

# 9

Charter School Boards & Staff In-Service

Minnesota Employment Law

MN Statute 181

Module No. 9

## Personnel Records & Employment References

MN Statute 181 Section 961, 962, 963, 9631, 964, 966 & 967



Minnesota charter schools are subject to MN Statute 181 - Employment Law. This law is the general employment law in the State of Minnesota that applies to all employers and employees.

One of the fiduciary duties of board members is to know the laws that apply to the school, and the charter school has a legal responsibility to notify employees of the terms and conditions of employment in the public charter school - especially since those terms and conditions are different than employment in traditional public schools.

These In-service Modules provide “bite size” lessons on Minnesota’s Employment Law for use as monthly in-services with public charter school boards and staffs. We hope that charter school boards and administrators will find these in-service modules a helpful tool.

---

### PERSONNEL RECORDS & EMPLOYMENT REFERENCES

*In the 2009 revision of Minnesota’s Charter School Law – MN Statute 124.D 10, the legislature lists MN Statute 181 as a law with which a charter school and a charter school board must comply. Within this law, personnel records and employment reference guidelines are outlined in sections 181.961-181.967.*

---

#### 181.960 – Definitions

##### Applicability

For purposes of sections [181.960](#) to [181.966](#) and unless otherwise provided, the following terms have the meanings given in this section.

##### Employee

"Employee" means a person who performs services for hire for an employer, provided that the services have been performed predominately within this state. The term includes any person who has been separated from employment for less than one year. The term does not include an independent contractor.

##### Employer

"Employer" means a person who has 20 or more employees. Employer does not include a state agency, statewide system, political subdivision, or advisory board or commission that is subject to chapter 13.

##### Personnel record

"Personnel record," to the extent maintained by an employer, means: any application for employment; wage or salary history; notices of commendation, warning, discipline, or termination; authorization for a deduction or withholding of pay; fringe benefit information; leave records; and employment history with the employer, including salary and compensation history, job titles, dates of promotions, transfers, and other changes, attendance records, performance evaluations, and retirement record. The term does not include:

- (1) written references respecting the employee, including letters of reference supplied to an employer by another person;
- (2) information relating to the investigation of a violation of a criminal or civil statute by an employee or an investigation of employee conduct for which the employer may be liable, unless and until:
  - (i) the investigation is completed and, in cases of an alleged criminal violation, the employer has received notice from the prosecutor that no action will be taken or all criminal proceedings and appeals have been exhausted; and
  - (ii) the employer takes adverse personnel action based on the information contained in the investigation records;
- (3) education records, pursuant to section 513(a) of title 5 of the Family Educational Rights and Privacy Act of 1974, United States Code, title 20, section 1232g, that are maintained by an educational institution and directly related to a student;
- (4) results of employer testing, except that the employee may see a cumulative total test score for a section of the test or for the entire test;
- (5) information relating to the employer's salary system and staff planning, including comments, judgments, recommendations, or ratings concerning expansion, downsizing, reorganization, job restructuring, future compensation plans, promotion plans, and job assignments;
- (6) written comments or data of a personal nature about a person other than the employee, if disclosure of the information would constitute an intrusion upon the other person's privacy;
- (7) written comments or data kept by the employee's supervisor or an executive, administrative, or professional employee, provided the written comments or data are kept in the sole possession of the author of the record;
- (8) privileged information or information that is not discoverable in a workers' compensation, grievance arbitration, administrative, judicial, or quasi-judicial proceeding;
- (9) any portion of a written or transcribed statement by a coworker of the employee that concerns the job performance or job-related misconduct of the employee that discloses the identity of the coworker by name, inference, or otherwise; and
- (10) medical reports and records, including reports and records that are available to the employee from a health care services provider pursuant to sections [144.291 to 144.298](#).

### **181.961 - Review of Personnel Record by Employee**

#### Right to review; frequency

Upon written request by an employee, the employer shall provide the employee with an opportunity to review the employee's personnel record. An employer is not required to provide an employee with an opportunity to review the employee's personnel record if the employee has reviewed the personnel record during the previous six months; except that, upon separation from employment, an employee may review the employee's personnel record once each year after separation for as long as the personnel record is maintained.

