

SENATE BILL REPORT

SB 5924

As of January 4, 2024

Title: An act relating to access to personnel records.

Brief Description: Concerning access to personnel records.

Sponsors: Senators Kuderer and Wellman.

Brief History:

Committee Activity: Labor & Commerce: 1/11/24.

Brief Summary of Bill

- Requires an employer to furnish an employee, former employee, or their designee with the employee's personnel file at no cost within 21 calendar 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 21 calendar days of the written request.
- Allows an employee or former employee to bring a private action, after five days notice, for violations of certain rights regarding personnel files, and discharge information, for 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

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employer must make these files available locally within a reasonable period of time after the employee requests the files.

An employee may annually petition the employer for a review of all information in the employee's personnel files 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 that information from the file. This requirement does not prevent the employer from removing information more frequently. 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. 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 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.

For purposes of making the personnel file available, L&I administrative policy provides the terms:

- locally means at the location where the requesting employee works or at a mutually convenient location agreed upon between the employer and employee; and
- within a reasonable period generally means within ten business days of the request unless good cause shows that more time is needed.

The policy also provides definitions of personnel file and irrelevant or erroneous information and a process for taking complaints. After a complaint L&I will request the employer comply.

Summary of Bill: The time period to provide a personnel file is increased to 21 calendar days after a request. In addition to the employee, a former employee or their designee may request the file. The file must be provided at no cost.

Every employer must, within 21 calendar days of receiving a written request from a former employee or their designee, furnish a signed written statement to the former employee or their designee stating the effective date of discharge, whether the employer had a reason for the discharge and, if so, the reasons. Former employee means a person who separated from the employer within three years of the date of the person's request.

An employee or former employee may enforce these requirements through a private cause of action and for each violation will be entitled to equitable relief, statutory damages, and reasonable attorneys' fees and costs. Prior to enforcing through a private cause of action, five calendar days' notice must be given to the employer, which must reference that the employee or former employee has the right to bring a legal action under Washington State law.

The statutory damages for violations range from \$250 to \$1,000 depending how late the file or statement is provided. The statutory damages for other violations is \$500.

If the employer creates these records, the term personnel file includes all job application records, performance evaluations, disciplinary records, medical, leave, reasonable accommodation records, payroll records, employment agreements, and other records contained in the file. A retention schedule for records is not required.

Appropriation: None.

Fiscal Note: Requested on December 31, 2023.

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

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