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# A CALL TO STATE LEGISLATORS: IT IS TIME TO TAKE INVENTORY OF A FORMER EMPLOYEE'S ABILITY TO ACCESS HIS/HER PERSONNEL FILE UNDER YOUR STATE STATUTE

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**ABSTRACT**

In recent years, an increasing number of states have enacted statutes regulating the ability of employees to access their personnel files. The regulations govern when and how an employee may review this material. However, aside from an employee, many states do not mention precisely who may examine the file. In particular, only a handful of states allow a former employee to review his/her file. In a recent Pennsylvania decision, the Commonwealth Court held that a former employee was not entitled to examine the file under the guise of statutory construction. The Pennsylvania statute on point was silent on the issue of allowing former employees access to their files. The author examines this seemingly peculiar case and its potential effect on state statutes governing this area of the law.

## PERSONNEL FILES

Today, nearly all states have enacted statutes that grant an employee the right to inspect his/her personnel file [1]. This trend recognizes the importance of safeguarding employee rights, while also promoting communication between the employer and the employee. As these statutes have developed, so too has litigation concerning the meaning and policy behind the rules. Thus, it is important for both the employee and the employer to know their rights and obligations with respect to the disclosure of the contents of personnel files.

In this regard, one must begin with the state statute governing the disclosure of personnel files. However, this is just a starting point, and one must always, of





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course, be cognizant of court decisions interpreting the statutes. One such recent court decision is *Beitman v. Department of Labor and Industry* [2], and it may indeed have a profound impact on the disclosure of personnel files to former employees, depending on the language of the statute at issue. In a matter of first impression, the *Beitman* Court reasoned that Pennsylvania's statute "unambiguously" defined "employee" and the petitioner, a "former" employee, fell outside the protection of the Act. Surely, state legislators should take heed of this decision and determine whether former employees are covered under their statute. Former employees may be denied access to their files if the statute is silent on the issue.

To gain a better understanding of the laws governing personnel files, an examination of the commonalities of state statutes is in order.

## WHAT IS A PERSONNEL FILE AND WHAT MUST BE CONTAINED IN IT?

States statutes vary greatly in their definitions of personnel files or lack thereof. A number of states specifically define a personnel file as "a record kept by the employer that identifies the employee, to the extent that 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" [3]. At least one state further defines "record" to include "papers, documents and reports pertaining to a particular employee . . ." in the definition of a personnel file [4]. Pennsylvania is explicit in its definition of a personnel file, as it is "any application of employment, wage or salary information, notices of commendations, warning or discipline, authorization for a deduction or withholding of pay, fringe benefit information, leave records, employment history with the employer, including salary information, job title, dates of changes, retirement record, attendance records and performance evaluations" [5].

However, what may be the most surprising effect of the statutory definition of a "personnel file" is the power it gives the employer to refuse disclosure of certain information to the employee upon request. Many statutes protect documents relating to possible criminal offenses, letters of reference, personal information relating to another individual, documents used or prepared for civil, criminal, or grievance procedures, and medical records [6]. However, it must be noted that even these materials may be disclosed if they fall under an "employee's qualifications for employment, promotion, transfer, additional compensation, or disciplinary action" [7, p. 674].

### Disclosure

A common thread in state statutes governing personnel files is that employers must disclose the contents of an employee's personnel file upon request of the

employee. However, in many states, the employee's right to inspection is subject to limitations adopted by the employer. For example, in virtually all states, employers may require the employee request to be in writing, in an effort to identify the employee and to ensure the file is not obtained by ineligible persons [8]. Moreover, employers may limit access to personnel files by making the employee specifically request the part(s) of the file he/she wishes to inspect [8]. Once employer permission is granted, the inspection usually takes place at the place of employment, during normal business hours. Most states allow the employee to copy part of his/her file and allow the employer to charge reasonable fees to recoup the cost of such services. A few states limit the number of times per year an employee may request to review such information [9].

## Retention

Most state statutes do not provide for a period of time for which the employer is obligated to maintain the file. However, a few states require the employer to retain the personnel file of the employee for a specific period of time. For example, Massachusetts mandates the employer retain the file for three years after termination, if the employer employs twenty or more employees [10]. Similarly, Connecticut provides a one-year retention period [4, § 31-128b], while Nevada calls for a sixty-day period [11]. Thus, unless governed by state law, it appears the shrewd employer may discard the personnel file immediately following termination.

