

# RECORD RETENTION COMPLIANCE OVERVIEW



Provided by Helpside

## EMPLOYER RECORD RETENTION REQUIREMENTS

Federal laws, such as the Federal Insurance Contributions Act (FICA), the Fair Labor Standards Act (FLSA) and the Equal Pay Act (EPA), impose recordkeeping duties on employers. These recordkeeping duties require employers to create and retain certain information related to their compliance with federal laws.

We have included a table that summarizes numerous employer recordkeeping and retention requirements, indicating the longest retention period established by federal law. This table does not attempt to outline all documents an employer may need in all situations.

State law requirements are not addressed in this table. To determine the time period for which records should be retained, it is important to reference applicable state laws in addition to federal laws. State laws may include recordkeeping requirements that operate in addition to or in conjunction with federal requirements.

## LINKS AND RESOURCES

- Department of Labor's (DOL) [web page](#) on OSHA injury and illness recordkeeping requirements
- Equal Employment Opportunity Commission's (EEOC) [web page](#) on fair employment recordkeeping requirements.
- DOL's [web page](#) on recordkeeping under the FLSA

## HIGHLIGHTS

### FAIR EMPLOYMENT RECORDS

- Federal fair employment laws require that employers keep all personnel or employment records for one year.
- If an employee is fired, his or her employment records must be retained for one year from the date of termination.

### FLSA RECORDS

- Employers covered by the FLSA must keep certain records for covered, nonexempt workers.
- There is no required form for the records, but the records must include accurate information about the employee and data about the hours worked and wages earned.



## WHAT FILES DO I NEED TO CREATE?

FILE TYPE	DOCUMENTS INCLUDED	BENEFIT
<b>Hiring Records*</b>	Resumes, interview notes, applications, job postings, and a record of your searches through your applicant tracking system.	If anyone ever questions a hiring decision, the employer will need to show that they were not discriminating illegally. Maintaining these records helps to document this.
<b>Drug Test Records*</b>	Copy of test results and all additional results due to an incident at work or as part of a random check.	If anyone ever questions test results, the employer will need to provide test results.
<b>Payroll Reports and Timecards*</b>	Records documenting how many hours and employee worked and how much they were paid for their entire tenure at the company.	Data needed for pay and tax questions. Other situations rely on the number of hours employees worked as well.
<b>I-9*</b>	I-9 forms must be stored separately from employee personnel records.	Officers from the Department of Homeland Security, employees from the Office of Special Counsel for Immigration-Related Unfair Employment Practices at the Department of Justice, and employees from the Department of Labor may ask to inspect these forms.
<b>Health Plan and 401(k) Plan*</b>	Maintain records of companies plans for all benefits. Keep all Summary Plan Descriptions.	The courts have held that that if an employee sues you, saying that he or she deserves a higher 401(k) percentage, for instance, it's the employer's responsibility to prove that they don't owe more, not the employee's responsibility to prove that they do.

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FILE TYPE	DOCUMENTS INCLUDED	BENEFIT
<p style="text-align: center;"><b>FMLA*</b></p>	<p>Basic payroll and identifying employee data.</p> <p>Dates FMLA leave is taken by FMLA-eligible employees (leave must be designated in records as FMLA leave), including the hours of the leave, if FMLA leave is taken in increments of less than one full day.</p> <p>Copies of employee notices of leave provided to the employer under the FMLA, if in writing, and copies of all eligibility notices given to employees as required under the FMLA (copies may be maintained in employee personnel files).</p> <p>Any documents (including written and electronic records) describing employee benefits or employer policies and practices regarding the taking of paid and unpaid leave.</p> <p>Premium payments of employee benefits.</p> <p>Records of any dispute between the employer and an eligible employee regarding designation of leave as FMLA leave, including any written statement from the employer or employee of the reasons for designation and for the disagreement.</p>	<p>Employers covered by the FMLA are required to make, keep and preserve certain records pertaining to their obligations under the law. They are not required to submit any records to the DOL unless specifically requested by a DOL official.</p>

