

Written Notice Required When Disclosing Disciplinary Action of Employee

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Recently, in *McManamon v Charter Township of Redford*, the Michigan Court of Appeals confirmed that an employee may sue his/her employer under Michigan's Bullard-Plawecki Employee Right to Know Act for divulging disciplinary action in his/her personnel record without providing the employee with written notice of the disclosure.

Under Bullard-Plawecki, an employer may not divulge a disciplinary report, letter of reprimand, or other disciplinary action to a third party without written notice to the employee. Written notice must be sent by first class mail to the employee's last known address and must be mailed on or before the day of the disclosure of the information. There are, however, three important exceptions where notice is not required: (1) where the employee has waived notice as part of a written signed employment application with another employer; (2) where the disclosure is ordered in a legal action or arbitration; and (3) where the information is requested by a government agency as a result of a claim or complaint by an employee. An employer must also review the personnel record and delete any record of disciplinary action more than four years old prior to disclosure except in cases where the disclosure is ordered in a legal action or arbitration.

In *McManamon*, a local paper quoted the Township supervisor confirming that the plaintiff had been charged with embezzlement and then stating that he was "suspended due to problems in the performance of his day-to-day duties beyond the embezzlement charge." The supervisor did not send plaintiff written notice of the disclosure of the suspension.

The court concluded that the supervisor's statement about the suspension divulged a disciplinary action to a third party. Because the Township admittedly did not provide written notice to the plaintiff, it concluded that the Township violated the Act. The court, however, vacated the \$100,000.00 jury award from the trial court and remanded the case to determine appropriate damages, finding that the jury award was excessive and based on inadequate evidence.

Importantly, the court noted that Bullard-Plawecki does *not* prohibit an employer from disclosing disciplinary information, but merely requires it to provide the employee with prompt notice of the disclosure. As a practice pointer, the written notice to the employee is required whether the employer provides a document to a third party or merely provides oral information concerning the employee and it must be provided on or before the date that the information is divulged. Although the court in *McManamon* vacated the \$100,000.00 jury verdict, violations of Bullard-Plawecki are subject to statutory damages including actual damages and costs, and an additional \$200.00 fine and attorney fees where the violation is willful. Additionally, an employer may be barred from using information that was improperly excluded from the employee's personnel file as required under Bullard-Plawecki in a subsequent judicial or quasi-judicial proceeding.

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