

# FEDERAL RECORD RETENTION REQUIREMENTS FOR EMPLOYERS

## Introduction

There is usually some confusion among employers about the legal requirements for record keeping and retention of employee files and employer-related records. Various federal agencies have record retention requirements, and individual states also have requirements that must be followed. Some requirements apply to most employers, while others apply primarily to government contractors and subcontractors. Many of these requirements are dependent upon the number of employees the organization has, or on the purpose for which the record keeping is meant.

We have included a chart that provides a reference for HR practitioners or office managers regarding what records must be kept under each federal law, the retention period for those records, and the applicability of each federal law. Here is an overview:

## Federal Tax and Compensation Records

- Federal Insurance Contribution Act (FICA)
- Federal Unemployment Tax (FUTA)
- Federal Income Tax Withholding

All of these require employee records related to mandatory federal taxes be retained for at least four years. (These include basic demographic data such as name, address, social security number, gender, date of birth, occupation and job class, total compensation, tax forms, records of hours worked, payments to annuities, pensions, accident, health and other benefit plans, all wages subject to withholding, and the actual taxes withheld from wages.)

- Equal Pay act
- Fair Labor Standards Act (FLSA)

Both of these require retention of payroll records information for three years.

For Federal Contractors:

- Davis-Bacon Act

- Service Contract Act
- Walsh-Healey Act

All of these require retention of employee demographic data and compensation records for three years.

### Employment Actions

- Title VII, Civil Rights Act of 1964
- Americans with Disabilities Act (ADA)

Both require employers with 15 or more employees to retain applications and other personnel records relating to hires, rehires, tests used in employment, promotions, transfers, demotions, selection for training, layoff, recall, terminations or discharges, for one year from making the record or taking the personnel action.

Basic demographic data, pay rates, and weekly compensation records must be retained for three years.

- Age Discrimination in Employment Act (ADEA)

Requires the same records as described above be retained for one year, but applies to employers of 20 or more employees.

- Immigration Reform and Control Act (IRCA)

Requires that the I-9 Form (Employee Eligibility Verification Form) be maintained for three years after date of hire or one year after date of termination, whichever is later. (These need to be available for inspection during an audit by either the Immigration and Naturalization Service or the Department of Labor, so it is strongly advised that they be filed separately from the personnel files.

- Employee Polygraph Protection Act

Requires that polygraph test results and records be kept for at least three years.

- Executive Order 11246
- Veterans' Readjustment Act
- Rehabilitation Act of 1973

These require federal contractors and subcontractors to prepare and annually update affirmative action plans. Contractors are required to maintain the current year's and prior year's affirmative action plan and documentation of good faith efforts.

- Uniform Guidelines on Employee Selection Procedures (UGESP)

These are guidelines for employers subject to Title VII or Executive Order 11246. They require the collection of data regarding applicant and employee race and gender. (Information regarding race, gender, veteran and disability status should be maintained separate from the personnel file.)

Also required are records showing the impact of the employer's selection processes on minorities and females. Information with respect to employment transactions must be retained. (These include records regarding applicants, offers, hires, rehires, tests used in employment, promotions, transfers, demotions, selection for training, layoff, recall, terminations and discharges.)

Any personnel or employment record must be preserved for two years. If the contractor has less than 150 employees, or does not have a contract for at least \$150,000, then the retention period is one year.

### **Benefits, Health & Safety, and related matters**

- Employee Retirement Income Security Act (ERISA)

Requires employers to maintain records, including summary plan descriptions, annual reports, and reports of plan termination for a minimum of six years.

- Family and Medical Leave Act (FMLA)

Requires the retention of certain records with respect to payroll and demographic information as well as information related to the individual employee's leave for a period of three years.

- Occupational Safety and Health Act (OSHA)

Requires that records of job-related illnesses and injuries be kept for five years. Also, it requires employers to complete and post an annual summary report (OSHA #200-S). Records related to medical exams along with toxic substances and blood-borne pathogen exposure must be retained for thirty years after termination of employment

*Many states have laws that are essentially the same as the federal statutes. You are encouraged to investigate your individual state requirements where your company does business.*

You will notice that in some cases records are required under more than one law, sometimes stating different periods of retention. When this occurs, always use the longer retention period.

