
**Labor & Workplace Standards
Committee**

HB 1320

Brief Description: Concerning access to personnel records.

Sponsors: Representatives Reed, Berry, Ortiz-Self, Ramel, Pollet and Fosse.

Brief Summary of Bill

- Specifies that an employer must provide the employee's complete, unredacted personnel file within 14 calendar days of the request from the employee, former employee, or their attorney, agent, or fiduciary.
- Requires an employer to provide to a former employee, upon request, a statement of the employee's discharge date and reasons, if any, for the discharge.
- Creates a private cause of action to enforce the requirements.
- Requires the Department of Labor and Industries and the Employment Security Department to provide employers with information regarding the employer's obligations and the employee's rights.

Hearing Date: 2/14/23

Staff: Trudes Tango (786-7384).

Background:

Under the Industrial Welfare Act (IWA), an employer is required, at least annually, to allow an employee to inspect the employee's own personnel file upon the employee's request. The employer must make the file available locally within a reasonable period of time after the

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request.

The Department of Labor and Industries (Department) administers the IWA, and interprets the statute to include former employees who retain the right to inspect their personnel records after termination. The Department also interprets "reasonable period of time" to generally mean within 10 business days unless good cause is shown that more time is needed.

The right to inspect does not apply to records of any employee relating to an investigation of possible criminal offenses. It also does not apply to records or information compiled in preparation of a lawsuit which would not be available to another party under the rules of pretrial discovery for causes pending in superior courts.

Regarding payroll records, employers are required to keep, for at least three years, records of each employee's name, address, occupation, dates of employment, rates of pay, hours worked, and other information. Employers must make that information available to the employee upon request at any reasonable time. Upon request from a former employee, an employer must furnish within 10 business days a signed written statement stating the reasons for, and effective date of, discharge.

An employee may file a complaint with the Department if the employee has been denied access to their personnel records, and the Department will contact the employer to request compliance.

Summary of Bill:

The Legislature intends to increase transparency, provide consistency, and encourage equitable compliance regarding access to personnel records.

Within 14 calendar days of a request from an employee, former employee, or their attorney, agent, or fiduciary, an employer must furnish to the employee a complete, unredacted electronic or paper copy of the employee's personnel file at no cost to the employee. For requests from former employees, the employer must also furnish a signed, written statement to the former employee stating the effective date of discharge, whether the employer had a reason for the discharge, and if so, the reasons.

An employee may enforce the provisions through a private cause of action in superior court and is entitled to equitable relief, statutory damages, and reasonable attorneys' fees and costs.

Statutory damages for each violation are:

- \$250 if the file or statement is not provided within 14 days from the due date;
- \$500 if the file or statement is not provided within 28 days of the due date;
- \$1,000 if the file or statement is provided later than 28 days from the due date.

"Personnel file" includes the following records, regardless of the labels of the files or folders in which they are maintained:

- all job application records;

- all performance evaluations;
- all disciplinary records;
- all medical, leave, and reasonable accommodation records, which an employer should maintain separately from other personnel records for medical privacy;
- all payroll records;
- all employment agreements; and
- all other records maintained in a personnel or employment file for that employee, however designated.

The requirements must not be construed to create a records retention schedule or to entitle an employee to an employer's protected legal file.

Public employers may redact information if required by law, and when providing the file, the public employer must provide the reasons for any redaction and the supporting laws.

The Department must develop and furnish to each employer information describing an employer's obligations and an employee's rights. The Department and the Employment Security Department must provide this information to employers at least annually. Failure to provide the information does not relieve an employer of its obligations.

Agents and fiduciaries must provide the document evidencing their legal authority to represent the employee or former employee. An agent is an attorney-in-fact granted authority under a durable or nondurable power of attorney. A fiduciary is an original, additional, or successor personal representative, guardian, or trustee.

Appropriation: None.

Fiscal Note: Requested on February 13, 2023.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.