

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

## **Fact Sheet for Supervisors**

### **Mott Community College**

References in italics refer to sections of the Bullard-Plawecki Employee Right to Know Act 397 of 1978, which is reprinted on pages 5 through 7 of this pamphlet.

#### **1) What is the purpose of this law and who does it cover?**

This law, which became effective January 1, 1979, narrowly defines personnel records for the purpose of the act. It permits employees to review personnel records and have them copied; permits employees to file written statements clarifying or protesting documents assembled by the employer; and regulates the employer's use and disclosure of the defined records. The act covers any employee or former employee hired by an employer with four or more employees in either the public or private sector. *Section 1(2)(a) and (b).*

#### **2) What are “personnel records” under the law?**

The Act defines personnel records as information relating to an employee which is kept by an employer and which is used, has been used, or **may** be used to determine an employee's qualifications for employment, promotions, transfers, additional compensation, or disciplinary information. *Section 1(2)(c).* Examples of personnel records (if kept for the purposes noted in the preceding text) are:

- employment applications
- work performance evaluations
- notes from disciplinary meetings
- disciplinary actions taken
- educational background, including supplementary training courses taken by the employee.
- general work history

#### **3) Under this law, is the College prohibited from keeping specific information?**

Yes. An employer is strictly prohibited from gathering and keeping records of an employee's associations, political activities, publications, or communication of non-employment activities unless the employee gives written authorization allowing the collection and retention of such information. If such authorization is given, any record kept by the College, such as professional association memberships or a list of published articles or books, becomes part of the personnel file. *Section 8.*

#### **4) Must the employer disclose all records it maintains that are personnel related?**

No, the law specifically identified the following items that are not open for review as part of the personnel record:

- Employee references supplied to Mott that would reveal the identity of the person making the reference.
- Materials which disclose Management's staff planning regarding more than 1 employee, including salary increases, promotions, and job assignments. Such materials relating only to the employee concerned are, however, subject to disclosure.

- Medical reports and records in the College's possession, if the information is available to the employee from other sources.
- Personal information concerning someone other than the employee if disclosure would be a clearly unwarranted invasion of the other person's privacy.
- Information concerning the employee relative to a criminal investigation, and kept apart from other records. *Section 9.*
- Records limited to grievance investigations which are kept separately and are **not used** to determine an employee's qualifications for employment, promotions, transfer, additional compensation, or disciplinary action. Note this is different from the final grievance resolution, which, unless specifically prohibited by the terms of the employee's CBA, **should** be included in the personnel file.
- Records maintained by an educational institution concerning a student which are considered educational records according to the Federal Family Educational Rights and Privacy Act of 1974.
- Notes kept by an executive, administrative, or professional employee which remain solely in the possession of the maker of the record, and are not seen by anyone else. However, a note concerning an occurrence or fact about an employee may be entered into the personnel file up to six months after the date of the occurrence or the date the fact becomes known. After this time, the information may not become part of the personnel file.

All other records kept and used by the College in determining an employee's qualifications for employment, promotions, transfers, additional compensation, or disciplinary action must be available to the employee for review. *Section 1(2)(c).*

### **5) Can supervisors keep separate personnel records?**

Yes. However, if anything which may be kept in a personnel record (see question 2 above) under the Bullard-Plawecki act is **not** included in the Human Resources personnel file, it may not be used by the College in a judicial or quasi-judicial proceeding. A record kept in a separate file by a supervisor concerning an occurrence or fact about an employee may be used in a proceeding if the occurrence took place or became known within 6 months of the proceeding. *Section 1(2)(c).*

### **6) What if a Supervisor forgets to send a document about an employee to Human Resources?**

This section does contain a provision that if the exclusion of information was unintentional, it may be used in a proceeding if the employee agrees or is given a reasonable time to review the information. The employee may use the excluded information in a judicial or quasi-judicial proceeding upon request. *Section 2.*

