

# **Bullard-Plawecki Employee Right to Know Act:**

## **Managing Risk When Producing a Personnel File**

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# The Personnel Record



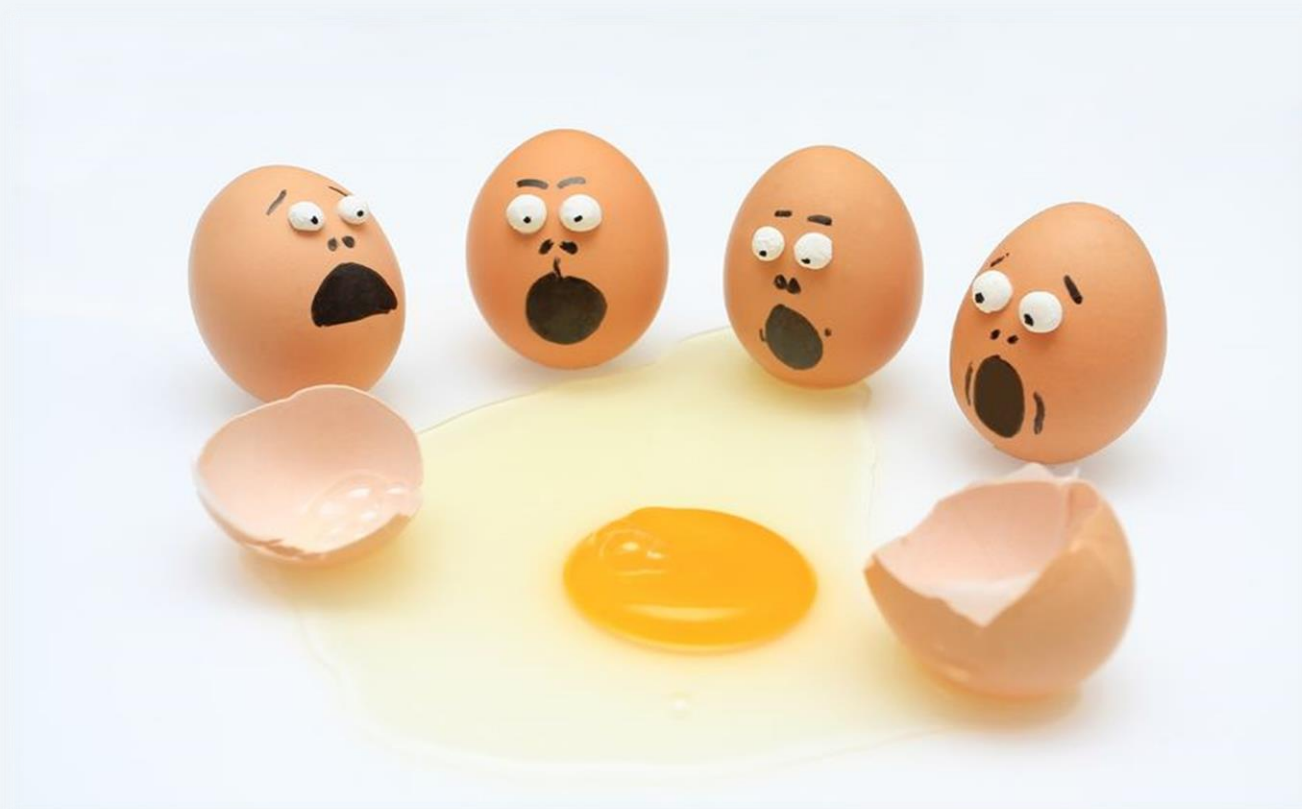
## The Personnel Record

- Defined by the Act
- A record kept by the employer (incl. PEOs)
- Identifies the employee by name
- Used/has been used/may affect employee's qualification for employment, promotion, transfer, compensation or discipline

## Shall Not be Included

- Identity of employee reference
- Employer staff planning materials >1 employee
- Medical records/reports if otherwise available to employee
- Personal info about another person if disclosure would clearly be an unwarranted invasion of other person's privacy.
- Employer investigation info if kept separately
- Grievance investigation info if kept separately
- Personal record made and separately kept by executive/admin. but may be entered into record not > 6 mos after event

**OOPS!**



## Omitted Record Information

- Act provides that an employer cannot use a record that should have been included in the record in court or other proceeding.
- Exception: if judge/officer determines omission was not intentional and employee agrees to allow use.
- Employee can always use it!

# Employee Right to Record

- Written request from employee
- Employer must allow period review/copy, not > 2x year
- Near employee's work location, office hours
- If employee unable to review at employing unit, employer must mail record to employee
- Employer can charge employee only the actual incremental copying fee

## Removal of Materials

- Employer/employee can agree to remove/correct
- If not agree, employee entitled to submit position statement not > 5 pages that must be produced with file
- Employer must review the employee file before producing to a third party and remove disciplinary reports, letters of reprimand and other disciplinary type records if more than 4 years old **UNLESS RELEASE IS ORDERED IN LAWSUIT OR ARBITRATION**



## Disciplinary Reports

- Must not be provided to third parties by employer or former employer without written notice mailed to employee on or before day the information is divulged
- Exclusion does not apply if production is ordered in legal action, requested by govt. agency due to employee complaint, or if employee waived notice as part of employment application with another employer

## Non-Employment Activities

- Employers must not keep a record of employee's associations, political activities, publications or communications of non-employment activities
- Prohibition does not apply if employee consented, activity occurred during working hours or upon employer's premises if interferes with work of employee or other employees
- Any information kept by employer about these matters must be included in the personnel record

## Criminal Investigations

- Separate file of investigation of suspected employee criminal activity
- Employee must be notified of investigation once completed or after 2 years, whichever is first
- If investigation completed and no disciplinary action, then materials must be destroyed

## Court Actions

- Employee can commence case to compel compliance with Act
- Employee who wins will be entitled to actual damages plus costs and if employer's violation was intentional, actual damages, plus \$200 plus reasonable attorney fees

# Thank You!

