



Greater Hartford Legal Aid

Testimony In Support of House Bill 5235: An Act Concerning An Employee's Right to Inspect, Copy or Dispute the Contents of His or Her Personnel File,

March 1, 2012

My name is Lisa Levy and I am a Staff Attorney at Greater Hartford Legal Aid, Inc. I am here to speak in support of H.B. 5235, which seeks to amend the Connecticut Personnel Files Act, Conn. Gen. Stat. § 31-128a et seq.

At Greater Hartford Legal Aid, Inc. we represent low wage workers who are often illegally terminated or disciplined. Many of these workers apply for unemployment compensation and some file discrimination, or other complaints of unlawful conduct by their employers with state and federal agencies. These workers need timely access to documentation in their personnel files in order to respond to unwarranted discipline or to a discharge notice, effectively advocate for unemployment benefits, or withstand a merit assessment review of their complaint by the Commission on Human Rights and Opportunities ("CHRO").

Although under the present statute, employees have the right to inspect their personnel file, unfortunately, many employers find ways to avoid providing documentation to their workers. As is often the case with our clients, their employers may impose discipline or issue a discharge, but then refuse to allow the employee to inspect the documentation or to provide him or her with a copy. Although the worker has the right to request an inspection of their own personnel file, there is *no* time limit in the statute on the employer's duty to oblige. Expediency is important so that the worker can write a prompt and accurate rebuttal to the alleged disciplinary violation, which under current law, becomes a part of the personnel file. The provision in H.B. 5235 that the employer must provide the employee with a copy of documented discipline within twenty-four hours after its imposition and a copy of the entire personnel file within three days of a request will assist the worker in making an expeditious rebuttal statement that may diminish the specter of further discipline, discharge, or negative performance evaluations.

In cases of discharge, it is even more crucial that the employee be provided with the documentation immediately so that he/she can respond to the notice while still on the employer's premises or, in the case of a termination to take effect prospectively (such as at the end of the business day or week), while still employed. Many of our clients are given only an oral notice of termination or, if there is a written notice, the employer often refuses to provide a copy. By requiring that the employer provide immediate written notice to the employee of its intent to terminate the worker's employment, HB 5235 enables the worker to promptly rebut management's reason for the termination and ensure that a timely and accurate statement is made in the worker's personnel file. The worker's statement may well provide corroborating evidence at an unemployment appeals hearing or other agency proceeding of the actual reason for termination of the worker, thus assisting the worker in seeking unemployment benefits or restoration of back pay or other relief to which she/he is entitled under the employment laws.

Finally, even when an employer provides documentation of discipline, discharge or a negative performance appraisal, workers often have no knowledge of their right to submit a statement

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disagreeing with the action and stating their own position. HB 5235 will ensure that workers will have written notice of this right on any documented disciplinary action, notice of discharge or performance evaluation.

In support of the rights of working poor clients, and all employees in the State of Connecticut, we respectfully urge the Committee to take favorable action on HB 5235.

**Please note technical corrections that must be made to the current bill language. I have submitted these changes as proposed substitute language and attached them to my testimony.**

**In section 1(a) the language reads "not less than three days," but should read "not more than three days," for the current employee to have access to their personnel file; section 1 (b) the language reads "not less than ten days," but should read "not more than ten days" for the separated employee to obtain access to their personnel file provided the request is made within one year from the date of separation; and section 1(c) provides "not less than twenty-four hours," and should read "not more than twenty-four hours" for an employee to obtain a written copy of documented disciplinary action.**

## Proposed Substitute Language from Legal Services

General Assembly  
February Session, 2012

**Raised Bill No. 5235**  
LCO No. 946  
\*00946 LAB\*

Referred to Committee on Labor and Public Employees

Introduced by:

(LAB)

### ***AN ACT CONCERNING AN EMPLOYEE'S RIGHT TO INSPECT, COPY OR DISPUTE THE CONTENTS OF HIS OR HER PERSONNEL FILE.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 31-128b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2012*):

(a) Each employer shall, [within a reasonable time] not [less] more than three business days after receipt of a written request from an employee, permit such employee to inspect, and if requested, copy his or her personnel file if such a file exists. Such inspection shall take place during regular business hours at a location at or reasonably near the employee's place of employment. Each employer who has personnel files shall be required to keep any personnel file pertaining to a particular employee for at least one year after the termination of such employee's employment.

(b) Each employer shall, not [less] more than ten business days after receipt of a written request from a former employee, permit such former employee to inspect, and if requested, copy his or her personnel file if such a file exists, provided the employer receives such written request not later than one year after the termination of such former employee's employment with the employer. Such inspection shall take place during regular business hours at a location at or reasonably near the former employee's former place of employment with the employer.

(c) Each employer shall provide an employee with a written copy of any documentation of any disciplinary action imposed on that employee not [less] more than twenty-four hours after the date of imposing such action. Each employer shall immediately notify an employee in writing of such employer's intent to terminate such employee's employment.

Sec. 2. Section 31-128e of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2012*):

(a) If upon inspection of his or her personnel file or medical records an employee disagrees with any of the information contained in such file or records, removal or correction of such information may be agreed upon by such employee and his or her employer. If such employee and employer cannot agree upon such removal or correction then such employee may submit a

written statement explaining his or her position. Such statement shall be maintained as part of such employee's personnel file or medical records and shall accompany any transmittal or disclosure from such file or records made to a third party.

(b) Each employer shall include a statement in clear and conspicuous language of any documented disciplinary action, intent to terminate such employee's employment or performance evaluation that the employee may, should the employee disagree with any of the information contained in such statement, submit a written statement explaining his or her position. Such employee statement shall be maintained as part of such employee's personnel file and shall accompany any transmittal or disclosure from such file or records made to a third party.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2012</i>	31-128b
Sec. 2	<i>October 1, 2012</i>	31-128e

***Statement of Purpose:***

To provide an employee or former employee the right to copy their personnel files and require employers to provide copies of any documented discipline notices and copies of statements notifying an employee of their right to dispute certain documents in their personnel file.

***[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]***

# **FACTS** about **Amendments to the Personnel Files Act**

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CT's Personnel Files Act, CGS 31-128a et seq, protects the confidentiality of personnel files except in limited circumstances. It also however, gives the employee certain rights to access these files.

## **CT's Personnel Files Act currently:**

- enables employees to inspect the documentation in their files
- gives the employee the right to request that the employer correct inaccurate information in the file
- allows an employee to submit a written memo for the file rebutting the employer's position on, for example, an incident of discipline or a negative evaluation.

**While these provisions are crucially important to employees, employers don't always comply with them.** Employment advocates find frequent violations of the provisions requiring the provision of copies of written discipline or discharge notices to employees as well as situations when employers refuse to give employees access to their files, or delay access unnecessarily. In more egregious cases, confidential information from a discharged employee's file to a prospective employer is disclosed without the employee's consent.

## **This proposed language:**

- Provides that an employee can receive a copy of one's personnel file within 3 days of a request
- Provides that a copy of a former employee's personnel file shall be provided within 10 days of a request if such request is received within one year of separation;
- Provides for copies of any documented disciplinary action be given to the employee within 24 hours of imposition
- Provides that copies of any documented discharge or intent to discharge notices will be provided to the employee immediately upon imposition;
- Provides for the inclusion of a statement in any documented discipline notice, notice of intent to discharge or performance evaluation, that the employee can submit a written statement for inclusion in their personnel file explaining their position.

