

ISBA Law Ed Seminar

The Basics You Need to Represent Local Governments: The Personnel Record Review Act

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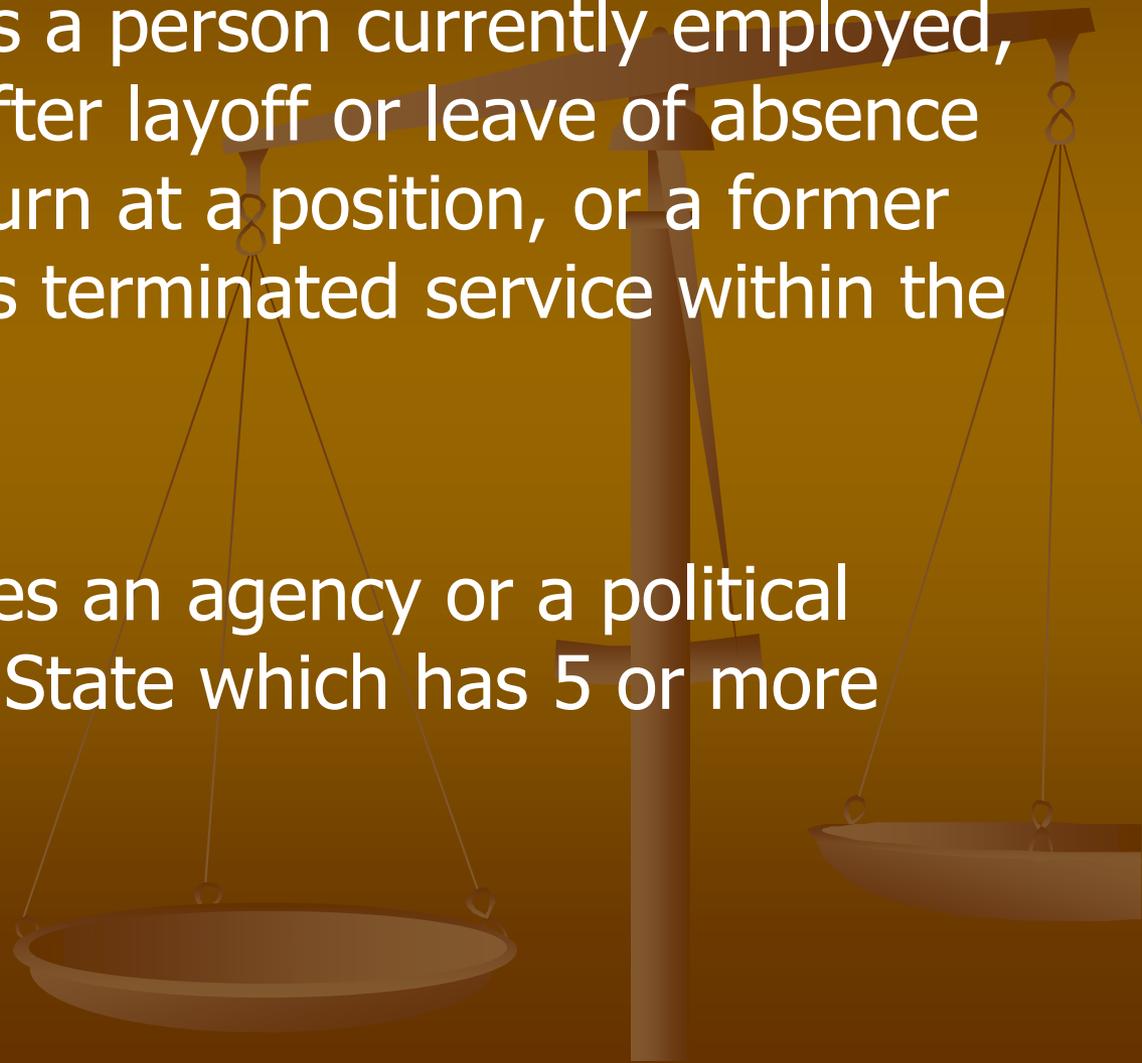
OVERVIEW