<b>Law</b>	<b>Records/Reports</b>	<b>Retention Requirements</b>
<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>Three years for payroll or other records showing basic employee information.</p> <p>One year for applications and other personnel records.</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>One year from making the record or taking the personnel action.</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.</p>	<p>One year from making the record or taking the personnel action.</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 divorce of the employee (that would cause dependents to lose coverage under the employer's plan).</p>	

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<p>Davis Bacon Act</p> <p>Service Contract Act</p> <p>Walsh-Healy Public Contracts Act</p> <p>Applies to Federal Contractors</p>	<p>Records containing the following information for each employee:</p> <ul style="list-style-type: none"> <li>• Basic employee data to include name, address, social security number, gender, date of birth, occupation, and job classification.</li> <li>- Walsh-Healy requires the retention of current work permits for minors.</li> <li>• Compensation records to include: <ul style="list-style-type: none"> <li>- Amounts and dates of actual payment.</li> <li>- Period of service covered.</li> <li>- Daily and weekly hours.</li> <li>- Straight time and overtime hours/pay.</li> <li>- Fringe benefits paid.</li> <li>- Deductions and additions.</li> </ul> </li> <li>• Walsh-Healy requires the retention of data with respect to job-related injuries and illnesses, specifically logs with dates and summaries and details of accidents.</li> </ul>	<p>Three years from the end of the contract.</p>
<p>Employee Retirement Income Security Act (ERISA)</p>	<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> <ul style="list-style-type: none"> <li>• Summary plan description (updated with changes and modifications).</li> <li>• Annual reports.</li> <li>• Notice of reportable events (such as plan amendments that may decrease benefits, a substantial decreases in the number of plan participants, etc.).</li> <li>• Plan termination.</li> </ul>	<p>Employers must maintain ERISA-related records for a minimum of six years.</p>
<p>Employee Polygraph Protection Act</p>	<p>Polygraph test results and the reasons for administering</p>	<p>Three years.</p>
<p>Equal Pay Act</p>	<p>Payroll records including time cards, wage rates, additions to and deductions from wages paid, and records explaining sexually based wage differentials.</p>	<p>Three years.</p>
<p>Executive Order 11246</p> <p>Applies to Federal Contractors</p>	<p>Requires the preparation of an Affirmative Action Plan (AAP) for Minorities and Women.</p> <p>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.</p>	<p>AAP's must be updated annually; AAPs and documentation of good faith efforts must be retained for two years.</p> <p>Personnel or employment records must be retained for two years. If there are less than 50 employees or contract is less than \$150,000, the retention period is one year.</p>

<p>Fair Labor Standards Act (FLSA)</p>	<p>Payroll or other records containing the following information for each employee:</p> <ul style="list-style-type: none"> <li>• Employee's name, home address, date of birth (if under 19 years of age), gender, and occupation.</li> <li>• Time of day/day of week for beginning of workweek.</li> <li>• Regular hourly rate of pay or other basis of payment (hourly, daily, weekly, piece rate, commission on sales, etc.).</li> <li>• Daily hours worked and total hours for each workweek.</li> <li>• Total daily or weekly straight-time earnings (exclusive of overtime premiums).</li> <li>• Total additions to and deductions from wages for each pay period.</li> <li>• Total wages per paid period.</li> <li>• Date of each payment of wages and the period covered by the payment.</li> </ul> <p>For executive, administrative, and professional employees, or those employed in outside sales, employers must maintain records, which reflect the basis on which wages are paid in sufficient detail to permit calculations of the employee's total remuneration, perquisites, including fringe benefits.</p>	<p>For at least three years.</p>
<p>Family and Medical Leave Act (FMLA)</p>	<p>Records containing the following information:</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• Dates of leave taken by eligible employees. Leave must be designated as FMLA leave.</li> <li>• For intermittent leave taken, the hours of leave.</li> <li>• Copies of employee notices and documents describing employee benefits or policies and practices regarding paid and unpaid leave.</li> <li>• Records of premium payments of employee benefits.</li> <li>• Records of any dispute regarding the designation of leave.</li> </ul>	<p>Three years.</p>

