
**Labor & Workplace Standards
Committee**

HB 1308

Brief Description: Concerning access to personnel records.

Sponsors: Representatives Reed, Fosse, Alvarado, Thai, Doglio, Cortes, Mena, Obras, Scott, Taylor, Macri, Ortiz-Self, Pollet, Salahuddin, Berry, Duerr, Reeves, Goodman, Street, Simmons, Walen, Ormsby, Ramel, Nance and Parshley.

Brief Summary of Bill

- Specifies that an employer must provide an employee or former employee with a copy of the employee's personnel file within 21 days of a request.
- 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 with statutory damages for enforcing the requirements to disclose personnel files and provide written discharge statements.

Hearing Date: 1/22/25

Staff: Kelly Leonard (786-7147).

Background:

Industrial Welfare Act.

Under the Industrial Welfare Act (IWA), an employer is required, at least annually, to allow an

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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 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.

Public Records Act.

Under the Public Records Act (PRA), state and local agencies are required to make written records available to the public for inspection and copying upon request, unless an exemption applies. Investigative records compiled by an employing agency in connection with pending investigations of unfair practices under the Washington Law Against Discrimination or other possible violations involving discrimination or harassment in employment are exempt. After the outcome of the investigation, the employing agency may disclose the records after the names of complainants, accusers, and witnesses are redacted, unless there is consent to disclosure. In addition, personal identifying information in an employee personnel file held by a postsecondary educational institution that reveals the identity of witnesses or victims of sexual misconduct committed by an employee of the institution are exempt from public disclosure, unless the victim or witness indicates a desire for disclosure.

Summary of Bill:

The IWA is modified with respect to the requirements to disclose personnel files to employees, including defining personnel file, specifying timelines for disclosure, allowing former employees to access their files, requiring statements of discharge upon request, and establishing a private right of action.

Personnel Files. An employer must provide a copy of a personnel file within 21 calendar days

after the employee, former employee, or their designee requests the file. The copy must be provided at no cost to the employee, former employee, or their designee. "Personnel file" includes the following records, if the employer creates such records:

- all job application records;
- all performance evaluations;
- all nonactive and closed disciplinary records;
- all leave and reasonable accommodation records;
- all payroll records;
- all employment agreements; and
- all other records designated by the employer as part of the employee's personnel file.

The bill specifically does not create a retention schedule for records, require an employer to create personnel records, or supersede state or federal privacy laws mandating nondisclosure.

Written Discharge Statements. An 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.

Private Cause of Action. An employee or former employee may enforce the requirement to disclose a personnel record and/or provide a written discharge statement through a private cause of action, which may include equitable relief, statutory damages, and reasonable attorneys' fees and costs. Prior to bringing an action, the employee or former employee must give a notice of intent to sue to the employer. The notice may be provided to the employer with the initial request for a copy of the personnel file or later on. An employee or former employee may not commence a lawsuit until five calendar days have elapsed since sending the notice.

The statutory damages for each violation are:

- \$250 if the complete personnel file or the statement is not provided within 21 calendar days of the request;
- \$500 if the complete personnel file or the statement is not provided within 28 calendar days of the request;
- \$1,000 if the complete personnel file or the statement is provided later than 35 calendar days of the request; and
- \$500 for any other violations.

Appropriation: None.

Fiscal Note: Requested on January 17, 2025.

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