However, this may not be the case. One commentator argues that federal law requires the employer to retain the file until at least one year following termination [7, p. 679]. Furthermore, if the issue relates to discrimination, the employer must retain the file until the litigation has ended [7, p. 679]. Thus, an employer seeking advice in this area may want to retain the file for a period of at least one year following termination.

## Violations

States vary in the penalties imposed and remedies available against an employer for denying an employee access to his/her file after a proper request has been made. For instance, Massachusetts subjects employers to a fine between five hundred and twenty-five hundred dollars for violation of its statute [10]. Colorado allows an employee who has been denied access to his/her file the right to file an appeal with the district court of the district wherein the record is located [12]. Upon a hearing, the court will issue an order granting access to the aggrieved employee if the employer cannot show good cause why the file should be withheld [12]. Maine adopts an incremental approach by subjecting the employer to a twenty-five dollar a day fine for each day the employer denies the employee access to the file without good cause [13]. Thus, the penalty and grievance

procedures for withholding the file information is largely dependent upon the individual state statute involved.

## WHO IS ENTITLED TO EXAMINE THE FILE?

### Third Party Disclosure

Statutes regulating personnel file disclosure do not largely address the issue of disclosure to third parties. One state that does address the issue is Connecticut. Under its statute, disclosure to third parties without consent of the employee is strictly prohibited, except in limited circumstances [4, § 31-128]. The primary reason for this stance is potential privacy issues associated with disclosing an employee's private information. Employees aggrieved by the circulation of personal information have sued their employers under Section 652D of the Restatement of Torts, a theory known as "public disclosure of private facts" [7, p. 683]. While the results have been mixed, courts appear to be more sympathetic to employees when their medical records are disclosed by the employer [7, pp. 684-687].

Other states have taken the position that disclosure to third parties is permitted in certain situations where the employer notifies the employee that the information will be disseminated. Both Illinois and Michigan have adopted these statutory notice provisions when information regarding employee discipline is sought by a third party [7, p. 679]. However, notice may be waived by the employee and disclosure may still be appropriate when the information is ordered by a court or a government agency [7, pp. 679-680].

### Former Employee Disclosure

The primary aim of personnel file regulating statutes is, of course, to provide the employee access to his employment information. The troublesome area and the topic of this article concerns disclosure of such information to a "former" employee. Simply put, does the law allow a former employee access to his/her personnel file after separation from employment? Perhaps the more interesting question is *should* the law allow a former employee access to his/her file after separation? At least one court has answered both of these questions in the negative. Since this answer is almost solely dependant on the particular statute involved, a brief examination of how states treat this issue is in order.

States' views with regard to allowing former employees access to personnel files may be classified into three categories. First, many states expressly allow former employees access by including former employees in the definition of "employees" under the statute [14]. Second, the majority of states do not specifically include or exclude former employees in their statutes [15]. Finally, a few states adopt a "compromise" position and provide that former employees may

examine their files for a limited period of time following separation from employment [16].

These classifications may be altered in light of a recent Pennsylvania decision. In *Beitman v. Department of Labor and Industry* [2], the Commonwealth Court held that an employee was not entitled to examine her personnel file under the Pennsylvania Personnel Files Act (hereinafter the "Act") [5, §§ 1321-1324] because she waited over two years after she was terminated to make such a request [2, at 1302]. In a matter of first impression, the majority reasoned that the Act "unambiguously" defined an "employee" and the petitioner, a "former" employee, fell outside the protection of the Act. By its decision, the Commonwealth Court purported to draw a bright line as to who may request inspection of a personnel file, and when such a request must be made. However, the Court's decision today does nothing more than blur this line and fortify employers with additional protection under the Act. The Court is perilously close to abrogating the meaning or the Act by narrowly construing "employee" and, in effect, may be abridging the rights of unknowing employees by denying them access to their personnel files.

The Personnel Files Act was passed in 1978 and amended in 1990. Section 1322 of the Act generally provides that an employee is entitled to inspect his/her personnel file upon written request to the employer [17]. The term "employee" is defined in section 1321 as follows: "Any person currently employed, laid off with reemployment rights or on leave of absence. The term 'employee' shall not include applicants for employment or any other person" [5]. Section 1322.1 provides that an employee may designate an agent or individual to inspect his/her employment records [5, § 1322.1]. Finally, section 1323 generally outlines the ways in which an employer may limit or restrict the employee's right to examine the file [18].