<p>Federal Insurance Contribution Act</p> <p>Federal Unemployment Tax Act</p> <p>Federal Income Tax Withholding</p>	<p>Records containing the following information for each employee:</p> <ul style="list-style-type: none"> <li>• Basic employee data to include name, address, social security number, gender, date of birth, occupation, and job classification.</li> <li>• Compensation records to include: <ul style="list-style-type: none"> <li>- Amounts and dates of actual payment.</li> <li>- Period of service covered.</li> <li>- Daily and weekly hours.</li> <li>- Straight time and overtime hours/pay.</li> <li>- Annuity and Pension payments.</li> <li>- Fringe benefits paid.</li> <li>- Tips.</li> <li>- Deductions and additions.</li> </ul> </li> <li>• Tax records to include: <ul style="list-style-type: none"> <li>- Amounts of wages subject to withholding.</li> <li>- Agreements with employee to withhold additional tax.</li> <li>- Actual taxes withheld and dates withheld.</li> <li>- Reason for any difference between total tax payments and actual tax payments.</li> <li>- Withholding forms (W-4, W4-E).</li> </ul> </li> </ul>	<p>Four years from the date tax is due or tax is paid.</p>
<p>Immigration Reform and Control Act (IRCA)</p>	<p>INS Form 1-9 (Employee Eligibility Verification Form) signed by each newly hired employee and the employer.</p>	<p>Three years after date of hire or one year after date of termination, whichever is later.</p>
<p>Occupational Safety and Health Act (OSHA)</p> <p>Applies to employers with at least 10 employees.</p>	<ul style="list-style-type: none"> <li>• A log of occupational injuries and illnesses</li> <li>• A supplementary record of injuries and illnesses.</li> <li>• Post a completed annual summary of injuries and illnesses.</li> <li>• Maintain medical records and records of exposure to toxic substances for each employee.</li> </ul>	<p>Five years.</p> <p>Employee's job tenure plus thirty years.</p>
<p>Rehabilitation Act of 1973</p> <p>Applies to Federal Contractors</p>	<p>Personnel/employment records (e.g., requests for reasonable accommodation, results of physical exams, job advertisements and postings, applications, resumes, tests, test results, interview notes and records regarding hiring, assignment, promotion, demotion, transfer, layoff, termination, rates of pay or terms of compensation and selection for training or apprenticeship).</p> <p>Data on complaints of disability discrimination and actions taken.</p> <p>Requires an Affirmative Action Plan for individuals with disabilities.</p>	<p>Two years.</p> <p>(Note: If a contractor has fewer than 150 employees or a contract of less than \$150,000, the retention period is only one year).</p> <p>Where a charge or lawsuit is filed, all relevant records must be kept until "final disposition".</p> <p>AAPs must be updated annually; no current requirement to retain expired plans.</p>



<p>Uniform Guidelines on Employee Selection Procedures</p>	<p>For employers with 100 or more employees, records showing the impact of the selection process for each job, maintained by sex for each racial or ethnic group that constitutes at least 2% of the labor force in the relevant labor area of 2% of the applicable workforce.</p> <p>For employers with less than 100 employees, records showing for each year the number of persons hired, promoted, terminated, applicants hired for each job by sex and where appropriate by race and national origin.</p> <p>Records include applications, tests, and other types of selection procedures used as a basis for employment decisions, such as hiring, promotion, transfer, demotion, training, and termination.</p> <p>Adverse impact analysis of selection process must be conducted annually.</p>	<p>Where adverse impact is found in the selection process, records must be maintained for two years after the adverse impact is eliminated.</p> <p>For federal contractors, during a compliance review from the Department of Labor's Office of Federal Contract Compliance Programs, data from the prior year's analysis must be available, and for the current year if a contractor is six months into its AAP plan year. (See also Executive Order 11246).</p>
<p>Vietnam Era Veterans' Readjustment Assistance Act</p> <p>Applies to Federal Contractors</p>	<p>Personnel/employment records (see Rehabilitation Act of 1973 above).</p> <p>Affirmative Action Plan for covered veterans.</p> <p>Requires the filing of the annual VETS-100 report.</p> <p>Job openings for positions must be listed with the state employment service.</p>	<p>Two years. (Note: If a contractor has fewer than 150 employees or a contract of less than \$150,000, the retention period is only one year).</p> <p>AAP's must be updated annually; no current requirement to retain expired plans.</p> <p>A copy of the current VETS-100 report must be retained.</p>