

ASSEMBLY BILL

No. 1399

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

February 28, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1399, 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 make copies of those records within a specified period of time. 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.

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

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

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

1198.5. (a) Every *current and former* employee, and his or her representative, has the right to inspect *and receive copies of* the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee.

(b) The employer shall make the contents of those personnel records available to the *current or former* employee, or his or her representative, at reasonable intervals and at reasonable times, *but not later than 21 calendar days from the date of a written or oral request for these records. Upon a request from a current or former employee, or his or her representative, the employer shall also provide copies of the personnel records, at a charge not to exceed the actual cost of reproduction.* Except as provided in paragraph (3) (4) of subdivision (c), the employer ~~shall not be~~ is not required to make those personnel records available at a time when the employee is actually required to render service to the employer, *if the requester is the employee.*

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

(1) Keep a copy of each *current* employee's personnel records at the place where the employee reports to work.

(2) *Maintain a copy of each employee's personnel records for a period of not less than four years after termination of employment.*

~~(2)~~

(3) ~~Make the~~ a current employee's personnel records available at the place where the employee reports to work within a reasonable period of time following ~~an employee's~~ a request by an employee, or his or her representative, *but not later than 21 calendar days from the date of a request.*

~~(3)~~

(4) ~~Permit the~~ a current employee, or his or her representative, to inspect the personnel records at the location where the employer stores the personnel records, with no loss of compensation to the employee.

(5) *Make a former employee's personnel records available for inspection at the location where the employer stores the records*

1 *or, at the request of the former employee, or his or her*
2 *representative, provide a copy of the personnel records to the*
3 *former employee, or his or her representative, not later than 21*
4 *calendar days from the date of the request.*

5 (d) The requirements of this section ~~shall~~ do not apply to:

6 (1) Records relating to the investigation of a possible criminal
7 offense.

8 (2) Letters of reference.

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

10 (A) Obtained prior to the employee's employment.

11 (B) Prepared by identifiable examination committee members.

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

13 (4) Employees who are subject to the Public Safety Officers
14 Procedural Bill of Rights, ~~Chapter~~ (Chapter 9.7 (commencing with
15 Section 3300) of Division 4 of Title 1 of the Government-Code
16 Code).

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

20 (e) The Labor Commissioner may adopt regulations that
21 determine the reasonable times and reasonable intervals for the
22 inspection of records maintained by an employer that is not a public
23 agency.

24 (f) If a public agency has established an independent employee
25 relations board or commission, an employee shall first seek relief
26 regarding any matter or dispute relating to this section from that
27 board or commission before pursuing any available judicial
28 remedy.

29 (g) In enacting this section, it is the intent of the Legislature to
30 establish minimum standards for the inspection of personnel
31 records by employees. Nothing in this section shall be construed
32 to prevent the establishment of additional rules for the inspection
33 of personnel records that are established as the result of agreements
34 between an employer and a recognized employee organization.

35 (h) *If an employer fails to permit a current or former employee,*
36 *or his or her representative, to inspect or copy personnel records*
37 *within the times specified in this section, the current or former*
38 *employee or the Labor Commissioner may recover a penalty of*
39 *seven hundred fifty dollars (\$750) from the employer.*

- 1 (i) A current or former employee may also bring an action for
- 2 injunctive relief to obtain compliance with this section, and may
- 3 recover costs and reasonable attorney's fees in such an action.