



# Washington Ramps Up Personnel File Rules and the Consequences for Noncompliance: 5 Employer Takeaways + 5 Steps to Take Now

Insights

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Washington law has long given employees the right to inspect their personnel records and former employees the right to receive a written statement about the reasons for their termination – but, until now, employers faced no meaningful consequences for failing to comply with these protections. Under a new law, however, the penalties could add up quickly. We'll give you five key takeaways from legislation that just changed the game, plus five action steps you can take now to comply.

## 5 Key Takeaways for Washington Employers

Gov. Bob Ferguson signed a bill ([SB 1308](#)) into law earlier this year that not only overhauls the state's existing rules on employee access to personnel files but also creates statutory damages for noncompliance. SB 1308 makes changes to the state's existing Industrial Welfare Act by amending two sections (RCW 49.12.240 and RCW 49.12.250) and adding a whole new section for private causes of action. These changes just took effect on July 27.

Here are five key takeaways you should know about:

**1. Broad and specific definition of “personnel file.”** RCW 49.12.240 now defines “personnel file” to include:

- all job application records;
- all performance evaluations;
- all nonactive and closed disciplinary records;
- all leave and reasonable accommodation records;
- all payroll records; and
- all employment agreements.

However, this does not mean you are required to create these personnel records (though you may have an obligation to maintain payroll records under other applicable laws) – just that you must permit employees to access them if you do.

You should also note that while “leave and accommodation records” are included among the types of personnel files that employees have a right to inspect, you must still comply with any applicable requirements under the federal Americans with Disabilities Act to maintain certain employee medical information separately from other personnel files and to treat that information as a confidential medical record.

**2. 21-day deadline to provide a free copy of personnel files.** RCW 49.12.250 now requires employers to provide a free copy of any personnel file requested by a current or former employee (or their “designee”) within 21 calendar days of the request. Former employees must make such requests within three years of their separation from the employer. Prior to July 27, employers were required to permit employees to inspect their personnel files upon request and to make such files available locally within a “reasonable period of time.”

**3. 21-day deadline to state the reasons for termination.** RCW 49.12.250 also now requires employers to provide a signed written statement to a former employee (or their designee) upon their written request, stating the effective date of discharge, whether the employer had a reason for the discharge, and if so, the reasons. The statement must be provided within 21 calendar days of the request (a similar rule under state regulations required this type of statement to be provided within 10 business days). For public employers, the Public Record Act’s disclosure requirements are unaffected by these modifications.

**4. Private right of action.** An employee or former employee may now sue their employer in state court for equitable relief (such as an order requiring compliance), statutory damages, and their attorneys’ fees and costs. However, before filing a lawsuit, an employee or former employee must give the employer notice of their intent to sue (which may be included with their initial request or anytime thereafter). The legal action may not begin until five calendar days after such notice is provided.

**5. Fixed statutory damages for violations.** For failures to timely provide copies of the requested information, the damages amount increases depending on the length of the employer’s delay in production after the initial request:

- **\$250** per violation after 21 calendar days;
- **\$500** per violation after 28 calendar days; and
- **\$1,000** per violation after 35 calendar days.

For any other violations under RCW 49.12.250, the damages amount is **\$500**.

## **5 Next Steps for Compliance**

**1. Review** your current recordkeeping. Be sure that every type of “personnel file” document is part of the employee’s personnel records to the extent you maintain them, although leave and reasonable

accommodations should still be kept separate.

**2. Keep** personnel files for at least three years following an employee's separation.

**3. Educate** your human resources or other appropriate personnel on the 21-calendar day requirement and develop a streamlined electronic delivery process.

**4. Confirm** that any third-party payroll or human resources systems (as applicable) can timely retrieve and send records in accordance with the new law.

**5. Be ready** for requests by attorneys for employees. A personnel file request from an attorney is common before a lawsuit is filed. The available damages make this step more attractive to employees who believe they have claims. This underscores the importance of putting solid compliance steps in place.

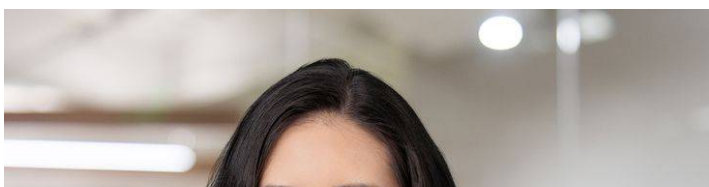
## Conclusion

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