Personnel Record Review Act
820 ILCS 40/1

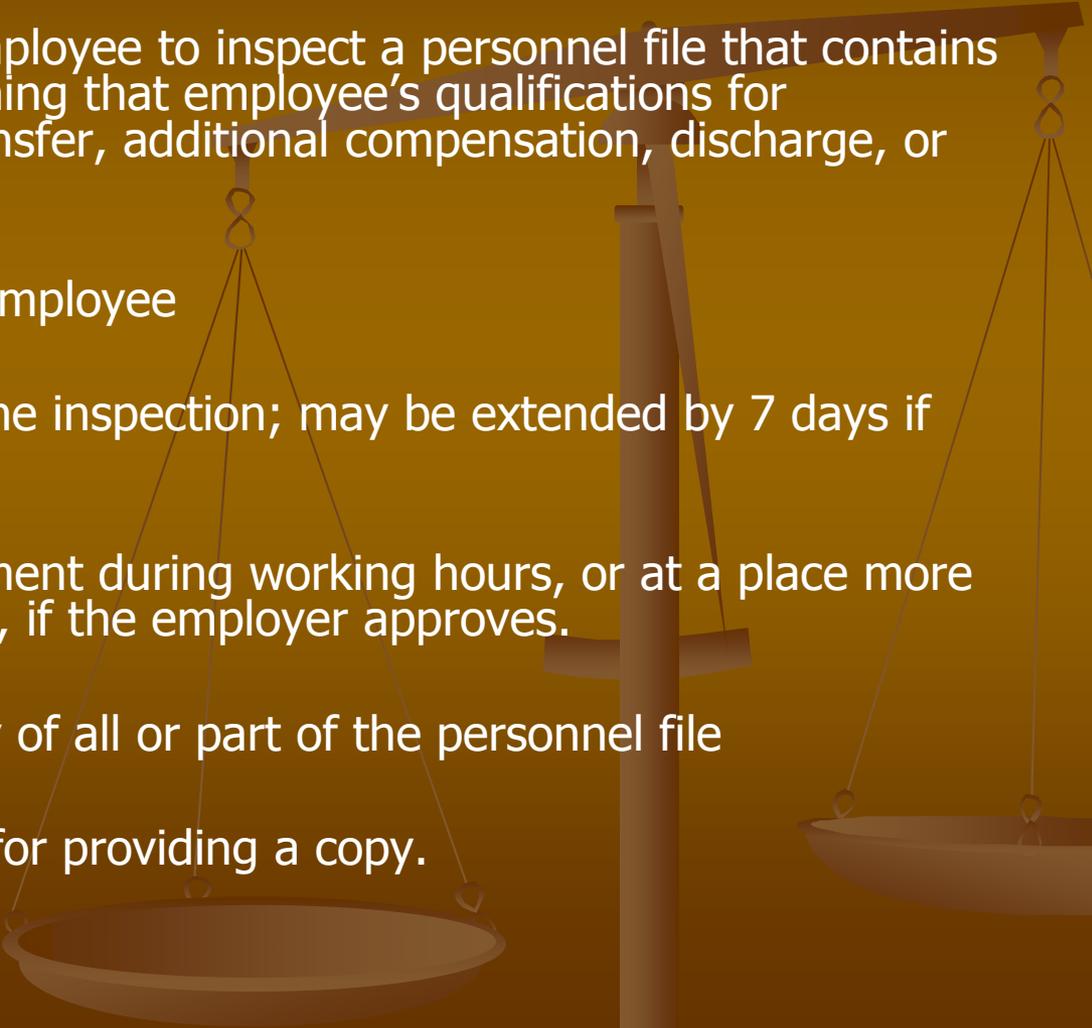


40/1 – Definitions

- “Employee” means a person currently employed, subject to recall after layoff or leave of absence with a right to return at a position, or a former employee who has terminated service within the preceding year.
- “Employer” includes an agency or a political subdivision of the State which has 5 or more employees

