



Employment Law Bulletin

September 2017

Employee Requests for Personnel and Payroll Records – It's Not Just Signed Documents Anymore

California laws about employee access to their own employment records began changing in 2013, and have continued to evolve. The impact of these changes has greatly increased over time, and we've seen some significant negative impacts on our clients when proper care is not taken when responding to a request for access to personnel and payroll records.

The Law - Personnel Records

Current and former employees have the right to inspect the personnel records maintained by their employers that relate to the employee's performance or to any grievance concerning the employee under **Labor Code section 1198.5**.

Section 1198.5 also requires that you provide the employee with a copy of his/her entire personnel file, if requested, rather than just those documents the employee signed, as was the case under the prior law. You still have the right to charge the employee a reasonable fee to cover any copying costs. You are also permitted to cover up some information, as listed in the statute.

The law also permits the employee to designate a representative (including an attorney) to review or receive the file for the employee. Because the contents of personnel files are highly protected under privacy rules, you should be careful to verify any request for a personnel file that comes to you from anyone other than directly from the employee.

If your employee makes a verbal request for his/her personnel records, you should provide

the employee with a personnel file request form to complete and return. Written requests made in another format must be honored, even if they are not on your specified form.

Under the law, you have only 30 days from your receipt of the request to produce the records, or up to 35 days if you and the employee agree in writing (but never more than 35 days). This deadline applies whether the request is to inspect the personnel records or for a copy of the file. There is a \$750 penalty if you miss the deadline so be sure to respond on time.

There are a number of specific exceptions in the law about documents within a personnel file that need not be produced, and those should be explored before records are produced or made available for inspection.

The Law – Time and Payroll Records

Under **Labor Code section 226(b), (c) and (f)**, employees are also entitled to inspect or copy their payroll records. This includes both start/stop time records and payment records, including paystubs (or reports containing paystub information). Employers must allow the inspection or provide a copy of the payroll records within 21 days of the date of the request. Failure to meet this deadline can result in an additional \$750 penalty.

Best Practices. We strongly recommend you proceed with caution when responding to a request for inspection or production of personnel or payroll records. The mere fact of a request can signal that there is trouble brewing, and the response should be taken seriously and considered thoughtfully. When we are asked to review records for our clients in response to an employee personnel or payroll record request, we often find documents that should never have been placed in the personnel file or payroll records in the first place, and shudder to think what could have happened if that information had been made available to either the employee or his or her representative. Responding to the employee's request can provide an opportunity to legally and ethically clean up employee records for legal compliance and to proactively and strategically best protect your organization.

In closing, we recommend that you respond to all records requests in a timely manner, but proceed carefully to ensure you are following the law **and** using best practices to protect your organization by taking thoughtful care in responding.

Contact one of SMT's employment law attorneys if you have questions about how to best comply with these laws or if you need assistance with preparing a compliant Request for Personnel Records.

No Se Habla Español?

SMT's employment attorneys can provide your company with employment policies, forms and employee disciplinary documentation in Spanish. Providing such important information to employees in the language they understand is critical to employee performance, providing a welcoming diverse work environment, and protecting your company against employment claims. Contact an SMT attorney today to get started.

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