A number of Pennsylvania courts have interpreted what an employee may inspect in his/her file and when such an inspection is proper [19]. Initially, employees who wish to inspect their personnel file must avail themselves of the statutory remedy available before going to court. In *Sewell v. Solomon* [20], the Commonwealth Court ruled that the petitioner was not entitled to inspect his personnel file under the Act because he failed to exhaust the statutory remedy of requesting the documents through the Bureau of Labor Standards of the Department of Labor and Industry [20, at 132]. The petitioner, a police officer, requested to examine several documents in his file regarding his performance by two written requests to his supervisors, a staff inspector, and a commissioner [20, at 131]. These individuals refused petitioner's request, contending, in part, they were not part of his personnel file [20, at 131]. As a result, the petitioner brought an action in mandamus to compel the city to provide access to his files [20, at 131]. On appeal, the Commonwealth Court ruled that the petitioner failed to show an inadequate remedy at law because he did not pursue the remedy of petitioning the Bureau of Labor Standards for such information as provided in

PA. STAT. ANN. tit. 43, § 1324 before commencing this action [20, at 132]. As such, the court dismissed the petitioner's action [20, at 132].

In *Lafayette College v. Department of Labor and Industry, Bureau of Labor Standards* [21], the issue before the Court was whether certain "performance evaluations" relating to tenure decisions of professors were entitled to inspection by employees under the Act [22]. Here, the respondent was a non-tenured professor who was notified he would not be offered a tenured position [21, at 127]. Upon learning this, the professor sought to examine certain reports prepared by the department head and tenured professors with regard to his tenure review [21, at 127]. The school denied the professor access to these reports and as a result, the professor filed a petition with the Bureau of Labor Standards [21, at 127-28]. The Bureau adopted the decision of the hearing examiner by determining the reports constituted "performance evaluations" subject to inspection under the Act [21, at 128]. On appeal, the school argued, *inter alia*, that the reports were mere "letters of reference" and as such, were not subject to inspection under the Act [21, at 129]. The Commonwealth Court held that the tenure reports were indeed "performance evaluations" subject to inspection under the Act. The court granted great deference to the hearing examiner's conclusion that "evaluations of an employee's work performance submitted by coworkers under the direction, supervision, and control of the employer, and in accordance with the employer's procedures, instructions, and guidelines," constitute "performance evaluations" and thus are accessible by the employee under the Act [21, at 130].

In *Tady v. Workmen's Compensation Appeal Board (Republic Steel Corp.)* [23], the court was faced with the issue of whether an employee's request for the inspection of certain documents in his personnel file made for the first time at a final hearing in a workmen's compensation case is the proper method of inspecting such records [23, at 900]. The employee sought to examine his personnel file to determine whether his employer had actual notice of his work-related disability [23, at 900]. The employer contended that the employee could only access certain information in his file by requesting a subpoena [23, at 900]. The Commonwealth Court held that the Personnel Files Act is "not applicable to workmen's compensation cases" [23, at 900]. As such, the court agreed with the employer that only through the issuance of a subpoena could the employee access the requested information [23, at 900].

These cases address when, and to what extent, an employee may or may not examine his/her file under the Personnel Files Act. However, not before the Commonwealth Court's decision in *Beitman v. Department of Labor and Industry* [2], had the issue arisen as to precisely who is entitled to inspect such files under the Act. In this case, Susan Beitman was employed by M & M/Mars, Inc., which terminated her in June of 1992 [2, at 1301]. Over two years later, in December of 1994, Beitman, with her counsel, requested to examine her personnel file to determine exactly why the employment relationship ended [2, at 1301].

The employer rejected this request, contending that Beitman was no longer an employee within the meaning of Sections 1 and 2 of the Act [2, at 1301].

Procedurally, Beitman filed a complaint with the Department of Labor and Industry, and the director of the Bureau of Labor Standards replied in a letter that Beitman was no longer a current employee and, therefore, not entitled to the protection of the Act [2, at 1301]. On appeal to the Commonwealth Court, the issue was one of first impression. That is, "whether the definition of 'employee' in the Act includes employees who have been terminated prior to any request to inspect their personnel file" [2, at 1301].