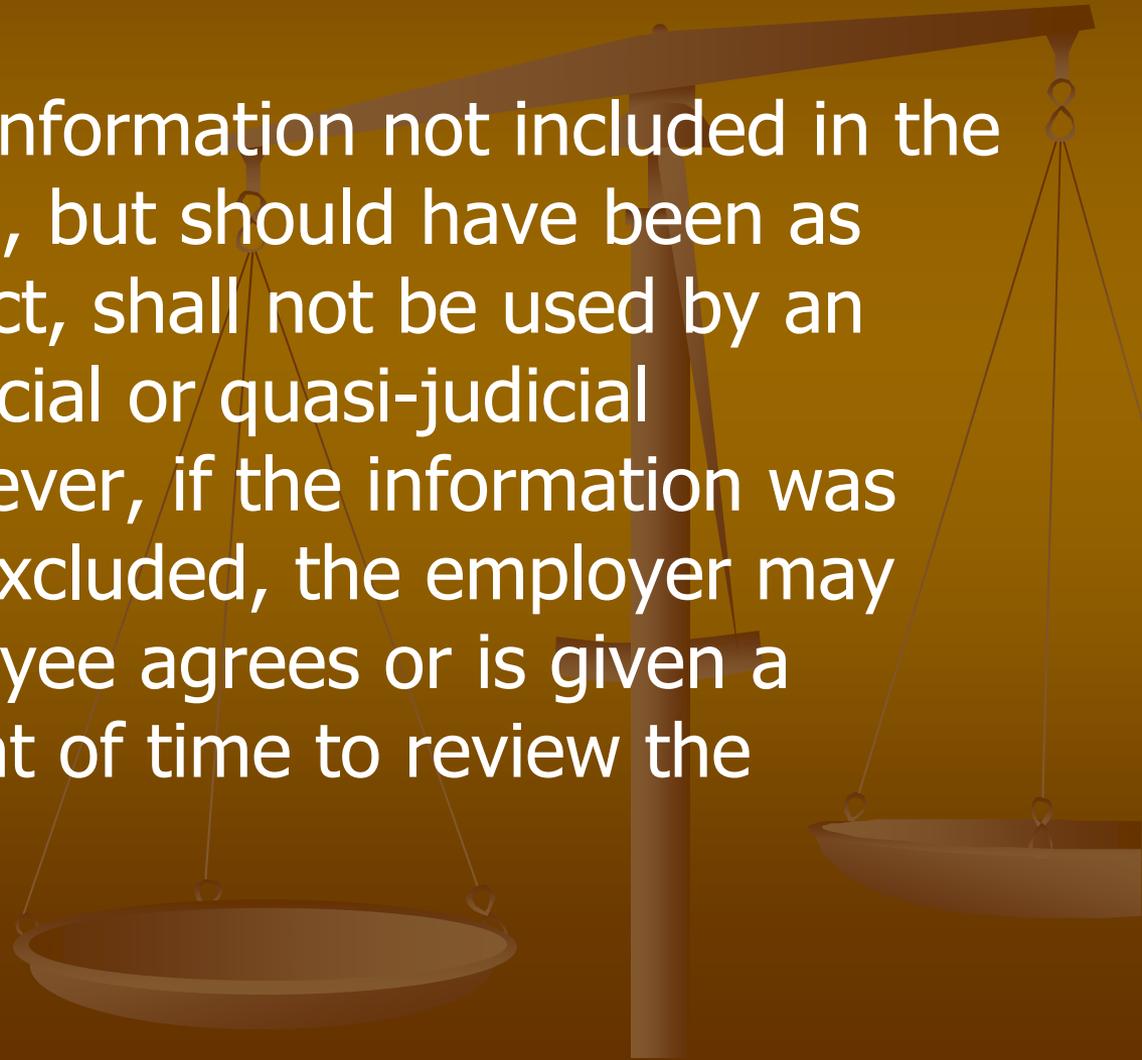


40/2 and 40/3 – Open Records

- Employer must allow any employee to inspect a personnel file that contains information used in determining that employee's qualifications for employment, promotion, transfer, additional compensation, discharge, or other disciplinary action.
 - 2 inspections per year, per employee
 - 7 business days to provide the inspection; may be extended by 7 days if reasonable
 - Location at place of employment during working hours, or at a place more convenient for the employee, if the employer approves.
 - Employee may obtain a copy of all or part of the personnel file
 - Employer may charge a fee for providing a copy.
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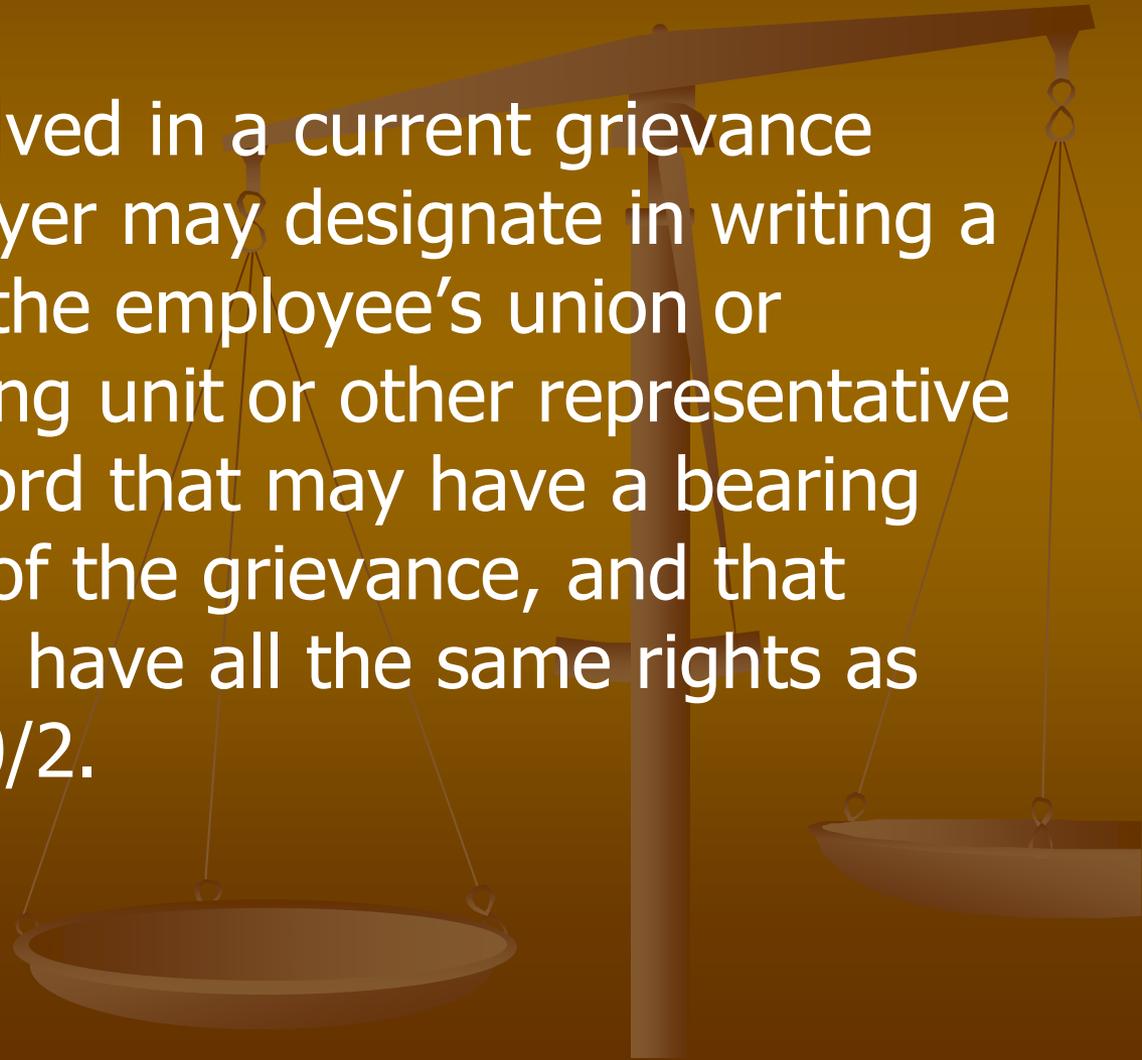
40/4 – Use of Information

- Personnel record information not included in the employee's record, but should have been as required by this Act, shall not be used by an employer in a judicial or quasi-judicial proceeding. However, if the information was not intentionally excluded, the employer may use it if the employee agrees or is given a reasonable amount of time to review the information.