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FILE TYPE	DOCUMENTS INCLUDED	BENEFIT
<p><b>Employee Personnel</b> <b>Part 1: Employment History</b></p>	<p>Job application</p> <p>Resume</p> <p>Resume cover letter</p> <p>Education verification</p> <p>Employment verification</p> <p>Rejection letter</p> <p>Position job description</p> <p>Job analysis records</p> <p>Job offer or employment contract</p> <p>Employment agency or temp agency agreement, if used</p> <p>Emergency contact information</p> <p>Signed employee handbook* acknowledgment form showing receipt of employee handbook</p> <p>Checklist from new employee orientation showing topics covered and by whom</p> <p>Any relocation agreements and documentation</p> <p>Any contract, written agreement, receipt, or acknowledgment between the employee and the employer (such as a non-compete agreement or employment contract, or an agreement relating to a company-provided car), for example</p> <p>Life of employment official forms including: requests for transfer, promotion, internal job applications, and so forth.</p> <p>Any other documentation related to employment</p>	<p>Employer may need any one of these documents to reference in a court of law to justify employment decisions if the employer is sued.</p>

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FILE TYPE	DOCUMENTS INCLUDED	BENEFIT
<p><b>Employee Personnel</b></p> <p><b>Part 2: Performance Development</b></p>	<p>Copies of any performance appraisal used or employee development plans</p> <p>Employee self-assessments</p> <p>Records from any formal counseling sessions</p> <p>Notes on attendance or tardiness</p> <p>Performance improvement plan documentation</p> <p>Disciplinary action reports</p> <p>Employee recognition presented such as certificates, recognition letters, and so forth</p> <p>Employee formal suggestions and recommendations, organization responses</p> <p>Safety training attendance rosters*</p> <p>Requests for training</p> <p>Competencies assessments</p> <p>Training class or session notifications or schedules</p> <p>Needs assessments signed</p> <p>Training expense reports</p> <p>Complaints from customers or coworkers</p>	<p>Employer may need any one of these documents to reference in a court of law to justify employment decisions if the employer is sued.</p>
<p><b>Employee Personnel</b></p> <p><b>Part 3: Termination Records</b></p>	<p>Employee resignation letter</p> <p>Exit interview documentation</p> <p>Cobra notification</p> <p>Employment ending checklist</p> <p>Final accounting for all aspects of the employee's employment such as final paycheck, vacation pay, return of company property, etc.</p>	<p>Employer may need any one of these documents to reference in a court of law to justify employment decisions if the employer is sued.</p>

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## HOW LONG DO I KEEP DOCUMENTS?

RELEVANT LAW/LEGAL AUTHORITY	TYPE OF RECORD	RETENTION PERIOD
<p style="text-align: center;"><b>Age Discrimination in Employment Act of 1967 (ADEA)</b></p>	<p>Payroll or other records for each employee which contain:</p> <ol style="list-style-type: none"> <li>1. Name;</li> <li>2. Address;</li> <li>3. Date of birth;</li> <li>4. Occupation;</li> <li>5. Rate of pay; and</li> <li>6. Compensation earned each week.</li> </ol>	<p>Three years</p>
	<p>All personnel records, including 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 and requests for reasonable accommodation</p>	<p>One year from date of personnel action to which any records relate</p>
	<p>Employee benefit plans, such as pension and insurance plans, and copies of documents describing any seniority systems and merit systems</p>	<p>For the full period that the plan or system is in effect, and for at least one year after its termination</p>
<p style="text-align: center;"><b>Employment Retirement Income Security Act (ERISA)</b></p>	<p>Benefit plan documents, annual reports and summaries of annual reports, summary plan descriptions, and all information used in compiling required reports, such as vouchers, worksheets, receipts, applicable resolutions, and participants' elections and deferrals</p>	<p>Generally, not less than six years from the date of record or the date of filing (or date would have been filed but for exemption or simplified reporting requirement)</p>