#### Time; location; condition; copies

(a) The employer shall comply with a written request pursuant to subdivision 1 no later than seven working days after receipt of the request if the personnel record is located in this state, or no later than 14 working days after receipt of the request if the personnel record is located outside this state.

(b) With respect to current employees, the personnel record or an accurate copy must be made available for review by the employee during the employer's normal hours of operation at the employee's place of employment or other reasonably nearby location, but need not be made available during the employee's working hours. The employer may require that the review be made in the presence of the employer or the employer's designee. After the review and upon the employee's written request, the employer shall provide a copy of the record to the employee.

(c) With respect to employees who are separated from employment, upon the employee's written request, the employer shall provide a copy of the personnel record to the employee. Providing a copy of the employee's personnel record to the employee satisfies the employer's responsibility to allow review as stated in subdivision 1.

(d) The employer may not charge a fee for the copy.

### Good faith

The employer may deny the employee the right to review the employee's personnel record if the employee's request to review is not made in good faith. The burden of proof that the request to review is not made in good faith is on the employer.

### **181.962 - Removal or Revision of Information**

#### Agreement; failure to agree; position statement

(a) If an employee disputes specific information contained in the employee's personnel record:

- (1) the employer and the employee may agree to remove or revise the disputed information; and
- (2) if an agreement is not reached, the employee may submit a written statement specifically identifying the disputed information and explaining the employee's position.

(b) The employee's position statement may not exceed five written pages. The position statement must be included along with the disputed information for as long as that information is maintained in the employee's personnel record. A copy of the position statement must also be provided to any other person who receives a copy of the disputed information from the employer after the position statement is submitted.

#### Defamation actions prohibited

(a) No communication by an employee of information obtained through a review of the employee's personnel record may be made the subject of any action by the employee for libel, slander, or defamation, unless the employee requests that the employer comply with subdivision 1 and the employer fails to do so.

(b) No communication by an employer of information contained in an employee's personnel record after the employee has exercised the employee's right to review pursuant to section 181.961 may be made the subject of any common law civil action for libel, slander, or defamation unless:

- (1) the employee has disputed specific information contained in the personnel record pursuant to subdivision 1;
- (2) the employer has refused to agree to remove or revise the disputed information;
- (3) the employee has submitted a written position statement as provided under subdivision 1; and
- (4) the employer either:

- (i) has refused or negligently failed to include the employee's position statement along with the disputed information or thereafter provide a copy of the statement to other persons as required under subdivision 1, or
- (ii) thereafter communicated the disputed information with knowledge of its falsity or in reckless disregard of its falsity.

(c) A common law civil action for libel, slander, or defamation based upon a communication of disputed information contained in an employee's personnel record is not prohibited if the communication is made after the employer and the employee reach an agreement to remove or revise disputed information and the communication is not consistent with the agreement.

### **181.963 - Use of Omitted Personnel Record**

Information properly belonging in an employee's personnel record that was omitted from the personnel record provided by an employer to an employee for review pursuant to section 181.961 may not be used by the employer in an administrative, judicial, or quasi-judicial proceeding, unless the employer did not intentionally omit the information and the employee is given a reasonable opportunity to review the omitted information prior to its use.

### **181.9631 - Notice of Employee Rights**

An employer as defined under section 181.960, subdivision 3, shall provide written notice to a job applicant upon hire of the rights and remedies provided in sections 181.960 to 181.965.

### **181.964 - Retaliation Prohibited**

An employer may not retaliate against an employee for asserting rights or remedies provided in sections 181.960 to 181.965.

### **181.966 - Additional Right of Access to Records**

Sections 181.960 to 181.965 do not prevent an employer from providing additional rights to employees and do not diminish a right of access to records under chapter 13.

### **181.967 - Employment References**

#### Causes of action limited

No action may be maintained against an employer by an employee or former employee for the disclosure of information listed below about the employee to a prospective employer or employment agency as provided under this section, unless the employee or former employee demonstrates by clear and convincing evidence that:

- (1) the information was false and defamatory; and
- (2) the employer knew or should have known the information was false and acted with malicious intent to injure the current or former employee.

### Employment reference information disclosure by private employers

(a) Subdivision 2 applies to the disclosure of the following information by a private employer in response to a request for the information:

- (1) dates of employment;
- (2) compensation and wage history;
- (3) job description and duties;
- (4) training and education provided by the employer; and
- (5) acts of violence, theft, harassment, or illegal conduct documented in the personnel record that resulted in disciplinary action or resignation and the employee's written response, if any, contained in the employee's personnel record.

