

Legislative Brief

Employer Record Retention Requirements



The following table summarizes numerous employer recordkeeping and retention requirements, indicating the longest retention period established by FEDERAL law. State law requirements are not addressed in this table. This document does not attempt to outline all documents an employer may need in all situations.

It is recommended that personnel records be retained for the longest time limit for bringing an action against an employer over an employment decision (i.e., your specific state law should also be referenced in this regard). Further, in the event that a claim is brought against an employer, all pertinent records must be retained until final disposition of the matter. Retention of supplemental records that document personnel decisions and actions may also be helpful. In addition, documents used to prepare reports required under ERISA must be retained for at least six (6) years from the date of filing, though rounding up to eight (8) years would best accommodate late or extended filings.

RELEVANT LEGAL AUTHORITY	TYPE OF RECORD	RETENTION PERIOD
Age Discrimination in Employment Act of 1967 (ADEA)	<p>Payroll or other records for each employee which contain:</p> <ul style="list-style-type: none"> (1) Name; (2) Address; (3) Date of birth; (4) Occupation; (5) Rate of pay, and (6) Compensation earned each week <p>Job applications, resumes, job advertisements, documents related to hiring/failure to hire, firing, transfer, demotions, promotions, layoffs/recall, payroll records, job descriptions, employment handbooks, training programs, employee evaluations, requests for reasonable accommodation</p>	<p>3 years - every employer shall make and keep</p> <p>1 year from date of personnel action to which any records relate</p>
Americans with Disabilities Act (ADA)	<p>Applications, job advertisements, documents related to hiring, firing, transfer, demotions, promotions, layoffs, payroll records, job descriptions, employment handbooks, training programs, employee evaluations, requests for reasonable accommodation</p>	<p>1 year from date of personnel action or date record is made (whichever is later)</p> <p>1 year from date of involuntary termination</p>
Civil Rights Act of 1964 – Title VII	<p>Applications, job advertisements, documents related to hiring, firing, transfer, demotions, promotions, layoffs, payroll records, job descriptions, employment handbooks, training programs, employee evaluations, requests for reasonable accommodation</p> <p>A chronological listing of the names, addresses, gender, and minority group identification of all applicants for an apprenticeship program, including any test papers and interview notes</p>	<p>1 year from date of personnel action or date record is made (whichever is later)</p> <p>1 year from date of involuntary termination</p> <p>2 years or program length, whichever is greater</p>

Legislative Brief

Employer Record Retention Requirements

Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA)	Copies of all COBRA required notices; any valid documentation or signed acknowledgments that the notices were received by the employee/qualified beneficiary; detailed documentation related to any instance in which COBRA continuation is not offered due to gross misconduct, late notification, Medicare entitlement, etc.; all related correspondence	COBRA regulations do not specify a recordkeeping period. Since COBRA amended ERISA, it is generally recommended that records be maintained for six years from the date of record, in accordance with ERISA requirements.
Employment Retirement Income Security Act (ERISA)	Benefit plan documents, disclosure of plan description, annual reports and summary of annual reports, summary plan descriptions, and all recorded information used in compiling required reports (such as vouchers, worksheets, receipts, applicable resolutions, and participants' elections and deferrals)	Generally 6 years from filing (or date would have been filed but for exemption or simplified reporting requirement)
Equal Pay Act of 1963 (EPA)	Any records which relate to the payment of wages, wage rates, job evaluations, job descriptions, merit systems, seniority systems, collective bargaining agreements, description of practices or other matters which describe or which explain the basis for payment of any wage differential to employees of the opposite sex in the same establishment	2 years
Executive Order 11246 (Affirmative Action)	EEO-1 Reports VETS-100 Reports Applications for employment (Affirmative Action employers with 150 or more employees) Applications for employment (Affirmative Action employers with less than 150 employees or contracts of less than \$150,000) Written affirmative action plans including supporting documentation, analyses, and related records or raw data; tests given to employees including documents on their use and validation studies Personnel or employment records	1 year 1 to 2 years, depending on employer size 2 years from the date of filling the position 1 year from the date of filling the position 2 years 2 years from the date of the making of the record or personnel action
Executive Order 11246 (Affirmative	Internal complaints and termination	1 year from termination of employment

