

Federal Guidelines for Employers: Record Retention

In reviewing the accompanying chart, you will notice that the same or similar records are often required under more than one law. However, the period of retention for this information may vary. If that is the case, you are advised to retain the information for the longer period of time. It is important that you are aware of these state laws.

It is also advisable to establish a system for auditing your organization's record keeping, including personnel files, as well as a consistent program for record destruction. However, be cautious that even with such a standard practice in place, when a discrimination charge or lawsuit is filed, all records relevant to the charge must be kept until "final disposition" of the charge or lawsuit.

Law	Records/Reports	Retention Requirements
<p>Age Discrimination in Employment Act (ADEA)</p> <p>Applies to employers with at least 20 employees.</p>	<p>Payroll or other records, including those for temporary positions showing employees' names, addresses, dates of birth, occupations, rates of pay and weekly compensation.</p> <p>Applications (including those for temporary employment), personnel records relating to promotion, demotion, transfer, selection for training, layoff, recall, or discharge; job advertisements and postings; copies of employee benefit plans, seniority system and merit systems.</p>	<p>3 years for payroll or other records showing basic employee information.</p> <p>One or two years, depending on the organization's size and whether any affirmative action statutes or executive orders apply to you.</p> <p>Where a charge or lawsuit is filed, all relevant records must be kept until "final disposition" of the charge or lawsuit.</p>
<p>Americans with Disabilities Act (ADA)</p> <p>Applies to employers with at least 15 employees.</p>	<p>Applications and other personnel records (e.g. promotions, transfers, demotions, layoffs, terminations) requests for reasonable accommodation.</p>	<p>2 years, depending on the organization's size and whether any affirmative action statutes or executive orders apply to you.</p> <p>Where a charge or lawsuit is filed, all relevant records must be kept until "final disposition."</p>
<p>Civil Rights Act of 1964, Title VII</p> <p>Applies to employers with at least 15 employees.</p>	<p>Applications and other personnel records (e.g. promotions, transfers, demotions, layoffs, terminations), including records for temporary or seasonal positions.</p> <p>Requires the filing of an annual EEO-1 Report (for Federal contractors with 50 or more employees, non-contract employers with 100 or more).</p>	<p>2 years, depending on the organization's size and whether any affirmative action statutes or executive orders apply to you.</p> <p>Where a charge or lawsuit is filed, all relevant records must be kept until "final disposition."</p> <p>A copy of the current EEO-1 Report must be retained.</p>
<p>Consolidated Omnibus Budget Reconciliation Act (COBRA)</p>	<p>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 and the death or</p>	<p>An organization's COBRA provider typically keeps these records.</p>

	divorce of the employee (that would cause dependents to lose coverage under the employer's plan).	
Davis Bacon Act	Records containing the following information for each employee:	3 years from the end of the contract.
Service Contract Act	<p>Basic employee data to include name, address, social security number, gender, date of birth, occupation and job classification. -- Walsh-Healy requires the retention of current work permits for minors</p> <p>Compensation records to include: - Amounts & dates of actual payment. - Period of service covered. - Daily and weekly hours. - Straight time and overtime hours/pay. - Fringe benefits paid. - Deductions and additions.</p>	
Employee Retirement Income Security Act (ERISA)	<p>Maintain, disclose to participants and beneficiaries and report to the Department of Labor, IRS and the Pension Benefit Guaranty Corporation (PBGC) certain reports, documents, information and materials. Except for specific exemptions, ERISA's reporting and disclosure requirements apply to all pension and welfare plans, including:</p> <p>Summary plan description (updated with changes and modifications).</p> <p>Annual reports.</p> <p>Notice or reportable events (such as plan amendments that may decrease benefits, a substantial decrease in the number of plan participants, etc.). Plan termination.</p>	<p>Minimum of 6 years.-Employers must maintain ERISA-related records used to develop all required plan descriptions or reports, as well as other materials needed to certify information.</p> <p>Records used to determine benefits that are or will become due for each employee participating in the plan must be retained as long as they are relevant.</p>
Equal Pay Act	Payroll records including time cards, wage rates, additions to and deductions from wages paid and records explaining sexually based wage differentials.	3 years.
<u>Fair and Accurate Credit Transactions Act (FACTA)</u>	Consumer credit reports.	Recently written rules for the Fair and Accurate Credit Transactions Act (FACTA) will require every employer that employs one or more employees to shred any and all documents that contain information

		<p>derived from a credit report. These provisions will go into effect on June 1, 2005. Penalties for failing to obey the shredding provisions could be severe.</p> <p>The penalties for failure to observe the shredding rules include: civil liability in which an employee can recover actual damages from his/her employer for all damages incurred from identity theft; statutory damages of up to \$1,000 per employee; an employer may open itself to class action liability if a large number of employees are affected; federal fines of up to \$2,500 for each violation; and state fines of up to \$1,000 per employee.</p>
<p>Fair Labor Standards Act (FLSA)</p>	<p>Payroll or other records containing the following information for each employee:</p> <p>Employee's name, home address, date of birth (if under 19 years of age), gender, and occupation</p> <p>Time of day/day of week for beginning of workweek</p> <p>Regular hourly rate of pay or other basis of payment (hourly, daily, weekly, piece rate, commission on sales, etc.)</p> <p>Daily hours worked and total hours for each workweek</p> <p>Total daily or weekly straight-time earnings (exclusive of overtime premiums)</p> <p>Total additions to and deductions from wages for each pay period</p> <p>Total wages per paid period</p> <p>Date of each payment of wages and the period covered by the payment</p> <p>For executive, administrative, and professional employees, or those employed in outside sales, employers must maintain records that</p>	<p>3 years.</p>

	reflect the basis on which wages are paid in sufficient detail to permit calculations of the employee's total remuneration, perquisites, including fringe benefits.	
Family & Medical Leave Act (FMLA)	<p>Records containing the following information:</p> <p>Basic employee data to include 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.</p> <p>Dates of leave taken by eligible employees. Leave must be designated as FMLA leave.</p> <p>For intermittent leave taken, the hours of leave.</p> <p>Copies of employee notices and documents describing employee benefits or policies and practices regarding paid and unpaid leave.</p> <p>Records of premium payments of employee benefits.</p> <p>Records of any dispute regarding the designation of leave.</p>	3 years.
Federal Insurance Contribution Act Federal Unemployment Tax Act Federal Income Tax Withholding	<p>Records containing the following information for each employee:</p> <p>Basic employee data to include name, address, social security number, gender, date of birth, occupation, and job classification.</p> <p>Compensation records to include:</p> <ul style="list-style-type: none"> - Amounts & dates of actual payment. - Period of service covered. - Daily and weekly hours. - Straight time and overtime hours/pay. - Annuity and pension payments. - Fringe benefits paid. - Tips. - Deductions and additions. <p>Tax records to include:</p>	4 years from the date tax is due or tax is paid.

	<ul style="list-style-type: none"> - 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). 	
Immigration Reform & Control Act (IRCA)	INS Form 1-9 (Employee Eligibility Verification Form) signed by each newly-hired employee and the employer.	3 years after date of hire or one year after date of termination, whichever is later.
Occupational Safety & Health Act (OSHA)	A log of occupational injuries and illnesses.	5 years.
Applies to employers with at least 10 employees.	<p>A supplementary record of injuries and illnesses.</p> <p>Post a completed annual summary of injuries and illnesses.</p> <p>Maintain medical records and records of exposure to toxic substances for each employee.</p>	Employee's job tenure plus thirty years.