

SENATE BILL REPORT

SB 5061

As of January 9, 2023

Title: An act relating to access to personnel records.

Brief Description: Concerning access to personnel records.

Sponsors: Senators Kuderer and Stanford.

Brief History:

Committee Activity: Labor & Commerce: 1/12/23.

Brief Summary of Bill

- Requires an employer to furnish an employee with a complete, unredacted copy of their personnel file at no cost within 14 days of a request.
- Mandates an employer to furnish a former employee with a signed written statement with the effective date of discharge, whether the employer had a reason for the discharge, and if so, the reasons, within 14 days of the written request.
- Allows an employee to bring a private action for violations of certain rights regarding personnel files and discharge information and entitles the employee to equitable relief, graduated statutory damages up to \$1,000, and reasonable attorneys' fees and costs of each violation.

SENATE COMMITTEE ON LABOR & COMMERCE

Staff: Susan Jones (786-7404)

Background: At least annually, every employer must, upon the request of an employee, permit that employee to inspect any or all of the employee's own personnel files. Each employer must make such files available locally within a reasonable period of time after the

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employee requests the files.

An employee may annually petition the employer for a review all information in the employee's personnel files that are regularly maintained by the employer as a part of the employer's business records, or are subject to reference for information given to persons outside of the company. The employer must determine if there is any irrelevant or erroneous information in the files, and must remove all such information from the file.

If an employee does not agree with the employer's determination, the employee may request to have a statement containing the employee's rebuttal or correction placed in the employee's personnel file. This requirement does not prevent the employer from removing information more frequently. A former employee retains the right of rebuttal or correction for a period not to exceed two years.

These requirements do not apply to:

- the records of an employee relating to the investigation of a possible criminal offense; or
- information or records compiled in preparation for an impending lawsuit which would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

The Department of Labor and Industries (L&I) rules provide that employers, subject to the minimum wage laws, must keep certain employee payroll and employment information. Under L&I rules, every employer must:

- keep, for at least three years, a record of the name, address, and occupation of each employee, dates of employment, rate or rates of pay, amount paid each pay period to each such employee and the hours worked;
- make these records available to the employee, upon request, at any reasonable time; and
- within ten business days of receiving a written request by a former employee, furnish a signed written statement stating the reasons for and effective date of discharge.

Summary of Bill: Within 14 calendar days of a request by an employee, former employee, or their attorney, agent, or fiduciary, each 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.

The employee's ability to petition for the employer's review of the personnel file is not limited, in part, to those files maintained as part of the employer's business records.

Within 14 business days of receiving a written request by a former employee or their attorney, agent, or fiduciary, the employer must furnish a signed written statement to the 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 employee's rights through a private cause of action in superior court, without exhausting any administrative remedies. For each violation, the employee is entitled to equitable relief; statutory damages of \$250 if the file or statement is not provided within 14 days from the due date; \$500 if not provided within 28 days from the due date; \$1,000 if provided later than 28 days from the due date; and reasonable attorneys' fees and costs.

Personnel file includes all:

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

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

Agents and fiduciaries must provide the document evidencing their legal authority to represent the employee or former employee at the time of any request.

A public employer may redact information before sending the copy of the personnel file if required by law. The public employer must provide the reasons for any redaction and the supporting laws when furnishing the file.

At least annually, L&I and the Employment Security Department must provide to employers L&I developed information that describes the obligations and rights.

The terms agent and fiduciary are defined. Legislative intent is provided.

Appropriation: None.

Fiscal Note: Requested on January 5, 2023.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.