HELPSIDE

FEDERAL RECORD RETENTION REQUIREMENTS

OVERVIEW:

The following document includes federal requirements for record-keeping and retention of employee files and other employment-related records. Individual states also have requirements not addressed here; therefore, employers should review state employment laws for additional record- keeping and retention obligations.

Some of the following requirements apply to most or all employers, while others apply primarily to government contractors and subcontractors. Employers should review the laws to determine employer coverage and responsibilities. Please note that this document does not attempt to outline all the documents an employer may need in all situations. Also note that this document is intended to provide helpful information only and should in no way be construed as legal advice.

HOW TO USE THIS DOCUMENT:

This document is divided by sections imbedded with quick links to assist with navigation. "Section 1 Quick Links by Record Type" links users to Section 4 which provides a detailed look at retention periods, relevant laws and record examples pertaining to that overall record type.

Section 2 provides quick links by file. Clicking on a file will take users to Section 5 which provides file organization and storage tips to help users know which records might be best to store together vs separate, how and when to purge files, and record retention strategies and best practices.

Finally, by clicking on any of the "Relevant Laws" found in Section 4, users can view "Section 3 which provides covered employer information for each law. For example, the ADA (Americans with Disabilities Act) only applies to businesses with 15 or more employees.

Section	Links to	Description
Section 1 Quick Links by Record Type	Section 4	Record details, retention periods, relevant laws, examples of record types
Section 2 Quick Links by File	Section 5	File organization and storage tips
Section 4 Record Details	Section 3	Click on any relevant law within section 4 and link to Section 3 which provides covered employer information.

HELPSIDE

FEDERAL RECORD RETENTION REQUIREMENTS

Section 1 - Quick Links by Record Type

Selection, Hiring, Employment
Affirmative Action Plan Records
Health Care Continuation Records (COBRA)
Background Check Records
Employment Benefit Records
FMLA Records
Payroll Records
Drug Test Records
Military Leave Records
Safety Data Records
Workers Compensation
I-9 Records
OSHA
Tax Records
Investigations
ADA Records

