

New California Law Expands Employee Access to Personnel Files

By Mia Farber

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California Governor Jerry Brown has signed into law new requirements specifying when and how employers must respond to their employees' requests for inspection and copying of their personnel files. The new requirements become effective January 1, 2013.

Existing law requires employers to permit employees to inspect, "within a reasonable time" after a request, their personnel records "relating to the employee's performance or to any grievance concerning the employee." AB 2674 imposes the following changes to Labor Code Section 1198.5:

- **Form.** The request must be in writing. Employers must provide a form for making the request, but employees need not use the form.
- **Representative.** The request can be made by an employee's authorized "representative." An employer need not respond to more than 50 requests by a representative in one calendar month.
- **Respond within 30 Days.** Employers must provide a copy of the requested personnel records or make them available for inspection within 30 calendar days.
- **Maintain Copies for Three Years.** Employers must maintain copies of personnel records for at least three years after termination of the employee.
- **Location for Inspection.** For current employees, inspection or copies must be provided at the place where the employee reports to work or at an agreed location. If the employee must go to a different location, there will be no loss of compensation to the employee.
- **Former Employees.** Inspection or copies must be provided to a former employee at the location where the employer stores the records, unless they agree to a different location. Former employees may be mailed the records if they agree to reimburse the employer for actual postal expenses. Employers must respond to only one request a year from each former employee.
- **Lawsuit.** If a current or former employee files a lawsuit based on a personnel matter, the right to inspect or copy files stops during the pendency of the lawsuit.
- **Collective Bargaining Agreements.** The requirements do not apply to employees covered by a collective bargaining agreement with certain provisions, such as a procedure for the inspection and copying of personnel records.
- **Penalty.** An employer's failure to comply with the personnel records law can result in a \$750 penalty, injunctive relief, and attorneys' fees.

In addition, prior to making records available for inspection or providing a copy of those records, the employer may redact the name of any nonsupervisory employee contained therein.

AB 2674 also amends the recordkeeping and inspection provisions under Section 226 and reduces the potential penalty for violations of these provisions from a misdemeanor to an infraction. Section 226(a) is amended to require that, at an employee's request, the employer must produce a copy of the itemized wage statement that is a duplicate of the original itemized statement or a computer-generated record that contains all required information.

If you have any questions, please contact the Jackson Lewis attorney with whom you regularly work.

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