The court first determined that Section 1 of the Act "unambiguously define[d] 'employee' as including only those individuals who are 'currently employed, laid off with reemployment rights or on a leave of absence' " [2, at 1301]. From this, the court reasoned that "even under the broadest interpretation of 'currently employed,' " Beitman did not fall under this definition [2, at 1301]. In response, Beitman argued that the intent of the legislature was to permit employees and particularly employees who have been discharged to inspect their records [2, at 1301]. Beitman cited, as support for her position, Section 1 of the Act itself, which allows an employee to inspect her records "to determine his or her qualifications for . . . termination or disciplinary action" [2, at 1301]. Beitman argued that to not allow her to inspect her file would be to, in effect, render the phrase "termination or disciplinary action" meaningless [2, at 1301].

The court rejected her argument in its entirety, under the guise of strict statutory construction. The court, in a 4-3 decision, held that the Act does not apply to "former employees" and that Beitman, as such, was not an "employee" under the Act [2, at 1302]. Accordingly, the court affirmed the decision of the Department of Labor Standards and determined that the employer did not have to provide Beitman with her personnel file [2, at 1302].

## DISCUSSION

### Beitman

The majority, by its decision, purports to draw a bright line as to who may inspect their personnel file, and when such a request must be made under the Act. However, this decision does nothing more than blur that line and afford greater protection to the employer. The majority ignored the purpose of the Act: to afford employees protection and safeguard their legal rights by allowing them to inspect their personnel file. The dissent comments, and understandably so, that these rights are "most in jeopardy, and, consequently, most in need of protection, in the event of termination" [2, at 1305]. However, the majority, in effect, abridged these fundamental rights by denying terminated individuals access to these records.

In an attempt to mitigate the harshness of its ruling, the Court carved out an unfounded exception by stating that recently terminated employees may inspect their files if the request is made "contemporaneously with termination or within a reasonable time immediately following termination" [2, at 1302]. While a commendable effort, the Court is in actuality finding a way to support its underlying disapproval of Beitman's failure to request her file for over two years. However, notwithstanding any potential statute of limitations problems, why should it matter how long an employee waits to inspect his/her file? First, even though the file itself is technically property of the employer, the file contains information that is indisputably about the employee, i.e., performance evaluations, warning and/or disciplinary information, and employment records, to name a few. Why then would an employer have any reason to withhold this information from an employee? The simple answer appears to be that the employer wants to insulate itself from potential liability in the event he/she has committed a wrong. The obvious response is that the Act was not enacted, nor intended to grant the employer such protection.

By overlooking the purpose of the Act, the Commonwealth Court is denying employees the protection they deserve. By denying employees access to their files who do not request inspection immediately following termination, the Court is in reality abridging fundamental rights of unknowing employees.

## Other Courts

At least one court decision prior to *Beitman* casts considerable doubt on the validity of that decision. In *Rix v. Kinderworks Corp.* [24], the New Hampshire Supreme Court was faced with precisely the same issue confronted by the court in *Beitman.* Ann Rix was employed by the defendant in March 1990 and subsequently suffered a wrist injury, allegedly in the course of her employment, in February 1991 [24]. Following a deteriorating work relationship with her employer, she quit her job in 1991. The employer's insurance carrier denied Ms. Rix's workers' compensation claim and as a result, she appealed to the department of labor.

Plaintiff's counsel, before the hearing, requested that the defendant provide Ms. Rix access to her personnel file. After the employer denied the request, plaintiff's counsel sought a court order granting the request. The superior court granted the order, and the employer appealed to the state supreme court.

The employer's primary argument was that the New Hampshire statute governing the disclosure of personnel files did not cover former employees and that Ms. Rix was therefore properly denied access to her file [24, at 834]. The court first turned to the language of the statute and determined that it does not expressly define an "employee." Moreover, the statute, the court concluded, was silent on the issue as to whether or not it applied to former employees. The court then

looked to legislative intent and found that former employees were indeed covered under the statute [24, at 834-35].

