

AMENDED IN ASSEMBLY JUNE 1, 2007

AMENDED IN ASSEMBLY APRIL 23, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 1707

**Introduced by Committee on Labor and Employment (Swanson
(Chair), DeSaulnier, Laird, Leno, and Ruskin)**

February 28, 2007

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1707, as amended, Committee on Labor and Employment. Private employment.

Under existing law, employees have a right to inspect employment records.

This bill would require employers to maintain employment records for a specified time and to provide inspection and copies within a specified time to current and former employees or their representatives. The bill would authorize those employees to recover a \$750 penalty from an employer for failure to do so and to bring an action to obtain compliance, *and it would provide that a violation of its provisions constitutes an infraction.*

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

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, and his or her
4 representative, has the right to inspect and receive copies 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 *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 21 calendar days from the date
12 of a written or oral request, *as specified*, for these records. Upon
13 a *written* request from a current or former employee, or his or her
14 representative, the employer shall also provide copies of the
15 personnel records, at a charge not to exceed the actual cost of
16 reproduction, *not later than 21 calendar days from the date of the*
17 *request*. Except as provided in paragraph ~~(4)~~ (2) of subdivision
18 (c), the employer is not required to make those personnel records
19 *or copies thereof* available at a time when the employee is actually
20 required to render service to the employer, if the requester is the
21 employee.

22 (c) The employer shall do the following:

23 (1) With regard to all employees, maintain a copy of each
24 employee's personnel records for a period of not less than ~~four~~
25 *three* years after termination of employment.

26 (2) With regard to current employees, make a current employee's
27 personnel records available *for inspection, or provide copies*
28 *thereof, as requested by the employee*, at the place where the
29 employee reports to work ~~within a reasonable period of time~~
30 ~~following a request by an employee or his or her representative~~
31 ~~for inspection or for a copy of the records, but not later than 21~~
32 ~~calendar days from the date of a request, or at another location~~
33 ~~agreeable to the employer and the requester. If the employee is~~
34 ~~required to inspect or receive copies at a location other than the~~
35 ~~place where he or she reports to work, no loss of compensation to~~
36 ~~the employee is permitted.~~

37 (3) With regard to former employees, make a former employee's
38 personnel records available for inspection, *or provide copies*

1 *thereof, as requested by the employee, at the location where the*
2 *employer stores the records, or, at the request of the former*
3 *employee or his or her representative, provide a copy of the*
4 *personnel records to the former employee or his or her*
5 *representative, not later than 21 calendar days from the date of the*
6 *request. A former employee may receive copies by mail if he or*
7 *she reimburses the employer for actual postal expenses.*

8 *(d) The employer may take reasonable steps to verify the identity*
9 *of a current or former employee or his or her authorized*
10 *representative. For purposes of this section, “representative”*
11 *means a person authorized in writing by the employee to inspect,*
12 *or receive a copy of, his or her personnel records.*

13 *(e) The employer may designate the person to whom a request*
14 *is made.*

15 *(f) Prior to making records specified in subdivision (a) available*
16 *for inspection or providing copies of those records, the employer*
17 *may redact the name of any nonsupervisory employee contained*
18 *therein.*

19 ~~(d)~~

20 *(g) The requirements of this section do not apply to:*

21 *(1) Records relating to the investigation of a possible criminal*
22 *offense.*

23 *(2) Letters of reference.*

24 *(3) Ratings, reports, or records that were:*

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

26 *(B) Prepared by identifiable examination committee members.*

27 *(C) Obtained in connection with a promotional examination.*

28 *(4) Employees who are subject to the Public Safety Officers*
29 *Procedural Bill of Rights (Chapter 9.7 (commencing with Section*
30 *3300) of Division 4 of Title 1 of the Government Code).*

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

34 ~~*(e) The Labor Commissioner may adopt regulations that*~~
35 ~~*determine the reasonable times and reasonable intervals for the*~~
36 ~~*inspection of records maintained by an employer that is not a public*~~
37 ~~*agency.*~~

38 ~~(f)~~

39 *(h) If a public agency has established an independent employee*
40 *relations board or commission, an employee shall first seek relief*

1 regarding any matter or dispute relating to this section from that
2 board or commission before pursuing any available judicial
3 remedy.

4 ~~(g)~~

5 (i) In enacting this section, it is the intent of the Legislature to
6 establish minimum standards for the inspection *and the receipt of*
7 *copies* of personnel records by employees. Nothing in this section
8 shall be construed to prevent the establishment of additional rules
9 for the inspection *and the receipt of copies* of personnel records
10 ~~that are~~, established as the result of agreements between an
11 employer and a recognized employee organization.

12 ~~(h)~~

13 (j) If an employer fails to permit a current or former employee
14 or his or her representative to inspect ~~or copy~~ personnel records
15 *or receive copies thereof* within the times specified in this section,
16 the current or former employee or the Labor Commissioner may
17 recover a penalty of seven hundred fifty dollars (\$750) from the
18 employer.

19 ~~(i)~~

20 (k) A current or former employee may also bring an action for
21 injunctive relief to obtain compliance with this section, and may
22 also recover costs and reasonable attorney’s fees in such an action.

23 (l) *Notwithstanding Section 1199, a violation of this section is*
24 *an infraction. Impossibility of performance, not caused by or*
25 *resulting from a violation of law, may be asserted as an affirmative*
26 *defense by an employer in any action alleging a violation of this*
27 *section.*