### **7) Can the College collect information about an employee's non-employment activities?**

**No.** See question 3 above.

## **8) Must the College notify an employee when divulging personnel record information to a third party?**

As a matter of courtesy, the College usually notifies employees when their personnel record has been requested by third parties (someone other than College management or its designee). Under the law, normally, the employer does not have to notify an employee when transmitting personnel records to a third party who is not a part of the employer's organization or a member of a labor organization representing the employee. However, in the case of disciplinary reports, letters of reprimand or other reports of disciplinary action, an employer or former employer must give written notice to the employee when divulging the information to third parties. Such notice must be mailed on or before the day the information is transmitted. Notification is not required when:

- The employee has waived written notice as part of a written, signed employment application with another employer.
- The disclosure is ordered in a legal action or arbitration to a person involved in that legal action or arbitration.
- Information is requested by a government agency because of a claim or complaint by an employee. [Section 6.](#)

## **9) Are there any restrictions on what information from an employee's file can be released to a third party?**

Human Resources reviews information in personnel files before releasing any material and may not transmit to a third party disciplinary reports, letters of reprimand, or other records of disciplinary action which are **more than four years old**, except when ordered to do so in a legal action or arbitration. [Section 7.](#)

## **10) How may an employee request to see his or her personnel file?**

An employee who wishes to review his or her file must make a written request which describes the personnel record to the College. This request should include as many identifying factors as possible in order to facilitate the College's retrieval of the record. Information should include name, Social Security number and dates of employment. [Section 3.](#)

## **11) How often may an employee see his or her personnel file?**

An employee may ask to see his or her personnel file at reasonable intervals, generally not more than two times in a calendar year or as provided by any other special law, or by the employee's collective bargaining agreement. [Section 3.](#)

## **12) Where may an employee review his or her personnel file?**

The review shall take place at a location reasonably near the employee's place of employment and during normal working hours. This is typically done in the office of Human Resources. However, the College may allow the review to take place at another time and location that would be more convenient to the employee. If a former employee wishes to review a personnel file kept by the College, an appointment will have to be made, or the former employee will have to request in writing a copy of the information contained in his or her file. [Section 3.](#)

**13) Does an employee need to take time off to review his or her file?**

The College ordinarily permits employees to view their file during their regular working hours. However, under the law, if reviewing the file during normal working hours was a problem, then the College would be required to provide some other reasonable time or location that would be more convenient to the employee. This stipulation does not apply to cases where the employee wishes to review a personnel file kept by a former employer. [Section 3.](#)

**14) How can an employee obtain a copy of his or her file?**

After looking at the file, an employee may obtain a copy of any or all information contained in the file by simply requesting it from Human Resources. Under the law, an employer may charge a fee for providing a copy of all or part of the information contained in the personnel file. While the College does not typically charge for this service if requested only once per year, it will charge 10 cents per sheet if an employee requests a copy more than once per year. [Section 4.](#)

**15) What if an employee disagrees with information in the file?**

If the employee disagrees with information contained in a personnel file, removal or correction of that information may be mutually agreed upon by the Executive Dean of Human Resources and the employee. If such an agreement cannot be reached, the employee may submit a written statement explaining his or her position, which will become a permanent part of the file. The law allows a statement of up to five sheets of 8½ by 11 inch paper to be added to the file. It must be included whenever the file is divulged to a third party. [Section 5.](#)

**16) What are the legal remedies for violation of this Act?**

If an employer fails or refuses to follow this Act, an employee may bring an action for compliance in a circuit court. The appropriate court would be the circuit court located in the county where the employee lives, works, or where the personnel file is maintained. The court can issue an order enjoining the employer to comply with the Act. In addition, the employer's penalty for violation of the Act is actual damages plus costs. For a willful and knowing violation of the Act, the penalty is \$200 minimum damages plus costs, reasonable attorney's fees and actual damages. [Section 11.](#)