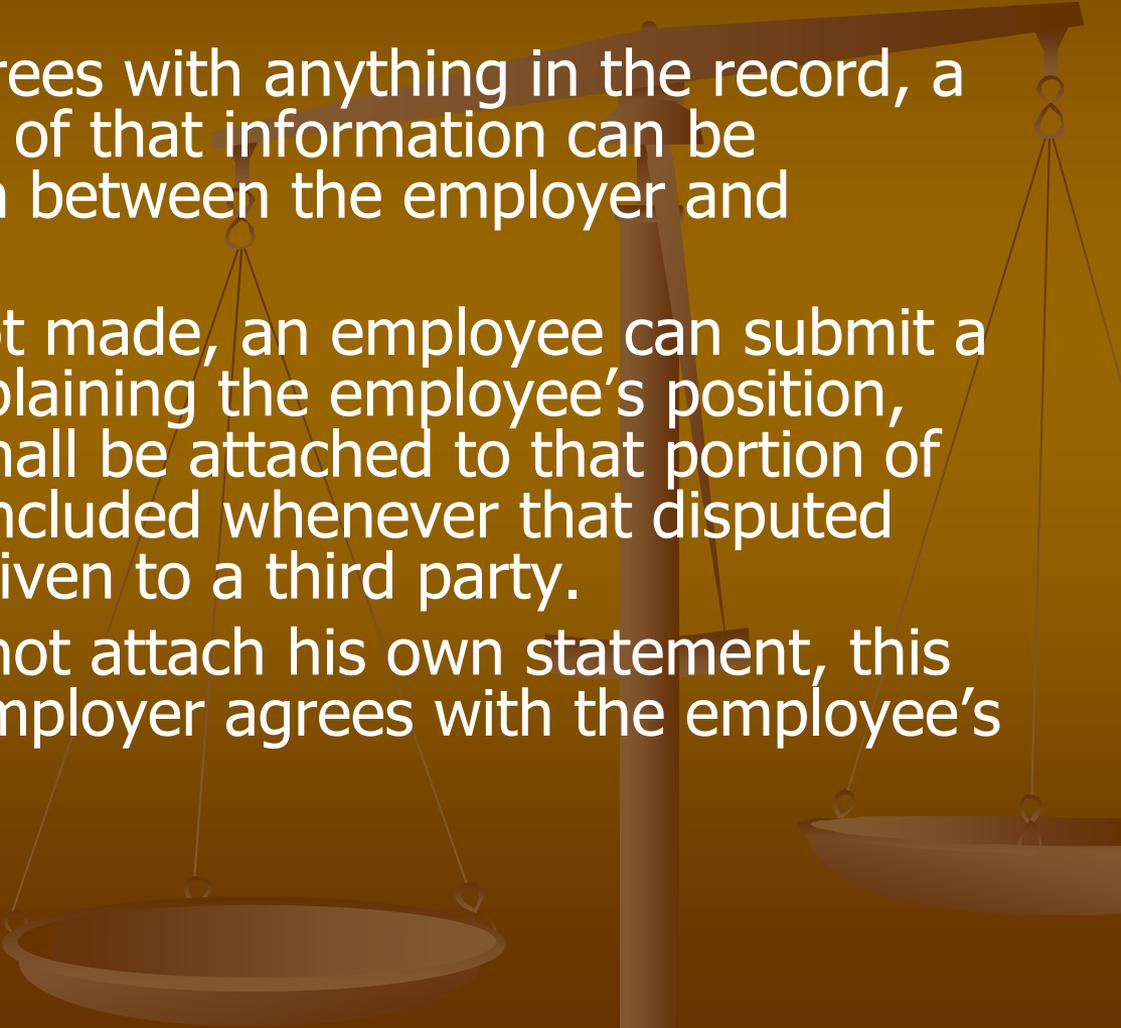


40/5 – Personnel Record Inspection by Representative

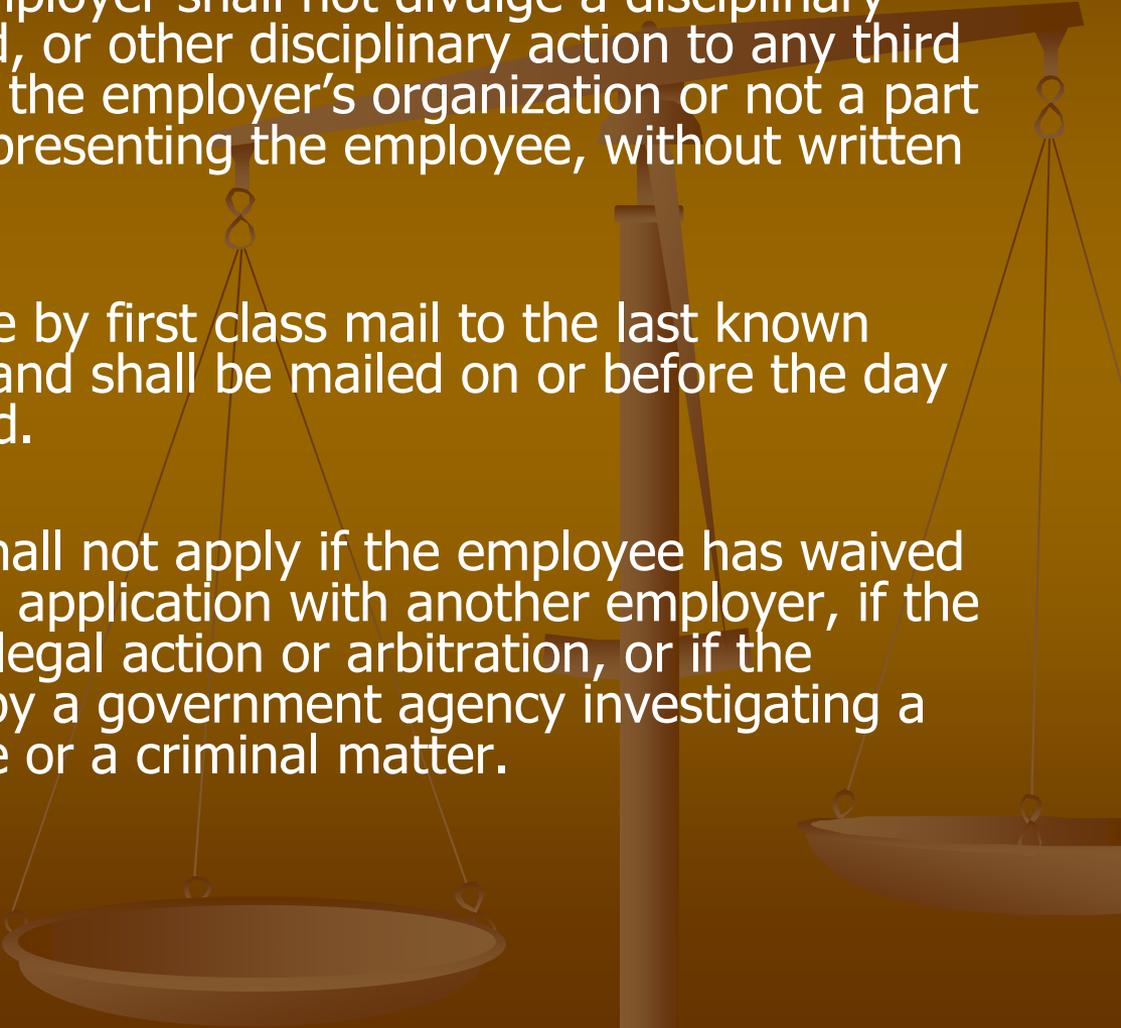
- An employee involved in a current grievance against the employer may designate in writing a representative of the employee's union or collective bargaining unit or other representative to inspect the record that may have a bearing on the resolution of the grievance, and that representative will have all the same rights as provided under 40/2.



40/6 – Personnel Record Correction

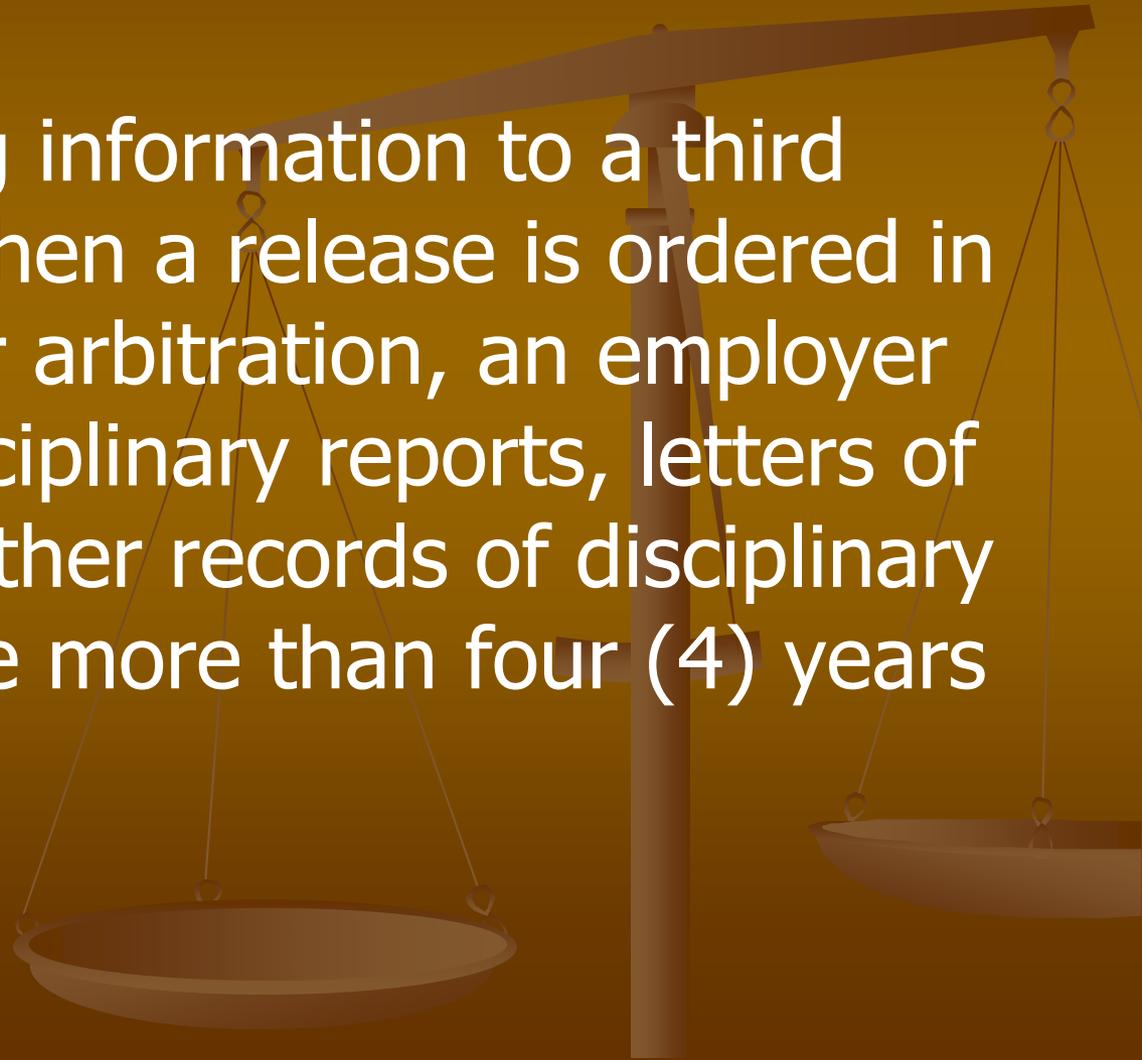
- If an employee disagrees with anything in the record, a removal or correction of that information can be mutually agreed upon between the employer and employee.
 - If an agreement is not made, an employee can submit a written statement explaining the employee's position, and that statement shall be attached to that portion of the file and shall be included whenever that disputed portion of the file is given to a third party.
 - If an employer does not attach his own statement, this does not mean the employer agrees with the employee's written statement.
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40/7 – Disclosure of Disciplinary Actions; Written Notice