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RELEVANT LAW/LEGAL AUTHORITY	TYPE OF RECORD	RETENTION PERIOD
<p style="text-align: center;"><b>Americans with Disabilities Act (ADA)</b></p>	<p>Any personnel or employment record made or kept by an employer, including requests for reasonable accommodation, application forms and other records having to do with hiring, promotion, demotion, transfer, lay-off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship</p>	<p>One year from date record is made or date of personnel action involved (whichever is later)</p>
	<p>Personnel records of an individual who is involuntarily terminated</p>	<p>One year from date of termination</p>
<p style="text-align: center;"><b>Civil Rights Act of 1964 – Title VII</b></p>	<p>Any personnel or employment record made or kept by an employer, including requests for reasonable accommodation, application forms and other records having to do with hiring, promotion, demotion, transfer, lay-off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship</p>	<p>One year from date record is made or date of personnel action involved (whichever is later)</p>
	<p>Personnel records of an individual who is involuntarily terminated</p>	<p>One year from date of termination</p>
	<p>For an apprenticeship program, a chronological listing of the names, addresses, gender, and minority group identification of all applicants, including the dates applications were received, any test papers and interview notes, and all other records relating to apprenticeship</p>	<p>Two years from date record is made or program length, whichever is greater</p>

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RELEVANT LAW/LEGAL AUTHORITY	TYPE OF RECORD	RETENTION PERIOD
<p><b>Genetic Information Nondiscrimination Act (GINA)</b></p>	<p>Any personnel or employment record made or kept by an employer, including requests for reasonable accommodation, application forms and other records having to do with hiring, promotion, demotion, transfer, lay-off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship</p>	<p>One year from date record is made or date of personnel action involved (whichever is later)</p>
	<p>Personnel records of an individual who is involuntarily terminated</p>	<p>One year from date of termination</p>
<p><b>Occupational Safety and Health Act (OSHA)</b></p>	<p>OSHA Form 300 (Log of Work-related Injuries and Illnesses), OSHA Form 300A (Summary of Work-related Injuries and Illnesses) and OSHA Form 301 (Injury and Illness Report)</p>	<p>Five years following the end of the calendar year that these records cover</p>
	<p>Noise exposure measurements</p>	<p>Two years (minimum)</p>
	<p>Safety Data Sheets (SDSs) containing physical and health hazards of each hazardous substance used in the workplace</p>	<p>30 years from the date the substance was last received in the workplace</p>
	<p>Audiometric exams and employee medical records, 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 results of physical examinations considered in connection with any personnel action</p>	<p>Duration of employment plus 30 years from termination of employment (if certain conditions are met, some exceptions are possible for health insurance claims, first-aid records and the records for persons employed less than one year)</p>

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<p><b>Internal Revenue Code (IRC)</b></p>	<p>Tax and Social Security records such as income tax withholding, Social Security, unemployment compensation and advanced date earned income credit payments</p>	<p>Four years from date of filing</p>
<p><b>Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA)</b></p>	<p>Copies of all COBRA-required notices; any documentation or signed acknowledgments that the notices were received by the employee/qualified beneficiary; and detailed documentation related to any instance in which COBRA continuation is not offered due to gross misconduct, late notification, Medicare entitlement or other reasons and all related correspondence</p>	<p>COBRA regulations do not specify a recordkeeping period. Since COBRA amended ERISA, it is generally recommended that records be maintained for not less than six years from the date of record, in accordance with ERISA requirements</p>
<p><b>Family and Medical Leave Act (FMLA)</b></p>	<p>Medical certifications and related medical 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; documents describing employer policies and practices regarding leave; records of any dispute about the designation of leave as FMLA leave</p>	<p>Three years from the date the leave ended</p>
<p><b>Employee Polygraph Protection Act (EPPA)</b></p>	<p>Polygraph test results and the reasons for administering the test</p>	<p>Three years from the date the polygraph test is conducted</p>

