

State of California

LABOR CODE

Section 1198.5

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

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

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

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

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

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

(c) The employer shall do all of 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, and, if requested by the employee or his or her representative, provide a copy thereof, 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 a copy at a location other than the place where he or she reports to work, no loss of compensation to the employee is permitted.

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

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

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

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

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

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

(e) 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.

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

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

(h) 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).

(i) 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.

(j) In enacting this section, it is the intent of the Legislature to establish minimum standards for the inspection and the receipt of a copy 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 a copy of personnel records that are established as the result of agreements between an employer and a recognized employee organization.

(k) If an employer fails to permit a current or former employee, or his or her representative, to inspect or copy personnel records within the times specified in this section, or times agreed to by mutual agreement as provided 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.

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

(m) 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.

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

(o) For purposes of this section, a lawsuit "relates to a personnel matter" if a current or former employee's personnel records are relevant to the lawsuit.

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

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

- (1) The wages, hours of work, and working conditions of employees.
- (2) A procedure for the inspection and copying of personnel records.
- (3) Premium wage rates for all overtime hours worked.
- (4) A regular rate of pay of not less than 30 percent more than the state minimum wage rate.

(Amended by Stats. 2012, Ch. 842, Sec. 2. (AB 2674) Effective January 1, 2013.)