

Assembly Bill No. 1707

Passed the Assembly June 6, 2007

Chief Clerk of the Assembly

Passed the Senate September 5, 2007

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2007, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1707, 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.

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 for inspection 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, as specified, for these records. Upon a written 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, not later than 21 calendar days from the date of the request. Except as provided in paragraph (2) of subdivision (c), the employer is not required to make those personnel records or

copies thereof 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 the following:

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

(2) With regard to current employees, make a current employee's personnel records available for inspection, or provide copies thereof, as requested by the employee, at the place where the employee reports to work, or at another location agreeable to the employer and the requester. If the employee is required to inspect or receive copies at a location other than the place where he or she reports to work, no loss of compensation to the employee is permitted.

(3) With regard to former employees, make a former employee's personnel records available for inspection, or provide copies thereof, as requested by the employee, at the location where the employer stores the records. A former employee may receive copies by mail if he or she reimburses the employer for actual postal expenses.

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

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

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

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

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

(2) Letters of reference.

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

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

(B) Prepared by identifiable examination committee members.

(C) Obtained in connection with a promotional examination.

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

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

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

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

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

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

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

Approved _____, 2007

Governor