 District Court or the Superior Court for such equitable relief,
40 including an injunction, as the court may consider to be
41 necessary and proper. The employer may also be required to
42 reimburse the employee, former employee or the Department of
43 Labor for costs of suit including a reasonable attorney's fee if
44 the employee or the department receives a judgment in the
45 employee's or department's favor, respectively. For the purposes
46 of this section, the term "nonprivileged medical records or
47 nurses' station notes" means all those materials that have not
48 been found to be protected from discovery or disclosure in the
49 course of civil litigation under the Maine Rules of Civil
50 Procedure, Rule 26, the Maine Rules of Evidence, Article V or

2 similar rules adopted by the Workers' Compensation Board or other
administrative tribunals.

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6 SUMMARY

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8 Current law requires an employer, upon written request by an
employee or former employee, to make available that employee's or
former employee's personnel file within 10 days of receipt of the
10 request. An employer who fails to comply is subject to a
forfeiture of \$25 per day, up to a maximum forfeiture of \$500.

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14 This bill requires the court to award the wronged employee
the amount collected from the employer for failure to comply.