



# REQUESTING YOUR EMPLOYEE RECORDS IN CALIFORNIA

California employees have the right to inspect and copy their personnel file, signed employment documents, and payroll records. Here's how to request them, with a sample letter.

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He writes these guides to put the state's labor laws into plain English, in neutral terms, with a citation for every claim.



California employees and former employees have the right to inspect and copy many of the records their employer keeps about them, including their personnel file, any document they signed to obtain or hold the job, and their payroll records.<sup>1</sup> To get these records, you make a request to your employer, in writing for your personnel file and signed documents and in writing or orally for payroll records. The employer must then respond within a set deadline: 21 calendar days for payroll records and 30 calendar days for personnel records.<sup>2</sup>

The right to inspect employee records is often the first tool that employment lawyers use to discover important information about their clients' employment histories.

This article explains some important aspects of an employee's right to review their records. It discusses the scope of the right and provides a sample form for employees to use in crafting their request.

## How should I request my employee records?

A request for employee records should be in writing. Although some statutes allow for an oral request,<sup>3</sup> putting your request in writing helps ensure that you have evidence of your request if you need to enforce your rights later.

For the same reason, you should make sure you keep a copy of the request you send. A “writing” for these purposes can be an e-mail, a letter, or even a fax.

## What kind of records can I request?

Generally, there are three categories of records that employees can request:



Your personnel records that relate to your performance, including education and training records, or to any grievance concerning you.<sup>4</sup>



Any instrument you have signed relating to the obtaining or holding of employment.<sup>5</sup>



Your payroll records.<sup>6</sup>

## What should I say?

In requesting employee records, it's usually a good idea to keep it simple. There's no reason to explain to your employer why you are seeking records. More often than not, employees end up putting their foot in their mouths trying to think of an innocent reason. The fact is: you don't need a reason to review your records. It's your right under California law.

Also, keeping it simple avoids confusion and superfluous language. Adding extra information will only detract from the actual message of your request. An employee records request is a straightforward matter and there is no reason to overcomplicate it.

### 3.1 Be Clear about Your Request

A request for records can be uncomfortable to write. Some people would rather bury their goal in the middle of a paragraph or a discussion on some other topic. It's better to dedicate your writing to the exclusive purpose of requesting your records.

So, write your request in a simple letter or e-mail that only discusses one thing: your request for employee records. That way, your employer knows up-front what they are dealing with and they don't mistakenly miss the point of your request.

### 3.2 Keep the Tone Respectful

Keep your request cordial and professional. Never express yourself in a disrespectful way to your employer or former employer, no matter how much they may deserve it. In some cases, these kinds of letters end up as exhibits in court.

Saying mean or rude things in a letter only makes you look bad to a judge or jury. Also, a disrespectful letter makes it less likely that you'll get what you want. Instead, keep it professional and straight to the point.

The formality of the tone, however, is a matter of discretion on your part. Some employers respond better to a casual and friendly e-mail, while others will require a formal letter. It may come down to how strong your relationship is with your employer, whether your employer is anticipating a lawsuit, and whether any tension exists between you and your supervisors.

### **3.3 Give a Deadline for a Response**

If you don't provide a firm deadline, it opens the door for your employer to sit on their hands and not respond to you. The exact deadline depends on the kind of record you are requesting.

An employer must respond to a request for personnel records relating to your performance no later than 30 calendar days after the date your employer receives your request.<sup>7</sup> Employers have only 21 calendar days, however, to respond to a request for payroll records.<sup>8</sup>

### **3.4 Optional: Reference the Law**

There is no magic language to use in an employee records request. So, your request for employee records is valid whether or not you cite the statutes that give you the right to make this request. Sometimes, however, it is helpful to remind your employer that your request is based on a legal right: you're not just asking a favor.

On the other hand, citing the relevant statutes can sometimes escalate the tone of your request. This may be a good thing if a particularly formal request is a good idea in your case, but it may be a bad thing if your employer would be more responsive to a casual and friendly letter.

## Sample Personnel File Request Form

Below is a sample request letter similar to what our attorneys normally send to employers.

## Re: Request for Employee Records



Dear [*Human Resources Department*]:

Please allow this letter to serve as a request for my employment records maintained by [*Acme Corporation*]. I am seeking complete copies of the following:

- My personnel records maintained by [*Acme Corporation*] that relate to my performance, including education and training records, or to any grievance concerning me. (Labor Code, § 1198.5, subd. (a).)
- Any instrument signed by me relating to the obtaining or holding of employment. (Labor Code, § 432.)
- Any and all of my payroll records and wage statements. (Labor Code, § 226, subd. (b).)

Please provide these documents as soon as possible, but not later than 21 days from the date of this request for my payroll records and 30 days from the date of this request for the remaining records.

Please direct any questions about this request directly to me. Thank you for your attention to this matter.

Sincerely,

[*Joe Employee*]

## Penalties for Failure to Produce Records

It depends. Because there are several statutes at play in most requests, the consequences vary depending on the kinds of records the employer is withholding. Some statutes provide for a \$750.00 civil penalty or injunctive relief.<sup>9</sup> These statutes usually also allow for the recovery of attorney fees in pursuing these remedies, so employees might not have to worry about paying their attorney if their employer refuses to hand over records.

Other laws make it criminal to refuse to provide employee records: specifically, Labor Code section 432, which gives employees or applicants the right to a copy of any instrument they have signed relating to the obtaining or holding of employment.

Section 433 provides that violations of that article are a misdemeanor. The consequences are therefore very serious if employers don't properly respond to record requests from employees or former employees.

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## References

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|---|------------------------------------------------------------------|
| 1 | Labor Code, §§ 1198.5, subd. (a), 432, and 226, subd. (b).       |
| 2 | Labor Code, §§ 226, subd. (c), and 1198.5, subd. (b).            |
| 3 | See, e.g., Labor Code, § 226, subd. (c).                         |
| 4 | Labor Code, § 1198.5, subd. (a).                                 |
| 5 | Labor Code, § 432.                                               |
| 6 | Labor Code, § 226, subd. (b).                                    |
| 7 | Labor Code, § 1198.5, subd. (b).                                 |
| 8 | Labor Code, § 226, subd. (c).                                    |
| 9 | Labor Code, §§ 226, subds. (f), (h) and 1198.5, subds. (k), (l). |