

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: 07/03/2012
POSITION: Oppose

BILL NUMBER: AB 2674
AUTHOR: Swanson, Sandre

BILL SUMMARY: Employment records: right to inspect.

This bill would require an employer to maintain and provide, upon request from a current or former employee, or his or her representative, a copy of the employee's personnel records within 30 days of the request. The bill would also impose a penalty of \$750 on an employer who fails to allow inspection or provide a copy of personnel records and would authorize the employee to bring an action for injunctive relief and recover costs and reasonable attorney's fees.

FISCAL SUMMARY

This bill would result in additional costs of \$190,000 to \$310,000, Labor Enforcement Compliance Fund, for the Department of Industrial Relations to fund 0.5 to 1.0 new positions to make determinations of an employee's right to recover the penalty included in this bill and provide related enforcement activities.

COMMENTS

The Department of Finance is opposed to this measure because it would result in additional costs not included in the 2012-13 Budget Act. Additionally, these costs would be supported by the Labor Enforcement Compliance Fund, which under current law sunsets on July 1, 2013. Should legislation be enacted to extend the life of the Labor Enforcement Compliance Fund, additional costs would likely result in an increased employer assessment to fund the activities supported by the fund.

Under existing law, every employee has the right to inspect their personnel records relating to the employee's performance or to any grievance concerning the employee, and requires that employers make these personnel records available to current and former employees.

This bill would revise requirements of existing law regarding employment records, specifically:

- Allows both current and former employees, including their representative, to inspect and copy their personnel records and allows the employer to verify the identity of the employee and representative. These inspection rights would not apply during the pendency of a lawsuit that relates to a personnel matter. Further, employees covered by a valid collective bargaining agreement that provides specified conditions would be excluded from the provisions of this bill.
Requires the employer to maintain personnel records for a minimum of three years following an employee's termination of employment.
Establishes a 30-day time frame for an employer to comply with an employee's request to inspect their personnel records which may be extended to 35 days by mutual agreement.
Allows the current or former employee, or the Labor Commissioner, to recover a \$750 penalty for noncompliance and allows them to bring an action to ensure compliance. An employee would also be

Analyst/Principal (0241) J.Morozumi Date Program Budget Manager Lisa Ann Mangat Date
Department Deputy Director Date
Governor's Office: By: Date: Position Approved Position Disapproved
BILL ANALYSIS Form DF-43 (Rev 03/95 Buff)

Swanson, Sandre

07/03/2012

AB 2674

COMMENTS (continued)

allowed to bring an action to provide injunctive relief to obtain compliance and may recover costs and reasonable attorney's fees.

- Limits an employer's required compliance to 1 request per employee per year, and a maximum of 50 requests filed by a representative or representatives of employees in one calendar month.

The intent of the bill is to address the challenges some employees face regarding the exact nature of the information in their personnel files, especially for employees with a limited understanding of English. The author's office asserts that some employers have refused to allow employees to bring a representative with them who could aid in the translation or the understanding of complex documents.

Code/Department Agency or Revenue Type	SO	(Fiscal Impact by Fiscal Year)					Fund Code
	LA	(Dollars in Thousands)					
	CO	PROP					
	RV	98	FC	2012-2013 FC	2013-2014 FC	2014-2015 Code	
7350/DIR	SO	No	C	95-155 C	190-310 C	190-310 3152	
<u>Fund Code</u>	<u>Title</u>						
3152	Labor Enforcement and Compliance Fund						