

AMENDED IN SENATE JULY 3, 2012
AMENDED IN ASSEMBLY APRIL 9, 2012
AMENDED IN ASSEMBLY MARCH 27, 2012
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2674

Introduced by Assembly Member Swanson

March 5, 2012

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2674, as amended, Swanson. 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 bill would provide that an employer is not required to comply with more than 50 requests for a copy of the above-described records filed by a representative or representatives of employees in one calendar month. The bill would provide that the above provisions shall not apply with respect to an employee covered by a valid collective bargaining agreement if the agreement provides, among other things, for a*

procedure for inspection and copying of personnel records. 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) (1) The employer shall make the contents of those personnel
 9 records available for inspection to the current or former employee,
 10 or his or her representative, at reasonable intervals and at
 11 reasonable times, but not later than 30 calendar days from the date
 12 the employer receives a written request, unless the current or former
 13 employee, or his or her representative, and the employer agree in
 14 writing to a date beyond 30 calendar days to inspect the records,
 15 and the agreed-upon date does not exceed 35 calendar days from

1 the employer's receipt of the written request. Upon a written
2 request from a current or former employee, or his or her
3 representative, the employer shall also provide a copy of the
4 personnel records, at a charge not to exceed the actual cost of
5 reproduction, not later than 30 calendar days from the date the
6 employer receives the request, unless the current or former
7 employee, or his or her representative, and the employer agree in
8 writing to a date beyond 30 calendar days to produce a copy of
9 the records, as long as the agreed-upon date does not exceed 35
10 calendar days from the employer's receipt of the written request.
11 Except as provided in paragraph (2) of subdivision (c), the
12 employer is not required to make those personnel records or a copy
13 thereof available at a time when the employee is actually required
14 to render service to the employer, if the requester is the employee.

15 (2) (A) For purposes of this section, a request to inspect or
16 receive a copy of personnel records shall be made in either of the
17 following ways:

18 (i) Written and submitted by the current or former employee or
19 his or her representative.

20 (ii) Written and submitted by the current or former employee
21 or his or her representative by completing an employer-provided
22 form.

23 (B) An employer-provided form shall be made available to the
24 employee or his or her representative upon verbal request to the
25 employee's supervisor or, if known to the employee or his or her
26 representative at the time of the request, to the individual the
27 employer designates under this section to receive a verbal request
28 for the form.

29 (c) The employer shall do all of the following:

30 (1) With regard to all employees, maintain a copy of each
31 employee's personnel records for a period of not less than three
32 years after termination of employment.

33 (2) With regard to current employees, make a current employee's
34 personnel records available for inspection, and, if requested by the
35 employee or his or her representative, provide a copy thereof, at
36 the place where the employee reports to work, or at another location
37 agreeable to the employer and the requester. If the employee is
38 required to inspect or receive a copy at a location other than the
39 place where he or she reports to work, no loss of compensation to
40 the employee is permitted.

1 (3) (A) With regard to former employees, make a former
2 employee’s personnel records available for inspection, and, if
3 requested by the employee or his or her representative, provide a
4 copy thereof, at the location where the employer stores the records,
5 unless the parties mutually agree in writing to a different location.
6 A former employee may receive a copy by mail if he or she
7 reimburses the employer for actual postal expenses.

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

13 (I) Making the personnel records available to the former
14 employee for inspection at a location other than the workplace that
15 is within a reasonable driving distance of the former employee’s
16 residence.

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

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

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

23 (e) The employer may take reasonable steps to verify the identity
24 of a current or former employee or his or her authorized
25 representative. For purposes of this section, “representative” means
26 a person authorized in writing by the employee to inspect, or
27 receive a copy of, his or her personnel records.

28 (f) The employer may designate the person to whom a request
29 is made.

30 (g) Prior to making records specified in subdivision (a) available
31 for inspection or providing a copy of those records, the employer
32 may redact the name of any nonsupervisory employee contained
33 therein.

34 (h) The requirements of this section do not apply to:

35 (1) Records relating to the investigation of a possible criminal
36 offense.

37 (2) Letters of reference.

38 (3) Ratings, reports, or records that were:

39 (A) Obtained prior to the employee’s employment.

40 (B) Prepared by identifiable examination committee members.

1 (C) Obtained in connection with a promotional examination.

2 (4) Employees who are subject to the Public Safety Officers
3 Procedural Bill of Rights (Chapter 9.7 (commencing with Section
4 3300) of Division 4 of Title 1 of the Government Code).

5 (5) Employees of agencies subject to the Information Practices
6 Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4
7 of Division 3 of the Civil Code).

8 (i) If a public agency has established an independent employee
9 relations board or commission, an employee shall first seek relief
10 regarding any matter or dispute relating to this section from that
11 board or commission before pursuing any available judicial
12 remedy.

13 (j) In enacting this section, it is the intent of the Legislature to
14 establish minimum standards for the inspection and the receipt of
15 a copy of personnel records by employees. Nothing in this section
16 shall be construed to prevent the establishment of additional rules
17 for the inspection and the receipt of a copy of personnel records
18 that are established as the result of agreements between an
19 employer and a recognized employee organization.

20 (k) If an employer fails to permit a current or former employee,
21 or his or her representative, to inspect or copy personnel records
22 within the times specified in this section, or times agreed to by
23 mutual agreement as provided in this section, the current or former
24 employee or the Labor Commissioner may recover a penalty of
25 seven hundred fifty dollars (\$750) from the employer.

26 (l) A current or former employee may also bring an action for
27 injunctive relief to obtain compliance with this section, and may
28 recover costs and reasonable attorney's fees in such an action.

29 (m) Notwithstanding Section 1199, a violation of this section
30 is an infraction. Impossibility of performance, not caused by or
31 resulting from a violation of law, may be asserted as an affirmative
32 defense by an employer in any action alleging a violation of this
33 section.

34 (n) If an employee or former employee files a lawsuit that relates
35 to a personnel matter against his or her employer or former
36 employer, the right of the employee, former employee, or his or
37 her representative to inspect or copy personnel records under this
38 section ceases during the pendency of the lawsuit in the court with
39 original jurisdiction.

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

4 (p) *An employer is not required to comply with more than 50
5 requests under this section to inspect and receive a copy of
6 personnel records filed by a representative or representatives of
7 employees in one calendar month.*

8 (q) *This section does not apply to an employee covered by a
9 valid collective bargaining agreement if the agreement expressly
10 provides for all of the following:*

11 (1) *The wages, hours of work, and working conditions of
12 employees.*

13 (2) *A procedure for the inspection and copying of personnel
14 records.*

15 (3) *Premium wage rates for all overtime hours worked.*

16 (4) *A regular rate of pay of not less than 30 percent more than
17 the state minimum wage rate.*

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

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