

ASSEMBLY BILL

No. 2674

**Introduced by Committee on Labor and Employment (Assembly
Members Swanson (Chair), Alejo, Allen, and Yamada)**

March 5, 2012

An act to amend Section 1198.5 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2674, as introduced, Committee on Labor and Employment. Employment records: right to inspect.

Under existing law, an employee has the right to inspect the personnel records that his or her employer maintains relating to the employee's performance or to any grievance concerning the employee.

This bill would require an employer to maintain personnel records for a specified period of time and to provide a current or former employee, or his or her representative, an opportunity to inspect and receive a copy of those records within a specified period of time, except during the pendency of a lawsuit filed by the employee or former employer relating to a personnel matter. In addition, in the event an employer violates these provisions, the bill would permit a current or former employee or the Labor Commissioner to recover a penalty of \$750 from the employer, and would further permit a current or former employee to obtain injunctive relief and attorney's fees.

Under existing law, an employer who fails to permit an employee to inspect the employee's personnel records is guilty of a misdemeanor punishable by a fine or imprisonment, as specified.

This bill would, instead, provide that a violation of the above provisions requiring that personnel records be made available for

inspection constitutes an infraction. Although this bill would change a violation of the above provisions requiring that personnel records be made available for inspection from a misdemeanor to an infraction, by expanding the scope of what would constitute an infraction, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1198.5 of the Labor Code is amended to
2 read:

3 1198.5. (a) Every *current and former* employee, or *his or her*
4 *representative*, has the right to inspect *and receive a copy of* the
5 personnel records that the employer maintains relating to the
6 employee’s performance or to any grievance concerning the
7 employee.

8 (b) The employer shall make the contents of those personnel
9 records available ~~to the~~ *for inspection to the current or former*
10 *employee, or his or her representative*, at reasonable intervals and
11 at reasonable times, *but not later than 30 calendar days from the*
12 *date of a written or oral request, as specified, for these records.*
13 *Upon a written request from a current or former employee, or his*
14 *or her representative, the employer shall also provide a copy of*
15 *the personnel records, at a charge not to exceed the actual cost*
16 *of reproduction, not later than 30 calendar days from the date of*
17 *the request.* Except as provided in paragraph ~~(3)~~ (2) of subdivision
18 (c), the employer ~~shall~~ *is not be* required to make those personnel
19 records *or a copy thereof* available at a time when the employee
20 is actually required to render service to the employer, *if the*
21 *requester is the employee.*

22 (c) The employer shall do ~~one of~~ the following:

23 (1) ~~Keep~~ *With regard to all employees, maintain* a copy of each
24 employee’s personnel records ~~at the place where the employee~~

1 ~~reports to work~~ for a period of not less than three years after
2 termination of employment.

3 (2) ~~Make the~~ With regard to current employees, make a current
4 employee's personnel records available for inspection, and, if
5 requested by the employee or his or her representative, provide a
6 copy thereof, at the place where the employee reports to work
7 ~~within a reasonable period of time following an employee's request,~~
8 or at another location agreeable to the employer and the requester.
9 If the employee is required to inspect or receive a copy at a
10 location other than the place where he or she reports to work, no
11 loss of compensation to the employee is permitted.

12 (3) ~~Permit the employee to inspect the personnel records~~
13 (A) With regard to former employees, make a former employee's
14 personnel records available for inspection, and, if requested by
15 the employee or his or her representative, provide a copy thereof,
16 at the location where the employer stores the ~~personnel records,~~
17 ~~with no loss of compensation to the employee records,~~ unless the
18 parties mutually agree in writing to a different location. A former
19 employee may receive a copy by mail if he or she reimburses the
20 employer for actual postal expenses.

21 (B) (i) Notwithstanding subparagraph (A), if a former employee
22 seeking to inspect his or her personnel records was terminated for
23 a serious violation of law, or an employment-related policy,
24 involving harassment or workplace violence, the employer may
25 comply with the request by doing one of the following:

26 (I) Making the personnel records available to the former
27 employee for inspection at a location other than the workplace
28 that is within a reasonable driving distance of the former
29 employee's residence.

30 (II) Providing a copy of the personnel records by mail.

31 (ii) Nothing in this subparagraph shall limit a former employee's
32 right to receive a copy of his or her personnel records.