Legislative Brief

Employer Record Retention Requirements

Action) – Continued	information for individuals with disabilities, disabled veterans, and veterans of the Vietnam era; includes all records concerning the actions taken and responses to such complaints and actions	
Fair Labor Standards Act (FLSA)	<p>Payroll and other records that contain name, address, Social Security number, date of hire, and date of termination, collective bargaining agreements, individual contracts, written FLSA agreements, sales and purchase records, certificates and notices</p> <p>Time each workday began and ended, time each meal period began and ended, total hours worked in each day and each week, rate of pay and wages paid during each pay period, amount of and reason for each deduction from wages, and daily output of an employee not paid on an elapsed time basis</p> <p>Certificates authorizing payment at less than minimum wage</p> <p>All employment records of apprentices in a program for skilled trades under which the employer pays a sub-minimum wage</p> <p>Employees that are minors: Name, home address and date of birth; certificate of age; dates of hire/termination; times each workday began and ended; times of daily meal period(s); total hours worked each day/week; pay rate for each pay period, amount of each deduction and reason, output of employee if paid other than on an elapsed time basis</p> <p>Employees that are student learners: copies of employment applications; certificates authorizing the employment of student learners; payroll records; and a notation of occupation</p>	<p>3 years from termination of employment</p> <p>Certain supplemental records, including time cards, need only be kept for 2 years from termination or 3 years from the making of the record.</p> <p>3 years from termination of employment</p> <p>3 years from the termination date of the program</p> <p>3 years from termination of employment</p> <p>3 years from termination of employment</p>
Family and Medical Leave Act (FMLA)	Medical certifications and related medical	3 years from the date the leave ended

Legislative Brief

Employer Record Retention Requirements

	information; type of leave taken; dates or hours of leave taken; name, position, and pay rate of person on leave; copies of all notices given to or received from employee; documents describing employee benefits and status; records of any dispute between employer and employee	
Internal Revenue Code	Tax and Social Security records such as income tax withholding, Social Security, unemployment compensation, and advanced date earned income credit payments	4 years from date of filing
Immigration Reform and Control Act (IRCA)	Form I-9 for terminated employees (All current employees hired since Nov. 6, 1986 must have an I-9 on file.)	Three years from the date of completion or 1 year from termination of employment, whichever is later
Occupational Safety and Health Act (OSHA)	<p>OSHA 300 Log, the privacy case list (if one exists), the annual summary, and the OSHA 301 Incident Report forms</p> <p>Noise exposure measurements</p> <p>Audiometric exams</p> <p>Material Safety Data Sheets (MSDS) containing physical and health hazards of each hazardous substance used in the workplace</p> <p>Medical records of employees for employers subject to OSHA standards including but not limited to asbestos, benzene, cadmium, formaldehyde, and occupational exposures to bloodborne pathogens</p> <p>Employee medical records concerning the health status of an employee including medical and employment questionnaires or histories; results of medical examinations or laboratory tests, medical opinions, diagnoses, progress notes, and recommendations; first aid records and the results of physical examinations considered in connection with any personnel action</p>	<p>5 years following the end of the calendar year that these records cover</p> <p>2 years minimum</p> <p>Duration of employment plus 30 years from termination of employment</p> <p>30 years from the date the substance was last received in the workplace</p> <p>Duration of employment plus 30 years from termination of employment</p> <p>Duration of employment plus 30 years from termination of employment</p> <p>(Exception: For persons employed less than one year, medical records need not be retained if provided to employee upon termination.)</p>
Omnibus Transportation Employee	Verified positive controlled substance test	5 years from making of the record

Legislative Brief

Employer Record Retention Requirements

<p>Testing Act of 1991</p>	<p>results, documentation of refusal to submit to required tests, driver evaluations and referrals, controlled substance testing program administration, and calendar year summary of drug test results</p> <p>Records from previous employers concerning drug and alcohol test results of employees</p> <p>Education and training of screening test technicians, supervisors, and trainers</p> <p>Negative and canceled drug tests</p>	<p>3 years from receiving records from previous employers</p> <p>Maintain while the individual is performing the function and for 2 years after the individual leaves the function</p> <p>1 year from test date</p>
<p>Paperwork Reduction Act of 1980</p>	<p>Job applications, resumes or any other form of employment inquiry, including records pertaining to the failure or refusal to hire any individual, records pertaining to promotion, demotion, transfer, selection for training, layoff, recall, or discharge of any employee, job orders to employment agencies or labor organizations, test papers completed by applicants or candidates for any position which disclose the results of any employer-administered aptitude or other employment test considered by the employer in connection with any personnel action, any advertisements or notices to the public or to employees relating to job openings, promotions, training programs, or opportunities for overtime work</p> <p>For employers not covered by federal drug testing rules, verified positive controlled substance test results used to deny employment</p> <p>Employee benefit plan descriptions such as pension and insurance plans, and seniority systems and merit systems</p>	<p>1 year from the date of filling the position, or until final disposition of enforcement action</p> <p>(Note: If an employer is a federal contractor or subcontractor, all employment applications should be retained for the employer's current year and the prior affirmative action program year.)</p> <p>1 year from the date of filling the position, or until final disposition of enforcement action</p> <p>Full period that the plan or system is in effect plus 1 year after termination, or until final disposition of enforcement action</p>

JMK 11/04; rev'd 11/07