

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT*Headquarters Office*

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*Office of the
State Labor Commissioner*

August 27, 1998

The Honorable Liz Figueroa
California State Assembly
P. O. Box 942849
Sacramento, CA 94249-0001

Dear Assembly Member Figueroa:

Thank you for your letter of August 21, 1998, in which you request clarification on the obligations of an employer to provide employees access to their personnel files.

The relevant provisions of the law governing an employee's right of access to view their personnel file are contained in Labor Code § 1198.5. That section states that the employer shall make available to employees the right to inspect their personnel file at "reasonable times." The section also provides that the Labor Commissioner, upon request, shall determine any "reasonable intervals" during which an employee may request to review his or her personnel files. Finally, the law states that a copy of each employee's personnel files shall be kept at the place where the employee reports to work, or requires the employer to make such files available at that place within a "reasonable period of time" after a request therefor is made by the employee.

The Division has historically taken the position that the flexibility demanded by the clear language of this statute means that reasonableness can only be determined on a case by case basis. For example, while it may initially appear to be reasonable to require an employer to provide access to a personnel file within 24 hours, it may not in fact be reasonable to expect the employer to comply with such an arbitrary deadline in the event it turns out that the employer has only one person in charge of the company's personnel functions, and that person is out sick on the day the employee makes a request to inspect their personnel file.

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Other difficulties in setting any hard and fast rule on access to an employee's personnel file would allow, for example, an out of state employer who maintains their personnel files at an out of state location, or one who has statewide operations and employees, but maintains their personnel files at a central location, to provide access to these files within a "reasonable period of time" after a request is made to inspect them by the employee. On the other hand, it would not be unreasonable to expect fairly immediate access to an employee's personnel file maintained at the place where the employee works, as required by the statute, absent compelling reasons or unusual circumstances that the employer would have the burden of establishing.

In the event your constituent is denied access to their personnel files outside of these time parameters, or altogether, he or she may file a complaint with the nearest office of the Division of Labor Standards Enforcement. The Division will utilize such tools that are necessary to achieve compliance with this Labor Code section, up to and including the use of subpoenas for the requested information.

I hope that this letter satisfactorily addresses the issues raised in your letter. Please let me know if I can be of any further assistance to you or to your constituent.

Sincerely,



Jose Millan
State Labor Commissioner

cc: Assistant Chiefs
Acting Chief Counsel