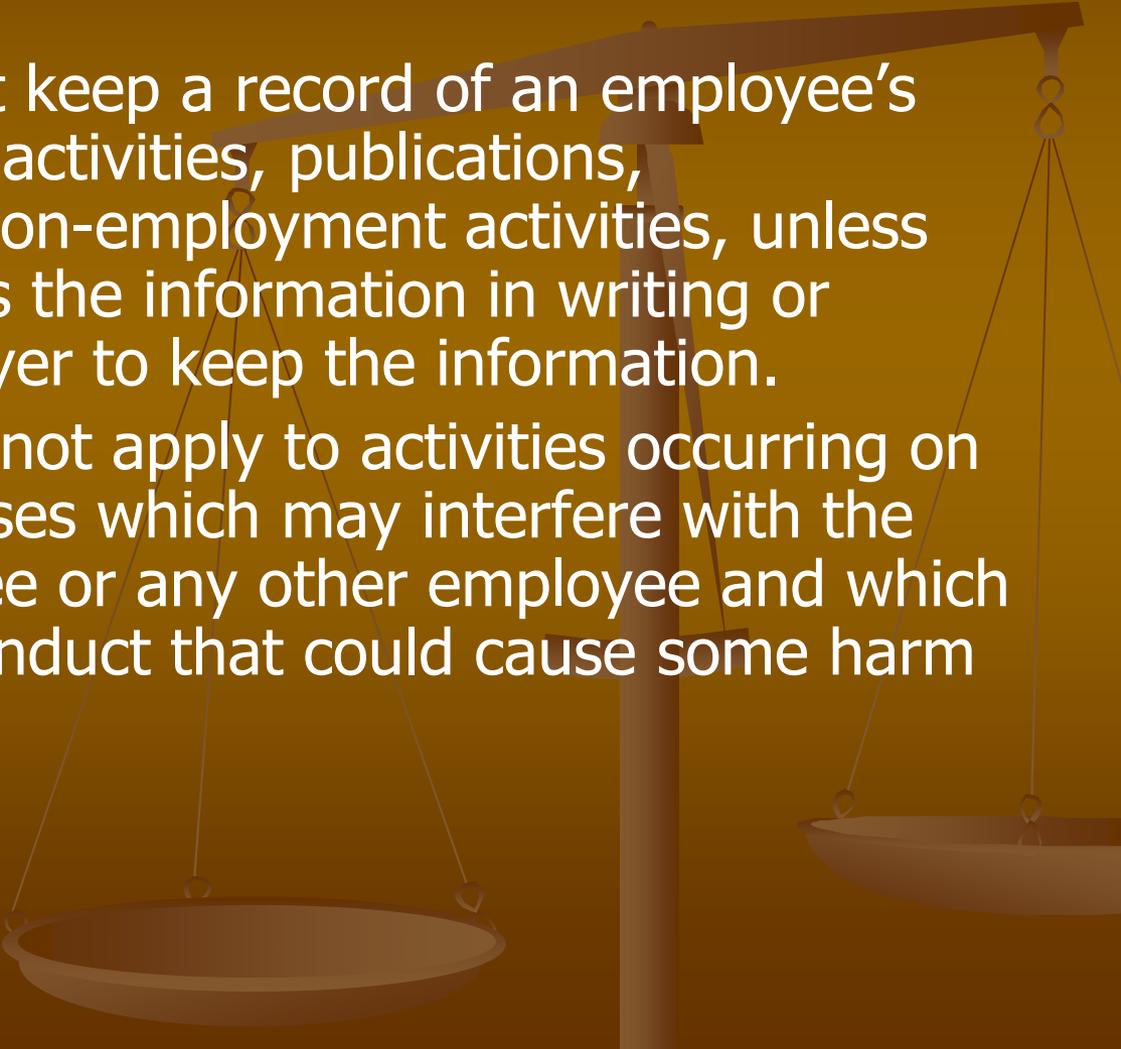
- An employer or former employer shall not divulge a disciplinary report, letter of reprimand, or other disciplinary action to any third party who is not a part of the employer's organization or not a part of a labor organization representing the employee, without written notice.
 - The written notice shall be by first class mail to the last known address of the employee and shall be mailed on or before the day the information is divulged.
 - The notice requirement shall not apply if the employee has waived notice as part of a written application with another employer, if the disclosure is ordered in a legal action or arbitration, or if the information is requested by a government agency investigating a complaint by an employee or a criminal matter.
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40/8 – Review of Record Prior to Release of Information

