New York Personnel Records Law

FOLLOW-UP QUESTIONS AND ANSWERS | NOVEMBER 2026

About this Q&A. The answers below address questions received during our October 30th webinar concerning New York's personnel records law, effective November 8, 2026. Several provisions remain subject to interpretation, and further legislative or regulatory guidance is anticipated. These answers reflect the law as currently enacted and recommended compliance practices as of November 2026. Employers should consult counsel regarding fact-specific questions.

DOES "COMPENSATION" MEAN PAY STUBS?

Not necessarily. The statute identifies an employee's "rate of pay and any other compensation paid to the employee" as information that must be included in the personnel record. The better reading is that this describes compensation information, rather than establishing a categorical requirement that every pay stub become part of the personnel record. Whether a particular payroll record must be produced may depend on whether it otherwise falls within the statute's broad definition of a personnel record.

ARE THERE PENALTIES FOR NONCOMPLIANCE?

Yes. The statute provides for enforcement by the New York Attorney General and civil penalties ranging from $500 to $2,500 per violation. As discussed during the webinar, the statute as enacted does not expressly create a general private right of action, although retaliation or discrimination may raise separate issues.

IF THE PERSONNEL FILE IS ENTIRELY ELECTRONIC AND EMPLOYEES CAN ACCESS IT, CAN THE EMPLOYER DIRECT THEM TO VIEW IT ONLINE?

Probably yes. The law requires an employer, upon written request, to provide the employee with a copy of the personnel record at no cost within five business days. The law does not say the copy cannot be electronic. If producing or permitting access on-line or by hard-copy, employers should be sure what is in the "personnel file" accessible online is what is properly classified as "personnel records" under the new law.

IF THE REQUEST IS MAILED, DOES THE FIVE-BUSINESS-DAY PERIOD RUN FROM MAILING OR RECEIPT?

The statute is not clear. The new law provides that the employers must provide a copy of the personnel record within five business days of "submission of a written request for such copy to the employer." The law does not address the issue of mailing. However, it is fundamentally unfair to the employer (and inconsistent with the statute) if the employer has less than five business days to respond because the request was mailed. We note that, while the New York State court rules do not expressly apply here, in similar circumstances, they provide additional time when "snail mail" is used. Thus, CPLR 2103(b) adds **5 days** (if mailed within New York State) or **6 days** (if mailed from outside New York State but within the U.S.).

We recommend that if requests are received by US Mail, then the employer should save the envelope and date stamp the employee's letter indicating when it was received. Thereafter, even though the law is unclear, the employer should be on good grounds in responding within five business days of the date stamped letter's receipt.

DO EMPLOYERS HAVE TO PROVIDE ACCESS TO THE FILE AS WELL AS A COPY, OR ONLY A COPY?

The statute provides both rights. It requires a free copy following a written request and also gives employees the right to review their personnel records, generally up to twice per calendar year. A review prompted by the addition of negative information does not count toward the twice-yearly limit.

DOES GIVING AN EMPLOYEE A WRITTEN WARNING SATISFY THE 10-DAY NEGATIVE-INFORMATION NOTICE REQUIREMENT?

Potentially, but employers should be cautious. If the employee receives the actual written warning contemporaneously with its placement in the record, there is a strong argument that the employee has been advised of the negative information. Because the statute does not specify the required form or content of notice, employers should document the date of delivery and consider expressly stating that the warning will be maintained in the employee's personnel record.

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MUST ALL INVESTIGATIVE INTERVIEWS BE PLACED IN THE DISCIPLINED EMPLOYEE'S FILE? WHAT ABOUT WITNESS PRIVACY?

Regarding the first question about all interview notes — No. The law should not be read as requiring employers to place every investigative document into an employee's personnel file. A separate question is whether existing investigative materials constitute covered personnel records. That requires a document-specific analysis based on how each record was or will be used and its relationship to the employment or disciplinary decision. Employers must also consider confidentiality and third-party privacy, including whether disclosure would constitute a clearly unwarranted invasion of privacy.

IF A CONFIDENTIAL HR INVESTIGATION RESULTS IN TERMINATION, MUST THE INVESTIGATION DOCUMENTS BE PRODUCED? CAN PRIVILEGED DOCUMENTS BE WITHHELD?

Regarding the production of investigation documents — not necessarily. An investigation report or related materials may fall within the definition if used to make a disciplinary or termination decision, but that does not mean every document generated during the investigation automatically must be produced. Employers should review individual documents for statutory coverage, privacy, confidentiality, attorney-client privilege, and work-product protection. Privileged investigation materials should be routed through counsel rather than automatically produced.

IS NEW YORK A "PRODUCE IT TO USE IT OR LOSE IT" STATE FOR LATER LITIGATION?

No. The statute does not expressly bar an employer from using a document in later litigation merely because the document was not produced in response to a personnel-record request. The webinar identified a practical litigation risk, not a statutory admissibility rule: failing to produce a document that the employer later claims was relied upon could create evidentiary or credibility issues.

WE KEEP I-9 SUPPORTING DOCUMENTS IN THE PERSONNEL FILE. SHOULD WE STOP DOING THAT?

As a best practice, yes. Employers generally should maintain Forms I-9 and supporting immigration and identity documentation separately from the general personnel file, particularly given the sensitive information those materials contain. The new law provides an additional reason to review file architecture and secure documents such as passports, driver's licenses, permanent resident cards, and employment authorization documents separately.

DO A SUPERVISOR'S PERSONAL NOTES OR OBSERVATIONS COUNT AS PERSONNEL INFORMATION IF THEY ARE NEGATIVE?

Potentially, but not simply because a note is negative. The more important question is how the note is used. A personal memory aid that is never shared or used in an employment decision presents a different issue from notes that become the basis for an evaluation, warning, compensation decision, or discipline. Managers should assume that substantive written observations about employee performance may require personnel-record analysis.

IF LEAVE PAUSES PROBATION, POSTPONES AN EVALUATION, OR AFFECTS BONUS OR WAGE PROGRESSION, DOES THE LEAVE DOCUMENTATION BECOME DISCLOSABLE?

Possibly, but not every underlying leave or medical record becomes disclosable. An employer may need to disclose a record documenting the employment consequence of leave, such as an adjusted probationary period, deferred review date, or compensation decision. Underlying medical, disability, and leave documentation should remain separately maintained and reviewed under applicable confidentiality requirements.

IMPORTANT LIMITATION. These responses are general informational guidance and are not a substitute for legal advice concerning a particular request, investigation, record set, or dispute.

Primary authority: New York Senate Bill S3460 (2025–2026), adding N.Y. Labor Law § 210-b: https://www.nysenate.gov/legislation/bills/2025/S3460. If you have any questions regarding this Q&A, please contact the authors, Richard Bahrenburg (rbahrenburg@fordharrison.com); Shawndra Jones (sjones@fordharrison.com); or Greg Reilly (greilly@fordharrison.com) Partners in our New York City office.

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