**Act No. 397 – Bullard-Plawecki Employee Right to Know Act**

Public Acts of 1978

Approved by Governor

August 1, 1978

MCLA 423.501 - 423-512

STATE OF MICHIGAN

79TH LEGISLATURE

REGULAR SESSION OF 1978

Introduced by Reps. Bullard, Clodfelter, Padden, Hollister, Conroy, Ferguson, Jondahl, Monsma, Holcomb, Barcia and Evans; Rep. Angel named co-sponsor

ENROLLED HOUSE BILL No. 5381

AN ACT to permit employees to review personnel records; to provide criteria for the review; to prescribe the information which may be contained in personnel records; and to provide penalties.

The People of the State of Michigan enact:

**Sec. 1.**

(1) This act shall be known and may be cited as the "Bullard-Plawecki employee right to know act."

(2) As used in this act:

(a) "Employee" means a person currently employed or formerly employed by an employer.

(b) "Employer" means an individual, corporation, partnership, labor organization, unincorporated association, the state, or an agency or a political subdivision of the state, or any other legal, business, or commercial entity which has 4 or more employees and includes an agent of the employer.

(c) "Personnel record" means 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. A personnel record shall include a record in the possession of a person, corporation, partnership, or other association who has a contractual agreement with the employer to keep or supply a personnel record as provided in this subdivision. A personnel record shall not include:

(i) Employee references supplied to an employer if the identity of the person making the reference would be disclosed.

(ii) Materials relating to the employer's staff planning with respect to more than 1 employee, including salary increases, management bonus plans, promotions, and job assignments.

(iii) Medical reports and records made or obtained by the employer if the records or reports are available to the employee from the doctor or medical facility involved.

(iv) Information of a personal nature about a person other than the employee if disclosure of the information would constitute a clearly unwarranted invasion of the other person's privacy.

(v) Information that is kept separately from other records and that relates to an investigation by the employee pursuant to section 9.

(vi) Records limited to grievance investigations which are kept separately and are not used for the purposes provided in this subdivision.

(vii) Records maintained by an educational institution which are directly related to a student and are considered to be education records under section 513(a) of title 5 of the family educational rights and privacy act of 1974, 20 U.S.C. 1232g.

(viii) Records kept by an executive, administrative, or professional employee that are kept in the sole possession of the maker of the record, and are not accessible or shared with other persons. However, a record concerning an occurrence or fact about an employee kept pursuant to this subparagraph may be entered into a personnel record if entered not more than 6 months after the date of the occurrence or the date the fact becomes known.

**Sec. 2.**

Personnel record information which was not included in the personnel record but should have been as required by this act shall not be used by an employer in a judicial or quasi-judicial proceeding. However, personnel record information which, in the opinion of the judge in a judicial proceeding or in the opinion of the hearing officer in a quasi-judicial proceeding, was not intentionally excluded in the personnel record, may be used by the employer in the judicial or quasi-judicial proceeding, if the employee agrees or if the employee has been given a reasonable time to review the information. Material which should have been included in the personnel record shall be used at the request of the employee.

**Sec. 3.**

An employer, upon written request which describes the personnel record, shall provide the employee with an opportunity to periodically review at reasonable intervals, generally not more than 2 times in a calendar year or as otherwise provided by law or a collective bargaining agreement, the employee's personnel record if the employer has a personnel record for that employee. The review shall take place at a location reasonably near the employee's place of employment and during normal office hours. If a review during normal office hours would require an employee to take time off from work with that employer, then the employer shall provide some other reasonable time for the review. The employer may allow the review to take place at another time or location that would be more convenient to the employee.

**Sec. 4.**

After the review provided in section 3, an employee may obtain a copy of the information or part of the information contained in the employee's personnel record. An employer may charge a fee for providing a copy of information contained in the personnel record. The fee shall be limited to the actual incremental cost of duplicating the information. If an employee demonstrates that he or she is unable to review his or her personnel record at the employing unit, then the employer, upon that employee's written request, shall mail a copy of the requested record to the employee.

