

Personnel Files

SB 1327 was passed modifying Labor Code Section 1198.5, which governs access to employee personnel files. This change became effective January 1, 2001 and applies to both public and private sector employment. It is important to note here that much of the labor code does not apply to public employees or employees covered by labor contracts.

Section 1198.5, provides that every employee has the right to inspect the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee. It requires that the employer shall make the contents of those personnel records available to the employee at reasonable intervals and at reasonable times.

The employer shall do one of the following: (1) Keep a copy of each employee's personnel records at the place where the employee reports to work. (2) Make the employee's personnel records available at the place where the employee reports to work within a reasonable period of time following an employee's request. (3) Permit the employee to inspect the personnel records at the location where the employer stores the personnel records, with no loss of compensation to the employee. However, the employer shall not be required to make personnel records available at a time when the employee is actually required to render service to the employer.

The requirements of section 1198.5 shall not apply to: (1) Records relating (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 (The Bill of Rights provides a separate procedure for the inspection of personnel records).

It is recommended that employees review their personnel files at least every few years to determine what they contain. Acting in a timely manner is critical when addressing material that has been placed in the file. Be aware that there are at least two personnel files, one maintained by the personnel department and the other by the department where you work. You should review both files because they may contain different material. The department file normally will have material related to specific employment with the department, while the file at the personnel department will have material related to your overall employment with the employer and election of benefits. In addition to these two primary files your supervisor or manager may maintain a file on you. Normally these files are considered working files and do not constitute official records unless materials being held there are used in some formal action.

When you do review your files you should take an inventory of what they contain, this will make it easier to review your files in the future and to know if something has been added or removed. Should you discover materials in your file(s) that are derogatory in nature, you should file a rebuttal if you disagree with its content. You may also have grounds for its removal if you were not informed that it was being placed in your file.