33 (d) An employer is required to comply with only one request
34 per year by a former employee to inspect or receive a copy of his
35 or her personnel records.

36 (e) The employer may take reasonable steps to verify the identity
37 of a current or former employee or his or her authorized
38 representative. For purposes of this section, "representative"
39 means a person authorized in writing by the employee to inspect,
40 or receive a copy of, his or her personnel records.

- 1 (f) *The employer may designate the person to whom a request*
- 2 *is made.*
- 3 (g) *Prior to making records specified in subdivision (a) available*
- 4 *for inspection or providing a copy of those records, the employer*
- 5 *may redact the name of any nonsupervisory employee contained*
- 6 *therein.*
- 7 ~~(d)~~
- 8 (h) The requirements of this section ~~shall~~ *do not apply to:*
- 9 (1) Records relating to the investigation of a possible criminal
- 10 offense.
- 11 (2) Letters of reference.
- 12 (3) Ratings, reports, or records that were:
- 13 (A) Obtained prior to the employee’s employment.
- 14 (B) Prepared by identifiable examination committee members.
- 15 (C) Obtained in connection with a promotional examination.
- 16 (4) Employees who are subject to the Public Safety Officers
- 17 ~~Procedural Bill of Rights, Chapter~~ *Rights (Chapter 9.7*
- 18 *(commencing with Section 3300) of Division 4 of Title 1 of the*
- 19 ~~Government Code Code).~~
- 20 (5) Employees of agencies subject to the Information Practices
- 21 *Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4*
- 22 *of Division 3 of the Civil Code).*
- 23 ~~(e) The Labor Commissioner may adopt regulations that~~
- 24 ~~determine the reasonable times and reasonable intervals for the~~
- 25 ~~inspection of records maintained by an employer that is not a public~~
- 26 ~~agency.~~
- 27 ~~(f)~~
- 28 (i) If a public agency has established an independent employee
- 29 relations board or commission, an employee shall first seek relief
- 30 regarding any matter or dispute relating to this section from that
- 31 board or commission before pursuing any available judicial
- 32 remedy.
- 33 ~~(g)~~
- 34 (j) In enacting this section, it is the intent of the Legislature to
- 35 establish minimum standards for the inspection *and the receipt of*
- 36 *a copy* of personnel records by employees. Nothing in this section
- 37 shall be construed to prevent the establishment of additional rules
- 38 for the inspection *and the receipt of a copy* of personnel records
- 39 that are established as the result of agreements between an
- 40 employer and a recognized employee organization.

1 (k) *If an employer fails to permit a current or former employee,*
2 *or his or her representative, to inspect or copy personnel records*
3 *within the times specified in this section, or times agreed to by*
4 *mutual agreement as provided in this section, the current or former*
5 *employee or the Labor Commissioner may recover a penalty of*
6 *seven hundred fifty dollars (\$750) from the employer.*

7 (l) *A current or former employee may also bring an action for*
8 *injunctive relief to obtain compliance with this section, and may*
9 *recover costs and reasonable attorney’s fees in such an action.*

10 (m) *Notwithstanding Section 1199, a violation of this section is*
11 *an infraction. Impossibility of performance, not caused by or*
12 *resulting from a violation of law, may be asserted as an affirmative*
13 *defense by an employer in any action alleging a violation of this*
14 *section.*

15 (n) *If an employee or former employee files a lawsuit that relates*
16 *to a personnel matter against his or her employer or former*
17 *employer, the right of the employee, former employee, or his or*
18 *her representative to inspect or copy personnel records under this*
19 *section ceases during the pendency of the lawsuit in the court with*
20 *original jurisdiction.*

21 (o) *For purposes of this section, a lawsuit “relates to a*
22 *personnel matter” if a current or former employee’s personnel*
23 *records are relevant to the lawsuit.*

24 SEC. 2. No reimbursement is required by this act pursuant to
25 Section 6 of Article XIII B of the California Constitution because
26 the only costs that may be incurred by a local agency or school
27 district will be incurred because this act creates a new crime or
28 infraction, eliminates a crime or infraction, or changes the penalty
29 for a crime or infraction, within the meaning of Section 17556 of
30 the Government Code, or changes the definition of a crime within
31 the meaning of Section 6 of Article XIII B of the California
32 Constitution.