

DATE: August 4, 2004

**PERSL #1384**

TO: Human Resource Directors/Designees



FROM: Paul Larson, Deputy Commissioner  
Labor Relations and Total Compensation Division

PHONE: (651) 296-8274

RE: New Legal Requirement for Reference Checks and Personnel Files

During the 2004 legislative session the Legislature passed a new law affecting the employment related information employers can provide to other prospective employers regarding current and past employees. This legislation, codified as Minnesota Statutes §181.967, went into effect on August 1, 2004.

This new law limits an employee's legal claims against an employer for disclosing employment related information about a current or former employee to a prospective employer or employment agency. However, this protection is limited in two (2) ways. First, this section does not apply to any action involving an alleged violation of the Minnesota Human Rights Act, Minnesota Chapter 363. Second, the employee may have a legal claim against a current or former employer if s/he can prove 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.

Subdivision 4 of this new law governs what information a public employer may disclose about a current or former employee to a prospective employer or employment agency. This provision applies the above listed standard to the disclosure of *all public* personnel data. Additionally, Subdivision 4 provides that *specific private* personnel data may be disclosed to a prospective employer or employment agency so long as the current or former employee gives *written consent* to the release of following *specific private* personnel data:

1. Written evaluations conducted before the employee's separation from the employer;
2. The employee's written response to the evaluation contained in the employee's personnel record; and
3. Written reasons for separation from employment.

Nothing in this law should be construed to limit the rights of employees under a collective bargaining agreement.

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Finally, as part of the session law enacting the new reference check standards, the legislature modified an existing law, Minnesota Statute §181.961, Subd. 1, regarding a former employee's right to review his/her personnel file. Previously, a former employee was only permitted to view his/her personnel file on one occasion within the year following the separation. The change allows a former employee to review his/her personnel record once each year after separation for as long as the personnel record is maintained.

If you have any questions or concerns regarding the above-discussed changes, please do not hesitate to contact your Labor Relations Representative.

cc: DOER Labor Relations Representatives