- Before releasing information to a third party, except when a release is ordered in a legal action or arbitration, an employer must delete disciplinary reports, letters of reprimand, or other records of disciplinary action which are more than four (4) years old.

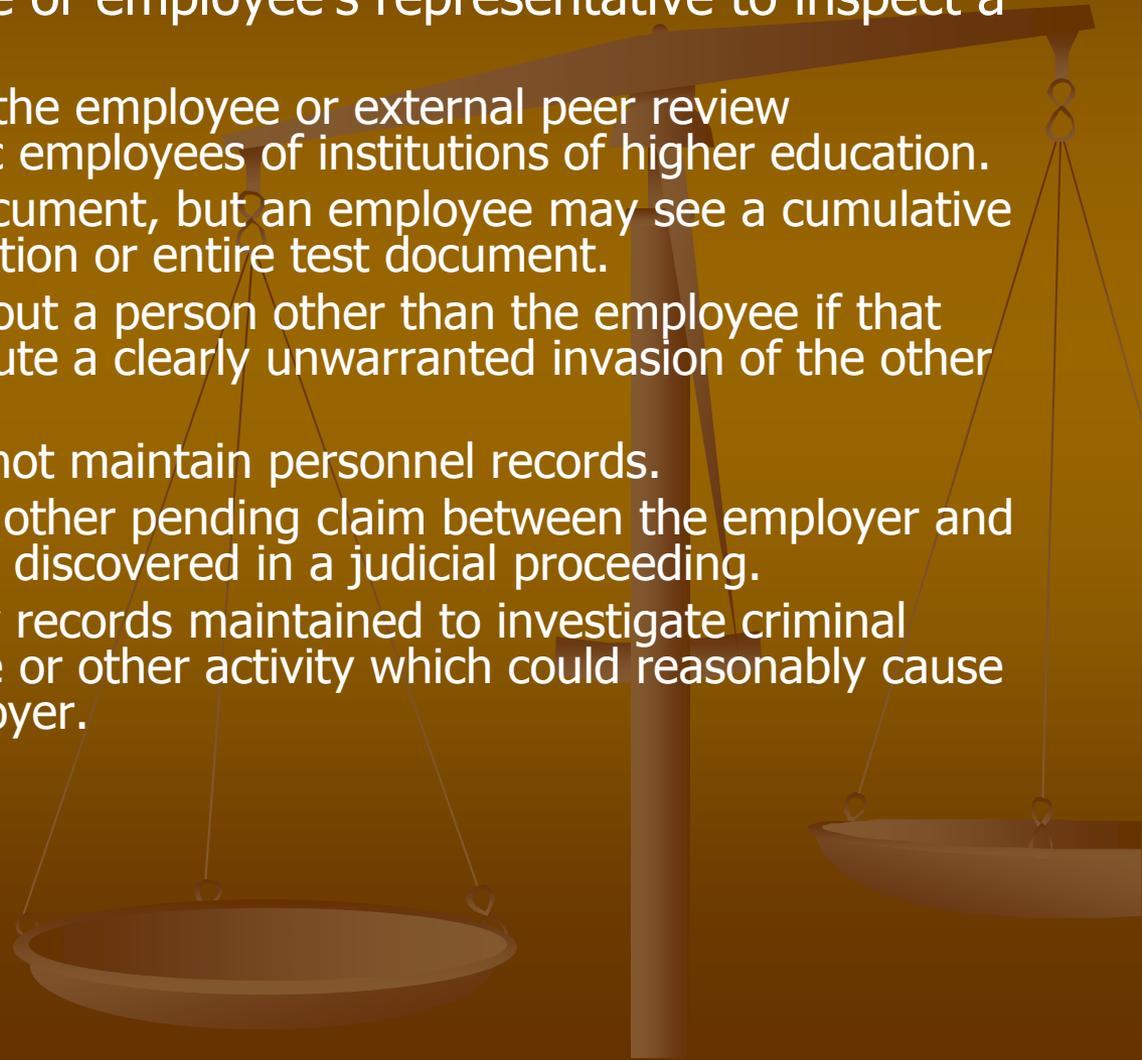


40/9 – Record of Non-Employment Activities

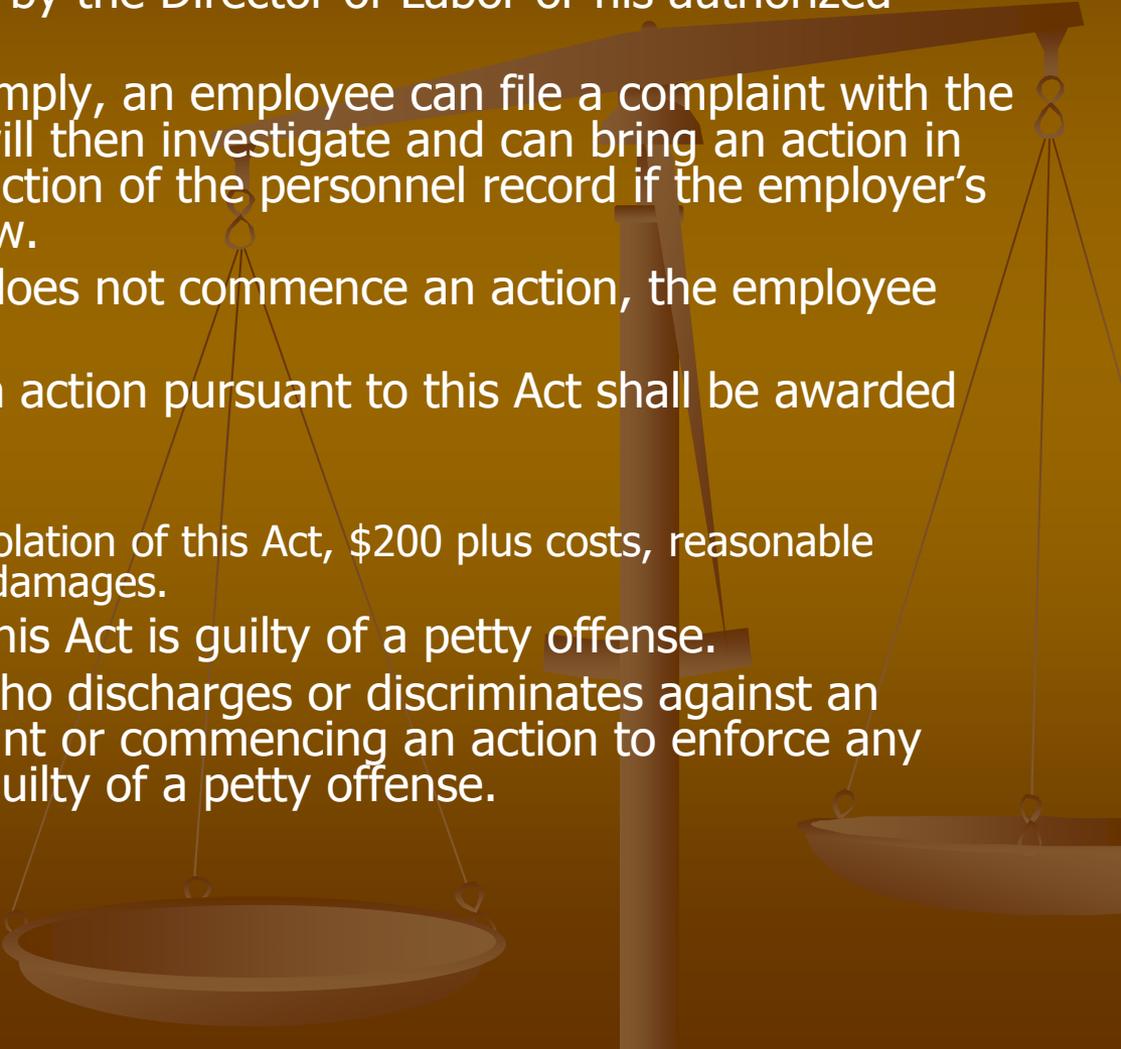
- An employer shall not keep a record of an employee's associations, political activities, publications, communications, or non-employment activities, unless the employee submits the information in writing or authorizes the employer to keep the information.
 - This prohibition does not apply to activities occurring on the employer's premises which may interfere with the duties of the employee or any other employee and which constitute criminal conduct that could cause some harm to the employer.
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40/10 – Exceptions

- The right of the employee or employee's representative to inspect a record does not apply to:
 - Letters of reference for the employee or external peer review documents for academic employees of institutions of higher education.
 - Any portion of a test document, but an employee may see a cumulative total test score for a section or entire test document.
 - Personal information about a person other than the employee if that disclosure would constitute a clearly unwarranted invasion of the other person's privacy.
 - An employer who does not maintain personnel records.
 - Records relevant to any other pending claim between the employer and employee which may be discovered in a judicial proceeding.
 - Investigatory or security records maintained to investigate criminal conduct by an employee or other activity which could reasonably cause some harm to the employer.



40/12 – Administration and Enforcement

- This act will be administered by the Director of Labor or his authorized representative.
 - If an employer refuses to comply, an employee can file a complaint with the Department of Labor, who will then investigate and can bring an action in circuit court to compel production of the personnel record if the employer's refusal is in breach of this law.
 - If the Department of Labor does not commence an action, the employee may.
 - An employee prevailing in an action pursuant to this Act shall be awarded the following damages:
 - Actual damages plus costs.
 - For a willful and knowing violation of this Act, \$200 plus costs, reasonable attorney's fees, and actual damages.
 - Any employer who violates this Act is guilty of a petty offense.
 - Any employer or his agent who discharges or discriminates against an employee for filing a complaint or commencing an action to enforce any provision of this Act will be guilty of a petty offense.
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40/13 – Records of employee subject to DCFS investigation resulting in unfounded report; expungement

- An employer shall not gather or keep a record identifying an employee as the subject of a DCFS investigation resulting in an unfounded report as specified in 325 ILCS 5/1 et seq.
- An employee shall give written notification to an employer when DCFS notifies the employee that an investigation has resulted in an unfounded report.