The court's reasoning is of considerable importance here. The court commented: "Were we to interpret the statute to deny former employees access to their personnel files, we would significantly curtail the statute's utility" [24, at 834]. The court further opined that "under the defendant's interpretation, an employer could freeze access to the contents of an employee's personnel file simply by firing that employee. We will not interpret the statute to produce such an 'illogical result' " [24, at 834].

This reasoning mirrors the same reasoning used by the dissent in *Beitman.* There, the dissent stated that legislative intent should be used to construe the statute and that "the occasion and the necessity for the statute, the mischief to be remedied, the object to be attained, and the consequences of a particular interpretation" should be addressed [2, at 1304]. The dissent reiterated the importance of safeguarding employees' rights in the work place and focused on what would happen absent such a statute. That is, the employee would be left with no recourse to correct errors in his/her file, to contest the validity of an employer's action, and most importantly, have no way to assert or enforce his/her rights with respect to discipline and termination. Thus, under these persuasive arguments, it is illogical to interpret the statute as denying former employees access to their file following termination.

## Recommendations

### *Employers*

Employers may attempt to rally behind the *Beitman* decision and deny former employees access to their files. However, employers must be familiar with their state statute, as it may or may not provide former employees access. If an employer is in a state where a former employee is denied access, the employer may still be obligated to hand over the file depending on the definition of the word "employee." In states where an employee is not defined in the statute (i.e., New Hampshire), the court will favor allowing the former employee access to the file. On the other hand, in states where an employee is defined and expressly limited in the statute, a former employee, in the eyes of a strict constructionalist court (i.e., Pennsylvania), may be denied access to his file.

In any event, the employer would be well-advised to provide the former employee with the file for a variety of reasons. First, in the majority of cases there is nothing contained in the file that is injurious to the employer. Thus, it follows that employers should not put anything in the file that may later hurt them. Or put still another way, employers should not put anything in the file they do not feel comfortable allowing the employee access to. Second, and equally important, is that by providing the former employee access to the file when initially requested,

the employer relieves itself from the impropriety of suspicion associated with denying the employee access to the file. Simply put, many times the employer appears to be hiding something by denying the employee access to the file. Thus, by allowing access when first requested by the former employee, the cloud of suspicion that hangs over the head of the employer is lifted. Finally, and perhaps most importantly, the former employee, through counsel, will obtain the contents of the file through the discovery process in the event the employer is sued. Discovery devices such as interrogatories, depositions, and requests for the production of documents, all make personnel files of former employees discoverable in an action against the employer [25]. Thus, it appears the employer would be well-advised to disclose the contents of the file to the former employee as soon as the request is made.

### *States*

State legislators need to reexamine their statutes in light of the *Beitman* decision. First of all, states that specifically include former employees in their statutes need not worry. In fact, these states should be commended for such a position, for it advances the purpose of the Act of safeguarding employees' rights, especially in the event of termination. These states appear "safe" because this issue arises only when states are either silent on the issue or when states do not provide former employees access to their files.

Second, for states that are silent on the issue of granting former employees access to their files, now is as good a time as any to amend the statute to provide access. These states are most vulnerable to a decision like *Beitman* and indeed may find themselves litigating a similar fact pattern in the near future. Most importantly, however, these states are only partially advancing the purpose of the Act by providing limited access to certain employees, namely current employees. By amending their statute to include former employees, all employees' rights are preserved.

Third, and finally, amending state statutes to provide former employees access to their personnel files avoids the unwanted situation of determining what is a reasonable time for requesting such information. The *Beitman* majority carved out an exception whereby a recently terminated employee may request his/her file "contemporaneously with termination or within a reasonable time immediately following termination" [2, at 1302]. Aside from the inherent difficulties associated with administering such a rule, this rule simply does not make sense. Why the sense of urgency? What is the employer trying to hide? Who determines what "reasonable" is, the employer or the court? This exception clearly is unnecessary and a waste of judicial resources for future litigation when one considers that the statute may and should be amended to provide former employees the access they rightfully deserve.