A disclosure under clause (5) must be in writing with a copy sent contemporaneously by regular mail to the employee's last known address.

(b) With the written authorization of the current or former employee, subdivision 2 also applies to the written disclosure of the following information by a private employer:

- (1) written employee evaluations conducted before the employee's separation from the employer, and the employee's written response, if any, contained in the employee's personnel record;
- (2) written disciplinary warnings and actions in the five years before the date of the authorization, and the employee's written response, if any, contained in the employee's personnel record; and
- (3) written reasons for separation from employment.

The employer must contemporaneously provide the employee or former employee with a copy of information disclosed under this paragraph and to whom it was disclosed by mailing the information to the employee or former employee.

A prospective employer or employment agency shall not disclose written information received under this section without the written authorization of the employee.

### Disclosure of personnel data by public employer

Subdivision 2 applies to the disclosure of all public personnel data and to the following private personnel data under section 13.43 by a public employer if the current or former employee gives written consent to the release of the private data:

- (1) written employee evaluations conducted before the employee's separation from the employer, and the employee's written response, if any, contained in the employee's personnel record; and
- (2) written reasons for separation from employment.

### School district disclosure of violence or inappropriate sexual contact

(a) Subdivision 2 applies to a disclosure by the superintendent of a school district or the superintendent's designee, or a person having administrative control of a charter school, to another school district or charter school of:

- (1) public personnel data under section 13.43, subdivision 2, relating to acts of violence toward or inappropriate sexual contact with a student that resulted in disciplinary action; and
- (2) private personnel data under section 13.43, subdivision 16.

## IN-SERVICE MODULE NO. 9 – PERSONNEL RECORDS & EMPLOYMENT REFERENCES

---

(b) A disclosure under this subdivision must be in writing with a copy sent contemporaneously by regular mail to the employee's last known address.

### Application; relation to other law

(a) This section does not affect the availability of other limitations on liability under common law.

(b) This section does not apply to an action involving an alleged violation of chapter 363 or other statute.

(c) This section does not diminish or impair the rights of a person under a collective bargaining agreement.

## QUESTIONS FOR DISCUSSION WITH BOARDS AND SCHOOL STAFF

1. How often may an employee review their own personnel record?
2. What is an employee position statement and what must it include?
3. State two situations in which an employer may be the subject of a common civil law action for libel, slander or defamation.
4. Explain the consequences of an employer leaving out information, intentionally or unintentionally, in a personnel file.
5. What types of information may a potential employer request from a previous, private employer?
6. What types of information may a potential employer request from a previous, public employer?
7. How do disclosure laws differ specifically for schools? What additional information must be made available?

## ACTIONS

- ✓ Board has adopted a policy on personnel records and employee references consistent with MN Statutes 181.
- ✓ Personnel Handbook has the policy and information on personnel may review and update their personnel records.
- ✓ Administrator has developed and implemented procedures regarding personnel files and employee references.
- ✓ Board has developed procedures to review and monitor compliance with personnel records and employee reference policy and guidelines.

### OTHER PROVISIONS OF THE LAW RELATED TO PERSONNEL RECORDS AND EMPLOYMENT REFERENCES

#### 181.9641 – Enforcement

The Department of Labor and Industry shall enforce sections [181.960](#) to [181.964](#). The department may assess a fine of up to \$5,000 for a violation of sections [181.960](#) to [181.964](#).

The fine, together with costs and attorney fees, may be recovered in a civil action in the name of the department brought in the district court of the county where the violation is alleged to have occurred or where the commissioner has an office.

The fine provided by this section is in addition to any other remedy provided by law.

#### 181.965 – Remedies

##### General

In addition to other remedies provided by law, if an employer violates a provision of sections [181.960](#) to [181.964](#), the employee may bring a civil action to compel compliance and for the following relief:

- (1) for a violation of sections [181.960](#) to [181.963](#), actual damages only, plus costs; and
- (2) for a violation of section [181.964](#), actual damages, back pay, and reinstatement or other make-whole, equitable relief, plus reasonable attorney fees.

##### Limitations Period

Any civil action maintained by the employee under this section must be commenced within one year of the actual or constructive discovery of the alleged violation.