

There is often confusion among employers concerning the legal requirements for recordkeeping and retention of employee files and other employment-related records. Not only are there federal recordkeeping requirements, but individual states also have requirements that must be followed. Some requirements apply to most or all employers, while others apply primarily to government contractors and subcontractors. Many of these requirements are dependent on the particular law which applies to the type of record and the number of employees.

This document may also be helpful when combined with the your state laws.

Generally an employer could establish the following retention periods for both electronic and paper-based records:

- Personnel: 7 years after termination
- Medical/benefits: 6 years after plan year*
- I-9 forms: Not more than 3 years after termination
- Hiring Records: 2 years after hiring decision

(*an exception would be to maintain employee exposure records for at least 30 years, under the requirements of [29 CFR 1910.1020](#)).

If the employer is involved in an employment-related dispute with a terminated employee and this dispute has not yet been reconciled, retain all documents relating to that employee.

Once the required retention time frames have been met be sure to create a destruction log and destroy records by shredding to ensure that no confidential employee information is inadvertently released.

1. Selection, Hiring & Employment Records

Relevant Laws

- Age Discrimination in Employment Act (20 or more employees)
- Americans with Disabilities Act (15 or more employees)
- Civil Rights Act of 1964 (Title VII) (15 or more employees)
- Section 503 of the Rehabilitation Act of 1973 (federal contractors)
- Vietnam Era Veterans Readjustment Assistance Act (federal contractors)
- Executive Order 11246 (applies to federal contractors)
- Service Contract Act, Davis-Bacon Act, Walsh-Healey Act (apply to federal contractors)

Years to be Kept

- 1 year after creation of the document or the hire/no hire decision whichever is later. (2 years for federal contractors)

Records Covered

- Job applications, resumes, job ads, screening tools/tests, interview notes and other records related to hire/no hire decisions.
- Records related to promotions, demotions, transfers, performance appraisals, terminations, reasonable accommodations and/or requests, training records, incentive plans, merit systems, and seniority systems.
- Copy of EEO-1 survey and intake forms if applicable.

2. Payroll Records, Time Sheets/Cards

Relevant Laws

- Age Discrimination in Employment Act (20 or more employees)
- Fair Labor Standards Act (1 or more employee)
- Equal Pay Act (1 or more employee)
- Lilly Ledbetter (1 or more employee)
- Service Contract Act, Davis-Bacon Act, Walsh-Healey Act (apply to federal contractors)
- Family Medical Leave Act (50 or more employees)

Years to be Kept

- 3 years (There are no retention requirements under Lilly Ledbetter, however it is recommended that employers retain records for length of employment, plus an additional 5 years)

Records Covered

- Basic employee data: name, address, Social Security number, gender, date of birth, occupation and job classification
- Compensation records:
 - Amounts and dates of actual payment
 - Time and day of week when employee's workweek begins
 - Total hours worked each day and workweek
 - Basis and rate which employee's wages are paid (e.g., "\$9 per hour", "\$455 a week", "piecework")
 - Straight time and overtime hours/pay. All additions to or deductions from the employee's wages
 - Total wages paid each pay period
 - Date of payment and the pay period covered by the payment
 - Records explaining any sex-based pay differences
 - Annuity and pension payments
 - Fringe benefits paid

3. Form I-9

Relevant Laws

- Immigration Reform and Control Act (1 or more employee)

Years to be Kept

- 3 years after date of hire or one year after date of termination, whichever is later

Records Covered

- N/A

4. Employment Benefits

Relevant Laws

- Employee Retirement Income Security Act

Years to be Kept

- 6 years

Records Covered

- Except for specific exemptions, ERISA's reporting and disclosure requirements apply to all pension and welfare plans, including: Summary plan description (updated with changes and modifications), annual reports, notice or reportable events (such as plan amendments that may decrease benefits, a substantial decrease in the number of plan participants, etc.), plan termination.

5. Tax Records

Relevant Laws

- Federal Insurance Contribution Act (all employers)
- Federal Unemployment Tax Act (all employers)
- Federal Income Tax Withholding (all employers)

Years to be Kept

- 4 years from date tax is due or paid

Records Covered

- Amounts of wages subject to withholding.
- Agreements with employee to withhold additional tax.
- Actual taxes withheld and dates withheld.
- Reason for any difference between total tax payments and actual tax payments.
- Withholding forms (W-4, W4-E).

6. Safety Data

Relevant Laws

- Occupational Health & Safety Act (10 or more employees)
- Walsh-Healy Act (federal contractors)

Years to be Kept

- 5 years following the year records pertain to (*Medical exams, material safety data sheets and exposure to toxic substances records retained for the duration of employee's job tenure plus 30 years)

Records Covered

- Log of occupational injuries and illnesses. Records of injuries and illnesses. Summary of injuries and illnesses. Records of exposure to toxic substances for each employee.

7. Family Medical Leave Records

Relevant Laws

- Family Medical Leave Act (50 or more employees)

Years to be Kept

- 3 years

Records Covered

- Basic employee data, including name, address, occupation, rate of pay, terms of compensation, daily and weekly hours worked per pay period, additions to/deductions from wages and total compensation. Dates of leave taken by eligible employees. Leave must be designated as the FMLA leave. For intermittent leave taken, the hours of leave. Copies of employee notices and documents describing employee benefits or policies and practices regarding paid and unpaid leave. Records of premium payments of employee benefits. Records of any dispute regarding the designation of leave.

8. Health Care Continuation

Relevant Laws

- Consolidated Omnibus Budget Reconciliation Act (20 or more employees)

Years to be Kept

- There are no recordkeeping requirements under COBRA. However, many experts recommend that records be maintained for 6 years from the date of the record to remain consistent with ERISA requirements.

Records Covered

- Provide written notice to employees and their dependents of their option to continue group health plan coverage following certain qualifying events, such as the employee's termination, layoff or reduction in working hours, entitlement to Medicare, or the death or divorce of the employee (that would cause dependents to lose coverage under the employer's plan).

9. Polygraph Test Records

Relevant Laws

- Employee Polygraph Protection Act (1 or more employee)

Years to be Kept

- 3 years

Records Covered

- Polygraph test result(s) and the reason for administering.

10. Affirmative Action Plan/Data

Relevant Laws

- Executive Order 11246 (applies to federal contractors)
- The Uniform Guidelines on Employee Selection Procedures (100 or more employees)

Years to be Kept

- 2 years

Records Covered

- Applications and other personnel records that support employment decisions (e.g., hires, promotions, terminations) are considered "support data" and must be maintained for the AAP.

11. Credit Reports

Relevant Laws

- Fair and Accurate Credit Transactions (1 or more employee)

Years to be Kept

- No retention requirement. Law requires shredding of all documents containing information derived from a credit report. Don't discard for at least one year though (see Selection, Hiring & Employment Records)

Records Covered

- N/A

12. Drug Test Records

Relevant Laws

- Department of Transportation (DOT) covered safety-sensitive transportation positions; aviation, trucking, railroads, mass transit and pipelines.

Years to be Kept

- 1 year from test date (up to 5 years for records relating to drug testing for DOT positions, see § 382.401 for specific DOT retention requirements)

Records Covered

- N/A