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RELEVANT LAW/LEGAL AUTHORITY	TYPE OF RECORD	RETENTION PERIOD
<p><b>Equal Pay Act of 1963 (EPA)</b></p>	<p>Any records relating to payment of wages, wage rates, job evaluations, job descriptions, merit or seniority systems, collective bargaining agreements, description of practices or other matters which describe or explain the basis for payment of any wage differential to employees of the opposite sex in the same establishment and which may be pertinent to a determination whether such differential is based on a factor other than sex</p>	<p>Two years</p>
<p><b>Immigration Reform and Control Act (IRCA)</b></p>	<p>Form I-9 for terminated employees (All current employees hired since Nov. 6, 1986, must have an I-9 on file)</p>	<p>Three years from the date of completion or one year from termination of employment, whichever is later</p>
<p><b>Executive Order 11246 (Affirmative Action)</b></p>	<p>Written affirmative action plans, including supporting documentation, analyses, and related records or raw data; and tests given to employees, including documents on their use and validation studies</p>	<p>One year</p>
	<p>VETS-100 Reports</p>	<p>Three years</p>
<p><b>Executive Order 11246 (Affirmative Action)</b> <i>Affirmative Action employers with 150 or more employees</i></p>	<p>Personnel or employment records, including the gender, race and ethnicity of each employee or applicant</p>	<p>Two years from the date of the making of the record or personnel action, whichever is later</p>
	<p>Termination information for individuals with disabilities, disabled veterans and veterans of the Vietnam era</p>	<p>Two years from the date of termination</p>

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RELEVANT LAW/LEGAL AUTHORITY	TYPE OF RECORD	RETENTION PERIOD
<p><b>Executive Order 11246 (Affirmative Action)</b></p> <p><i>Affirmative Action employers with less than 150 employees or contracts of less than \$150,000</i></p>	<p>Personnel or employment records, including the gender, race and ethnicity of each employee or applicant</p>	<p>One year from the date of the making of the record or personnel action, whichever is later</p>
	<p>Termination information for individuals with disabilities, disabled veterans and veterans of the Vietnam era</p>	<p>One year from the date of termination</p>
<p><b>Fair Labor Standards Act (FLSA)</b></p>	<p>Payroll and other records containing each employee's name, Social Security number, address, date of birth (if under 19), sex, occupation, time and day of the week when the employee's workweek begins, hours worked each day, total hours worked each workweek, basis on which employee's wages are paid, regular hourly pay rate, total daily or weekly straight-time earnings, total overtime earnings for the workweek, all additions to or deductions from the employee's wages (including reasons for such additions/deductions), total wages paid each pay period, date of payment and the pay period covered by the payment</p>	<p>Three years from the date of entry</p>
	<p>Collective bargaining agreements, individual contracts, certificates, notices, sales and purchase records</p>	<p>Three years from the last effective date</p>
	<p>Records required for the computation of wages, including: basic time and earning cards/sheets; wage rate tables; order, shipping, and billing records; and records of additions to or deductions from wages paid</p>	<p>Two years</p>

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	Certificates authorizing payment at less than minimum wage	Three years
<b>Omnibus Transportation Employee Testing Act of 1991</b>	Negative/canceled drug tests and alcohol test results less than 0.02	One year from test date, except two years for pilot records, or three years for employees in the railroad industry
	Records related to the alcohol and drug collection process, and education and training records	Two years from test date, or two years after ceasing to perform functions (exception for employers in the pipelines industry, three years for training records related to drug testing only)
<b>Omnibus Transportation Employee Testing Act of 1991</b>	Records from previous employers concerning drug and alcohol test results	Three years from receiving records from previous employers
	Annual MIS reports; employee evaluation and referrals to SAPs; follow-up tests and follow-up schedules; refusals to test; alcohol test results of 0.02 or greater; verified positive drug test results; and EBT calibration documentation	Five years from making of the record
	Employee dispute records	Five years from making of the record for employers in the airlines industry, or two years for employers in the railroad industry

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