



## *Labor and Employment Law Update*

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### INSPECTION OF PERSONNEL RECORDS (AB 2674)

California Governor Jerry Brown signed into law AB 2674 which imposes new requirements specifying when and how employers must respond to employee requests for inspection and copying of personnel files. The new requirements are effective January 1, 2013. Does AB 2674 impact public school employers? Yes. Education Code section 44031(a) provides that “[e]very employee has the right to inspect personnel records pursuant to Section 1198.5 of the Labor Code.”

AB 2674 amends Labor Code section 1198.5, resulting in greater rights to employees for review and access to personnel files. First, AB 2674 makes it clear that an employee’s right to inspect his/her personnel file applies to both current and former employees (or the employee’s representative). Second, it requires employers to maintain personnel records for at least three years after the separation of employment. Third, the law requires that the employer allow inspection/provide copies of the personnel file within 30 days of the request (the 30 days may be extended by an additional five days by mutual written agreement). Fourth, the law also requires employers to provide employees with copies of all personnel records relating to the employee, rather than just documents that the employee signed.

The law also specifies the location where the inspection must take place and provides that an employer-provided form shall be given to the employee or the employee’s representative once the employer knows the employee would like to inspect his/her file. This law does not apply if there is a pending lawsuit regarding the employee or if there is a collective bargaining agreement in place that contains a procedure for the inspection and copying of personnel records. It is unclear whether an existing collective bargaining agreement must incorporate all of the new requirements/protections of AB 2674. Likely, as collective bargaining agreements are renegotiated, the requirements of AB 2674 will be negotiated.

As noted above, a request to inspect/copy a personnel file may be made by an employee's "representative," which is a person authorized in writing by the employee. A union representative or attorney would meet the definition of representative. An employer need not respond to more than 50 requests by a "representative" in one calendar month.

For current employees, the inspection of records or copies must be provided at the location where the employee normally reports to work, or at another mutually agreeable location. If the employee is required to go to a different location, the employee may do so only if he/she suffers no loss of compensation. Former employees may inspect or receive copies of records where the employer stores the records, unless otherwise mutually agreed to in writing. Former employees may receive copies of his/her personnel records by mail if he/she reimburses the employer for the actual cost of

postage. Employers are required to respond to only one request per year from a former employee. An employee/former employee is entitled to receive copies of the personnel records, at a charge that may not exceed the employer's actual cost of reproduction.

Where a former employee was terminated for workplace harassment/violence, an employer can make the personnel records available at a location other than the workplace that is within a reasonable driving distance of the former employee's residence, or mail copies of the records to the former employee.

Prior to producing personnel records for inspection, an employer is permitted to redact the names of any nonsupervisory employees that may appear in any of the documents contained in the personnel file.

### **Education Code Requirements**

In addition to complying with Labor Code section 1198.5, school districts are also required to comply with Education Code section 44031. Education Code section 44031(b) gives an employee the right to receive notice of any derogatory information, and the opportunity to comment on the derogatory information, before it is placed in the personnel file. This includes an employee's right to attach a written response to the derogatory information. A non-credentialed employee has the right to access his/her numerical scores from a written examination that is used to screen or qualify for filling a position.

### **Recommendations for School Districts**

School districts are required to create a request form for inspection or copies of personnel records. However, employees are not required to use the form. School districts should designate an individual to whom requests should be made and put in place processes to ensure compliance with Education and Labor Code requirements. For example, school districts should track the dates on which requests are made to ensure timely responses, track the number of requests made by employee representatives, and review retention policies and practices to ensure that covered personnel records are maintained for at least three years after separation. School districts must train human resources employees regarding these new requirements and update all relevant policies, procedures, and handbooks.

Finally, make sure that personnel files only include employee personnel records. Other employment-related documentation should be filed elsewhere (i.e., I-9 Forms, pre-employment screening documentation, medical documents, and disciplinary investigation materials including witness statements). I-9 Forms can be maintained in a separate I-9 file for all employees. Employee medical information should be maintained in a separate medical file for each employee. Disciplinary interviews and other investigation material should be kept in a confidential investigation file.

— Timothy L. Salazar

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