## CONCLUSION

Personnel files are exactly what their name suggests: files containing information, documents, and papers relating to the employment of a particular employee. It comes as no surprise then that virtually all states allow an employee access to the information contained in his/her file. What is shocking, however, is that some states "cut off" this ability to examine the file when the employment relationship has ended. This surely appears to be illogical, as employee rights are "most in jeopardy, and, consequently, most in need of protection, in the event of termination" [2, at 1305]. An example of this "severance of rights," is the Pennsylvania decision of *Beitman v. Department of Labor and Industry* [2]. There, the court determined that a former employee was not entitled to examine her personnel file because the Act covered only current employees. Such a decision may very well send a "red flag" warning to states to reexamine their statutes in light of this decision.

Thus, state legislators whose statute is silent on this issue should amend the statute to include former employees. Then and only then, will the full purpose of these statutes, namely the safeguarding of employees' rights, be served.

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## ENDNOTES

1. *See* ALASKA STAT. § 23.10.430(a) (1995); ARK. CODE. ANN. §§ 25-19-105(a) (Michie 1996); CAL. LAB. CODE § 1198.5 (WEST SUPP. 1996); COLO. REV. STAT. ANN. § 24-72-204 (West 1996) (public records); CONN. GEN. STAT. ANN. § 31-128 (West 1987); DEL. CODE ANN. tit. 19, § 732 (1995); LA. REV. STAT. ANN. § 17:1237 (1996); ME. REV. STAT. ANN. tit. 26, § 631 (West 1996); MASS. GEN. L. ch. 149, § 52C (1996); MICH. COMP. LAWS §§ 423.501-.512 (1995); MINN. STAT. ANN. § 181.961 (West 1996); NEV. REV. STAT. § 613.075 (1996); N.H. REV. STAT. ANN. ch. 408, §§ 275:56(I)-(III) (1994); N.C. GEN. STAT. § 153A-98 (1996) (public employees); OR. REV. STAT. § 652.750 (1989); PA. STAT. ANN. tit. 43, §§ 1321-1324 (1990); R.I. GEN. LAWS tit. 28, § 6.4 (1995); TENN. CODE ANN. § 8-50-108 (1987) (state employees); TEX. GOVT CODE ANN. § 552.021 (West 1996) (public records); UTAH CODE ANN. § 67-18-1 (1996); VT.

STAT. ANN. tit. 1, § 317 (1994) (public employees); WASH. REV. CODE ANN. § 49.12.240 (1990); WIS. STAT. § 103.13 (1995).

2. *Beitman v. Department of Labor and Industry*, 675 A.2d 1300 (Pa. Commw. Ct. 1995).
3. MASS. GEN. L. ch. 149, § 52C (1996); MICH. COMP. LAWS § 423.501(2)(c) (1995).
4. CONN. GEN. STAT. ANN. § 31-128(a)(3) (West 1987).
5. PA. STAT. ANN. tit. 43, § 1321 (1990).
6. COLO. REV. STAT. ANN. § 24-72-204(3)(a) (West 1996) (public records); CONN. GEN. STAT. ANN. § 31-128(a)(3) (West 1987); MASS. GEN. L. ch. 149, § 52C (1996); MICH. COMP. LAWS §§ 423.501(2)(c)(i)-(viii) (1995); MINN. STAT. ANN. § 181.960 (West 1996); PA. STAT. ANN. tit. 43, § 1321 (1990).
7. Barry A. Hartstein, *Rules of the Road in Dealing with Personnel Records*, EMPLOYEE RELATIONS L.J., Vol. 17, No. 4, pp. 673-692, Spring 1992 (arguing that artful pleading is necessary because this area is "ripe for litigation").
8. DEL. CODE ANN. tit. 19, § 732 (1995).
9. R.I. GEN. LAWS tit. 28, § 6.4-1(b) (1995).
10. MASS. GEN. L. ch. 149, § 52C (1996).
11. NEV. REV. STAT. § 613.075(2) (1996).
12. COLO. REV. STAT. ANN. § 24-72-204 (West 1996) (public records).
13. ME. REV. STAT. ANN. tit. 26, § 631 (West 1996).
14. ALASKA STAT. § 23.10.430(a) (1995); CONN. GEN. STAT. ANN. § 31-128a(1) (West 1987); ME. REV. STAT. ANN. tit. 26, § 631 (West 1996); MASS. GEN. L. ch. 149, § 52C (1996); MICH. COMP. LAWS § 423.501(2)(a) (1995); N.C. GEN. STAT. § 153A-98(a) (1996); WIS. STAT. § 103.13 (1995).
15. CAL. LAB. CODE § 1198.5 (West Supp. 1996); DEL. CODE ANN. tit. 19, § 732 (1995); LA. REV. STAT. ANN. § 17-1237 (1996); N.H. REV. STAT. ANN. ch. 408, §§ 275:56(I)-(III) (1994); PA. STAT. ANN. tit. 43, §§ 1321-1324 (1990); R.I. GEN. LAWS tit. 28, § 6.4 (1995); TENN. CODE ANN. § 8-50-108 (1987) (state employees); WASH. REV. CODE ANN. § 49.12.240 (1990).
16. ILL. REV. STAT. ch. 820, para. 40/1, § 1(a) (Supp. 1996); MINN. STAT. ANN. § 181.960 (West 1996); NEV. REV. STAT. ANN. § 613.075 (1996).
17. The full text of section 1322 provides:

