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LAW ALERT

A.B. 2674 - EMPLOYEES' RIGHT TO INSPECT PERSONNEL RECORDS; WAGE STATEMENT RETENTION **(EFFECTIVE JANUARY 1, 2013)**

A.B. 2674 significantly changes the obligations of California employers, and the rights of current and former employees, regarding employees' personnel files.

Previously, Labor Code section 1198.5 allowed employees to inspect their personnel records at reasonable intervals and times. As amended, the section now more closely resembles another law spelling out employees' rights to review and obtain copies of their payroll records, California Labor Code section 226.

A.B. 2674 provides that employers must make personnel records available for inspection by any current or former employee or his/her representative. Employers must also provide a copy of the records within 30 calendar days from receipt of a written request, or if the parties agree in writing, within no more than 35 calendar days. Additionally, the amended section requires that employers keep a copy of the employee's personnel records for at least three years after termination of employment.

The amended section also provides for the following:

• If a current or former employee files a lawsuit against the employer regarding a personnel matter, his or her right to inspect or copy personnel records ceases during the pendency of the lawsuit.

• An employer may: (1) designate the person to whom records requests are made, (2) take reasonable steps to verify the identity of the employee or representative making the request, and (3) redact the names of nonsupervisory employees contained in the records.

• An employer need not comply with more than 50 requests filed by a representative or representatives of employees in one calendar month.

• The inspection and copying provisions do not apply to an employee covered by a valid collective bargaining agreement if the agreement provides, among other things, for a procedure for inspection and copying of personnel records.

• If an employer fails to permit inspection or copying of records within the times required, the employee or Labor Commissioner may recover a $750 penalty. The employee also may obtain injunctive relief, costs, and attorney fees. In a change from existing law, a violation of the above provisions requiring that personnel records be made available for inspection constitutes an infraction, not a misdemeanor.

Finally, A.B. 2674 amends Labor Code section 226 with respect to the obligation for employer retention of wage statements. Previous law required employers to keep copies of wage statements for at least three years, either at the employment site or a central location within the state. This bill clarifies that "copies" may include duplicates of the statements provided to the employee, or computer-generated records that accurately show all information required to be included on the wage statement.

For more information, please contact Jim Diamond, Caroline Nasella or any other Goldfarb & Lipman attorney at 510-836-6336.

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