**Sec. 5.**

If there is a disagreement with information contained in a personnel record, removal or correction of that information may be mutually agreed upon by the employer and the employee. If an agreement is not reached, the employee may submit a written statement explaining the employee's position. The statement shall not exceed 5 sheets of 8 ½-inch by 11-inch paper and shall be included when the information is divulged to a third party and as long as the original information is a part of the file. If either the employer or employee knowingly places in the personnel record information which is false, then the employer or employee, whichever is appropriate, shall have remedy through legal action to have that information expunged.

**Sec. 6.**

(1) An employer or former employer shall not divulge a disciplinary report, letter of reprimand, or other disciplinary action to a third party, to a party who is not a part of the employer's organization, or to a party who is not a part of a labor organization representing the employee, without written notice as provided in this section.

(2) The written notice to the employee shall be by first-class mail to the employee's last known address, and shall be mailed on or before the day the information is divulged from the personnel record.

(3) this section shall not apply if any of the following occur:

(a) The employee has specifically waived written notice as part of a written, signed employment application with another employer.

(b) The disclosure is ordered in a legal action or arbitration to a party in that legal action or arbitration.

(c) Information is requested by a government agency as a result of a claim or complaint by an employee.

**Sec. 7.**

An employer shall review a personnel record before releasing information to a third party and, except when the release is ordered in a legal action or arbitration to a party in that legal action or arbitration, delete disciplinary reports, letters of reprimand, or other records of disciplinary action which are more than 4 years old.

**Sec. 8.**

(1) an employer shall not gather or keep a record of an employee's association, political activities, publications, or communications of nonemployment activities, except if the information is submitted in writing by or authorized to be kept or gathered, in writing, by the employee to the employer. This prohibition on records shall not apply to the activities that occur on the employer's premises r during the employee's working hours with that employer that interfere with the performance of the employee's duties or duties of other employees.

(2) A record which is kept by the employer as permitted under this section shall be part of the personnel record.

**Sec. 9.**

(1) If an employer has reasonable cause to believe that an employee is engaged in criminal activity which may result in loss or damage to the employer's property or disruption of the employer's business operation, and the employer is engaged in an investigation, then the employer may keep a separate file of information relating to the investigation. Upon completion of the investigation or after 2 years, whichever comes first, the employee shall be notified that an investigation was or is being conducted of the suspected criminal activity described in this section. Upon completion of the investigation, if disciplinary action is not taken, the investigative file and all copies of the material in it shall be destroyed.

(2) If the employer is a criminal justice agency which is involved in the investigation of an alleged criminal activity or the violation of an agency rule by the employee, the employer shall maintain a separate confidential file of information relating to the investigation. Upon completion of the investigation, if disciplinary action is not taken, the employee shall be notified that an investigation was conducted. If the investigation reveals that the allegations are unfounded, unsubstantiated, or disciplinary action is not taken, the separate file shall contain a notation of the final disposition of the investigation and information in the file shall not be used in any future consideration for promotion, transfer, additional compensation, or disciplinary action.

**Sec. 10.**

This act shall not be construed to diminish a right of access to records as provided in Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled laws, or as otherwise provided by law.

**Sec. 11.**

If an employer violates this act, an employee may commence an action in the circuit court to compel compliance with this act. The circuit court for the county in which the complainant resides, the circuit court for the county in which the complainant is employed, or the circuit court for the county in which the personnel record is maintained shall have jurisdiction to issue the order. Failure to comply with tn order of the court may be punished as contempt. In addition, the court shall award an employee prevailing in an action pursuant to this act, the following damages:

(1) For a violation of this act, actual damages plus costs.

(2) For a willful and knowing violation of this act, \$200.00 plus costs, reasonable attorney's fees, and actual damages.

**Sec. 12.**

This act shall take effect January 1, 1979.