    An employer shall, at reasonable times, upon request of an employee, permit that employee or an agent designated by the employee to inspect his or her own personnel files used to determine his or her own qualifications for employment, promotion, additional compensation, termination or disciplinary action. The employer shall make these records available during regular business hours of the office where these records are usually and ordinarily maintained, when sufficient time is available during the course of a regular business day, to inspect the personnel files in question. The employer may require the requesting employee or the agent designated by the employee to inspect such records on the free time of the employee or agent. At the employer's discretion, the employee may be required to file a written form to request access to the personnel file or files or to indicate a designation of agency for the purpose of file access and inspection. This form is solely for the purpose of identifying the requesting individual or the designated agent of the requesting individual to avoid disclosure to ineligible individuals. To assist the employer in providing the correct

records to meet the employee's need, the employee shall indicate in his written request, either the purpose for which the inspection is requested, or the particular parts of his personnel record which he wishes to inspect or have inspected by the employee's agent. [5, § 1322].

18. The full text of section 1323 provides:
    Nothing in this act shall be construed as a requirement that an employee or the designated agent of the employee be permitted to remove his personnel file, any part thereof, or copy of the contents of such file from the place of the employer's premises where it is made available for inspection. The taking of notes by an employee or the designated agent of the employee is permitted. The employer shall retain the right to protect his files from loss, damage or alteration to ensure the integrity of the files. The employer may require inspection of the personnel file in the presence of an official commensurate with the volume content of the file. Except for reasonable cause the employer may limit inspection to once every calendar year by an employee and once every calendar year by the employee's designated agent, if any. [5, § 1323].
19. *Lafayette College v. Department of Labor and Industry, Bureau of Labor Standards*, 546 A.2d 126 (Pa. Commw. Ct. 1988); *Pennsylvania State University v. Department of Labor and Industry, Bureau of Labor Standards*, 536 A.2d 852 (Pa. Commw. Ct. 1988); *Tady v. Workmen's Compensation Appeal Board*, 485 A.2d 897 (Pa. Commw. Ct. 1985); *Sewell v. Solomon*, 465 A.2d 130 (Pa. Commw. Ct. 1983).
20. *Sewell v. Solomon*, 465 A.2d 130 (Pa. Commw. Ct. 1983).
21. *Lafayette College v. Dept. of Labor and Industry, Bureau of Labor Standards*, 546 A.2d 126 (Pa. Commw. Ct. 1988).
22. *See Pennsylvania State University v. Department of Labor and Industry, Bureau of Labor Standards*, 536 A.2d 852 (Pa. Commw. Ct. 1988) (holding reports prepared in determining tenure decisions are "performance evaluations" subject to employee inspection under the Personnel Files Act).
23. *Tady v. Workmen's Compensation Appeal Court (Republic Steel Corp.)*, 485 A.2d 897 (Pa. Commw. Ct. 1985).
24. *Rix v. Kinderworks Corp.*, 618 A.2d 833 (1992).
25. *See Ornelas v. Department of Institutions*, 804 P.2d 235, 236-37 (1990) (holding that a former employee was entitled to his personnel file pursuant to the Open Records Act even absent a discovery request); *Dias v. Consolidated Edison Co.*, 496 N.Y.S.2d 686, 686 (1986) (holding that where a former employee alleges discrimination by the employer, the employee is entitled to review his personnel file by requesting a subpoena duces tecum to demonstrate a pattern and practice of decision making).

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