

RESOLUTION 8-02-2002

DIGEST

Employment Termination: Right to Inspect Personnel Records

Amends Labor Code section 1198.5 to give an employee the right to inspect his or her personnel record up to four years after termination.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

Reasons:

This resolution amends Labor Code section 1198.5 to give an employee the right to inspect his or her personnel record up to four years after termination. This resolution should be approved in principle because it clarifies the law and provides an appropriate length of time to preserve employment records.

An employee has the right to inspect the employer's personnel records regarding that employee's performance. (Lab. Code, § 1198.5, subd. (a).) But the law is silent as to the rights of a former employee. Although the Labor Commissioner has interpreted section 1198.5 to permit terminated employees to inspect their personnel files, the failure of the statute to address the issue leaves confusion about both employer and employee rights.

This resolution would codify the Labor Commissioner's interpretation, as well as specify that employment records must be maintained for the length of the statute of limitations on a written contract. Any burden it imposes on employers is outweighed by the protection it gives to the rights of wrongfully terminated employees.

TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates recommends that legislation be sponsored to amend Labor Code section 1198.5 to read as follows:

- 1 §1198.5
- 2 (a) Every employee has the right to inspect the personnel records that the employer
- 3 maintains relating to the employee's performance or to any grievance concerning the employee.
- 4 (b) The employer shall make the contents of these personnel records available
- 5 to the employee at reasonable intervals and at reasonable times. Except as provided in
- 6 paragraph(3) of subdivision(c), the employer shall not be required to make these personnel
- 7 records available at a time when the employee is actually required to render service to the
- 8 employer.
- 9 (c) The employer shall do one of the following:

- 10 (1) Keep a copy of each employee's personnel records at the place where the
11 employee reports to work.
- 12 (2) Make the employee's personnel records available at the place where the request.
- 13 (3) Permit the employee to inspect the personnel records at the location where the
14 employer stores the personnel records, with no loss of compensation to the employee.
- 15 (d) The requirements of this section shall not apply to:
- 16 (1) Records relating to the investigation of a possible criminal offense.
- 17 (2) Letters of reference.
- 18 (3) Ratings, reports, or records that were:
- 19 (A) Obtained prior to the employee's employment.
- 20 (B) Prepared by identifiable examination committee members.
- 21 (C) Obtained in connection with a promotional examination.
- 22 (4) Employees who are subject to the Public Safety Officers Procedural Bill of Rights,
23 Chapter 9.7 (commencing with Section 3300) of Division 4 of Title 1 of the Government Code.
- 24 (5) Employees of agencies subject to the Information Practices Act of 1977 (Title
25 1.8 (commencing with Section 1798) of Division 3 of the Civil Code).
- 26 (e) The Labor Commissioner may adopt regulations that determine the reasonable
27 time and reasonable intervals for the inspection of records maintained by an
28 employer that is not a public agency.
- 29 (f) If a public agency has established an independent employee relations board or
30 commission, an employee shall first seek relief regarding any matter or dispute
31 relating to this section from that board or commission before pursuing any judicial
32 remedy.
- 33 (g) In enacting this section it is the intent of the legislature to establish minimum
34 standards for the inspection of records by employees. Nothing in this section shall
35 be construed to prevent the establishment of additional rules for the inspection of personnel
36 records that are established as the result of agreements between an employer and a recognized
37 employee organization.
- 38 (h) Employees shall have the right to inspect their personnel files for a period of four
39 years after their termination or other cessation of employment.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Orange County Bar Association

STATEMENT OF REASONS:

Existing Law: Despite the Labor Commissioner's interpretation that Labor Code Section 1198.5 extends to terminated employees, many employers resist such access and assert the Labor Commissioner is not correctly interpreting the statute.

This Resolution: Because the right to review personnel files assists former employees and their counsel in deciding whether there is a basis to bring an action, specifically extending the right to inspect personnel files to four years after termination (the Statute of Limitations for actions based on a written contract) serves public policy by preventing the filing of unnecessary litigation.

The Problem: If the employer refuses to allow terminated employees to inspect their files, the employee is forced to file suit to obtain inspection by discovery procedures.

IMPACT STATEMENT:

The proposed legislation does not affect any other law, statute or rule.

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RESPONSIBLE FLOOR DELEGATE: Harris Kershner

COUNTERARGUMENT

SAN DIEGO COUNTY BAR ASSOCIATION

Four years is too long and unduly burdensome to employers, especially in light of the repeated and regular intervals at which such inspections must be permitted. The period of one year would be a reasonable accommodation of the proponent's legitimate concerns (which do not include preventing litigation just to obtain inspection).