

STEVE TISZA, *President*



LOCAL 4250/5050

Workers of America

(AFFILIATED WITH AFL-CIO)

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October 21, 2004

TO: ALL "SURPLUS AT-RISK" LOCAL 4250 AT&T MEMBERS

SUBJECT: REQUEST FOR PERSONNEL TRAINING RECORDS

Once in each year employees shall, upon their request, inspect their personnel records in accordance with AT&T's practices concerning inspection of personnel and/or medical records. This is your contractual right as well as state law.

I strongly urge **all current "surplus at-risk" AT&T members of Local 4250** to immediately submit a **written request** to your AT&T manager to inspect your personnel records. In doing so, **get copies of all training records showing all qualifications and training you have achieved during your AT&T employment. (make sure it is updated). Fax your training records to me at 312-988-9302 ASAP!**

If your request is denied for any reason, **IMMEDIATELY DEMAND UNION REPRESENTATION!** Chief Steward/Executive Board Members for AT&T members are Paul Bolbat at 312-831-5184 for Downtown Chicago work locations and Kattie Russey-Starnes at 847-364-3181 for Rolling Meadows and all outlying areas.

In Unity-Strength & Solidarity:

Steve Tisza, President
CWA Local 4250
Chicago

Employer Guidelines for Complying with the Illinois Personnel Records Review Act

Employees in Illinois have the right to review and copy their personnel records as well as attach their own position statement to disputed materials in their file. These rights are laid out in the Illinois Personnel Records Review Act (the "Act"). Although personnel records are "company property," employers must now take steps to comply with the Act when requested by employees. The following is a summary of the law and guidelines for compliance.

Summary of the Act

- **Documents Regarded As "Personnel Records"**

The term "personnel records" is broadly defined in the Act and includes documents which are, have been, or are intended to be used in determining "an employee's qualifications for employment, promotion, transfer, additional compensation, discharge or other disciplinary action." This definition includes not only the official personnel file maintained in the human resources office. It also extends to notes and counseling records which frequently are kept separate from the employee personnel files in supervisory files. It also may include records in the possession of third parties, e.g., insurance carriers and consultants.

- **Documents Excluded From The Definition Of Personnel Records**

There are several types of documents that are often included in an employee's personnel file, but that are specifically excluded from the inspection requirements. They include (1) records that involve employer investigations and security files where it is reasonable to believe that damage to an employer's business or property or other financial interest may result from disclosure (except that the information contained in such records must be disclosed as part of an employee's record if and when an adverse employment action is taken based on them); (2) letters of reference; (3) test documents; (4) materials used for staff management planning; (5) information of a personal nature about another person the release of which would constitute a clearly unwarranted invasion of privacy; and (6) information relevant to an existing claim between employer and employee that may be discovered in a judicial proceeding.

- **Employee Rights To Inspect Records**

An employee must be permitted at least two inspections of his/her file annually, but requests must be reasonably spaced. An employer may require requests to be in writing and such a requirement is advisable. If an employee is involved in a current grievance, the employee may designate a representative to inspect the records.

Inspections must be permitted within seven working days of the request, and it must be available at a convenient location. An additional seven days is permitted for cause shown. An employee has no right to remove the records from the place of inspection, and there is no requirement that the employer pay the employee wages for inspection time, except where otherwise provided, such as when an inspection is made during a paid break period or lunch hour. Finally, the employee also must be permitted to photocopy any of the personnel records, but the employee can be required to pay the

actual costs for this photocopying.

- **Employee Rights to Dispute Materials in Personnel Record**

If the employee disagrees with any part of the record, the employee and employer can mutually agree (preferably in writing) to remove or correct the information. If an agreement cannot be reached and the employee desires to submit an explanatory written statement, the employer must attach it to the disputed record. The Act specifically provides that there will be no presumption that an employer agrees in the employee's statement if the employer does not also file a rebuttal to the employee's statement.

- **Limitations on an Employer's Right to Disclose Certain Records to Third Persons**

Except where specifically authorized by the employee, ordered in a legal action or arbitration, or requested by a government agency, an employer may not divulge a disciplinary report to a third party without mailing written notice to the employee, by first class mail, on or before the day the information is divulged. All reports more than four years old must be deleted before making them available to a third party except when ordered to do so in a legal proceeding or arbitration. Also, if the employee has filed a dispute regarding any record provided a third party, the employee's statement also must be included.

- **Remedies**

An employee may seek compliance with the Act in a local circuit court, which is authorized to award an employee actual damages plus costs. For a willful and knowing violation of the Act, the court is authorized to award \$200 plus costs, reasonable attorneys' fees, and actual damages. More importantly, if there are documents that should have been included in the personnel file but they were not shared with the employee pursuant to a request, the missing documents may not be used later by an employer in a judicial or quasi-judicial proceeding.

Suggestions for Compliance

Illinois employers should formulate policies and procedures to implement these statutory requirements. Some of the more critical issues that should be addressed are as follows:

- **Centralize Files**

Identify all internal documents which fall within the statutory definition of "personnel records" and centralize the filing of those documents.

- **Review/Categorize Files**

Carefully review all such documents to determine if any are exempt from disclosure, e.g., letters of reference, and keep all exempt documents separate from material which is subject to disclosure. This will help to avoid unintentional release of exempt

documents.

- **Formalize Review Request Process**

Develop a written form which employees are required to use to request an examination of their personnel records, and advise all employees of that requirement.

- **Keep Records**

Develop and maintain a log or file in which all employee requests to review their personnel files are kept. The purpose of the log is to avoid disputes concerning the number of inspections that an employee has requested and been granted during each calendar year.

- **Formalize Review Process**

A procedure for scheduling actual times for record inspection may be established. It is important for employees to understand that management retains the right to make its final determination concerning the actual terms under which record inspections may be conducted and that employees cannot leave their work area to inspect their records without advance notice or permission. Furthermore, employees should not be allowed to review their records outside the presence of management to ensure records are not tampered with.

The questions of payment for time spent by employees in reviewing their records should be explained so that employees clearly understand whether the time is compensable. The statute does not require that employees be paid while inspecting their records, but such an obligation may already be imposed under any applicable labor contracts, on current personnel policies or past practices.

- **Centralize Responsibility**

An employer should designate a responsible person for ensuring compliance with the Act. This person should have authority to resolve issues concerning disputed records and determine whether an employer rebuttal is appropriate. Even though not required, a written rebuttal may be advisable in some cases so that a clear record of the matter is preserved while the incident is relatively fresh in the minds of the participants.