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# msk's annual labor & employment law update

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*MSK Client Alert*

January 2013

## **New Laws**

Employee right to inspect personnel files expanded. Under prior law, an employee had a right to inspect his or her personnel records (Labor Code § 1198.5) and to obtain a copy of any document signed by the employee (Labor Code § 432). AB 2674 amends Labor Code § 1198.5 so that, in addition to inspection, an employee or his/her representative also may obtain a copy of any personnel records. For purposes of the statute, "representative" includes any person authorized by a current or former employee in writing. Personnel records must be made available for inspection and/or copying within 30 days of a written request (which may be extended to 35 days by mutual agreement). Moreover, if a verbal request is made, the employer must provide a form on which the request can be made in writing. Where a copy of the records is requested, the employer may require the employee to reimburse the employer for the actual cost of reproduction. Before personnel records are inspected or copied, the employer may redact the name(s) of any non supervisory employee appearing in the personnel records.

AB 2674 also expressly extends the right to inspection and copying of personnel records to former employees. However, a former employee only may request to inspect and/or copy records once per year. Moreover, if the former employee was terminated for violating a law or a workplace policy concerning harassment or violence, the employer may comply with an inspection request by bringing the records to a neutral location or by mailing them to the employee. As amended, Labor Code § 1198.5 additionally requires that employers must maintain personnel records for at least three years. A violation of the statute is an infraction (criminal charge), and the new law provides for the recovery of a penalty of \$750 per violation, as well as for the recovery of attorneys' fees and injunctive relief.

## **attorneys**

Anthony J. Amendola

## **practice areas**

employment litigation & counseling

labor & employment

labor litigation & counseling



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