Section 2

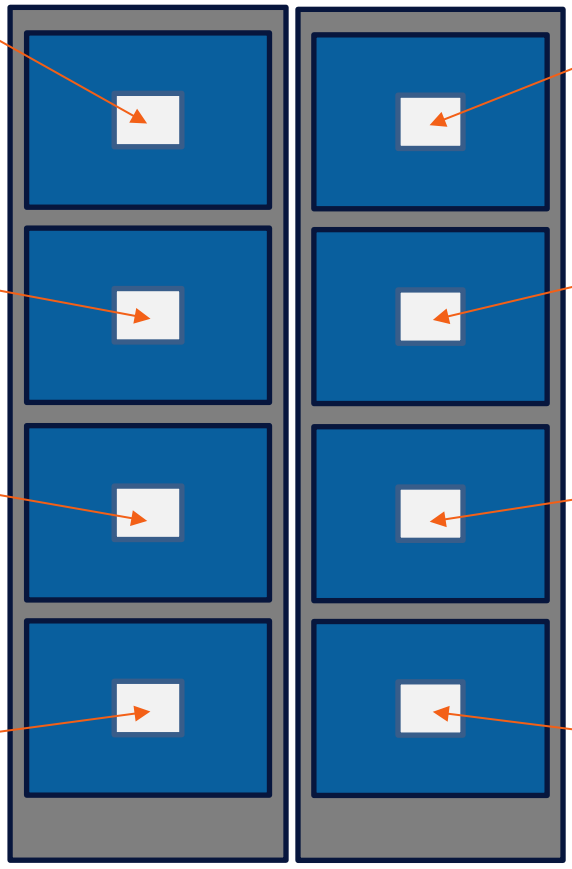
Quick Links by File

Drawer #1
Active Employee Files

Drawer #2
I-9 Records
Investigations

Drawer #3
Open Requisitions
Closed Requisitions

Drawer #4
Terminated Employee Files



Drawer #5
Affirmative Action Plan Records
Benefit Plan Records

Drawer #6
Employee Payroll and Tax Records

Drawer #7
Medical Files General
FMLA/ADA
Military Leave Records

Drawer #8
OSHA
Workers Compensation

Section 3 - Covered Employers

Law	Covered Employers
Age Discrimination in Employment Act (ADEA)	Employers with 20 or more employees
Americans with Disabilities Act (ADA) Civil Rights Act of 1964 (Title VII)	Employers with 15 or more employees
Americans with Disabilities Act as Amended (ADAAA)	Employers with 15 or more employees
Civil Rights Act of 1964 (Title VII)	Employers with 15 or more employees
Consolidated Omnibus Budget Reconciliation Act (COBRA)	Employers with 20 ore more employees who offer health care benefits
Davis-Bacon Act	Applies to each contract over $2,000 "to which the Federal Government or the District of Columbia is a party
Department of Transportation (DOT)	Employers with employees in safety sensitive positions
Employee Retirement Income Security Act (ERISA)	Employers offering welfare benefit plans
Equal Pay Act (EPA)	All employers
Executive Order 11246	Federal contractors/subcontractors and federally assisted contractors who do over $10,000 in government business in one year
Fair Credit Reporting Act (FCRA)	Employers who run background checks
Fair Labor Standards Act (FLSA)	All employers
Family Medical Leave Act (FMLA)	Private employers with 50 or more employees, all public agencies and schools regardless of size
Federal Insurance Contribution Act (FICA)	All employers
Federal Unemployment Tax Act	All employers
Immigration and Nationality Act (INA)	All employers
Immigration Reform and Control Act (IRCA)	All employers
Internal Revenue Code	All employers
Lilly Ledbetter Fair Pay Act	Employers with 15 or more employees
Occupational Health & Safety Act (OSHA)	All private sector employers and the US Postal Service
Service Contract Act	Prime contracts of over $2,500 entered into by federal government and District of Columbia agencies in which the principal purpose of the contract is to furnish services in the US using service employees.
Uniform Services Employment and Reemployment Rights Act (USERRA)	All employers
Vietnam Era Veterans Readjustment Assistance Act (VEVRAA)	Federal contractors and subcontractors

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Section 4 - Record Details

Record Type: **Selection, Hiring, Employment**

Retention Period: **1 year** after creation of the document or the hire/no-hire decision, whichever is later. After employment terminates, employers must keep existing employment records for one year from the date of the termination.

2 years after creation of the document or the hire/no-hire decision for qualified federal contractors. If, however, the contractor has fewer than 150 employees or does not have a government contract of at least $150,000, the minimum record retention period is 1 year.

Relevant Laws:
Age Discrimination in Employment Act (ADEA)
Americans with Disabilities Act (ADA) Civil Rights Act of 1964 (Title VII)
Section 503 of the Rehabilitation Act Executive Order 11246
Vietnam Era Veterans Readjustment Assistance Act (VEVRAA)

Where to Store:
Open Requisitions (drawer #3)
Closed Requisitions (drawer #3)
Active Employee Files (drawer #1)
Terminated Employee Files (drawer #4)

Records may Include:

- Job applications/Resumes
- Job postings/ads
- Screening tools/tests
- Interview notes and records related to hire/no-hire decisions
- Health Benefit plan election forms
- Promotion records
- Demotion records
- Transfer/relocation records
- Performance appraisals
- Termination records
- Training records/acknowledgments
- Incentive plans
- Merit systems
- Seniority systems
- Copy of EEO-1 survey and self-identification forms if applicable.

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Record Type: **Affirmative Action Plan (AAP) Records (Federal Contractors)**

Retention Period: Certain records keep **2 years (see below).** A contractor must maintain a copy of its AAP and all documentation of good-faith efforts for **the current and preceding year**.
Certain records keep **3 years (see below).**

Relevant Laws: Section 503 of the Rehabilitation Act of 1973
Executive Order 11246
Vietnam Era Veterans Readjustment Assistance Act (VEVRAA)

Where to Store: Affirmative Action Plan Records (drawer #5)

Retain for 2 years AAP records related to:

- Workforce analysis
- Job group analysis
- Availability analysis
- Placement goals
- Internal audit and reporting systems Job applications/Resumes
- Copy of EEO-1 survey and self-identification forms if applicable.

Retain for 3 years AAP records related to:

- External dissemination of policy, outreach, and positive recruitment activities
- Audit and reporting system
- Data collection analysis
- Benchmarks for hiring

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Record Type: **Payroll Records**

Retention Period: Varies per applicable law, but best practice is at least **5 years** from termination

Relevant Laws:
Age Discrimination in Employment Act (ADEA)
Fair Labor Standards Act (FLSA)
Service Contract Act
Davis-Bacon Act
Walsh-Healey Act (Federal Contractors only)
Lilly Ledbetter Fair Pay Act
Equal Pay Act (EPA)

Where to Store: Employee Payroll and Tax Records (drawer #6)

Records May Include:

Basic employee data:

- Name.
- Address.
- Social Security number.
- Gender.
- Date of birth.
- Occupation.
- 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 at which wages are paid.
- Pay changes and dates
- Straight time and overtime hours/pay. All additions to or deductions from the employee's wages.
- Total wages paid each pay period.
- Records explaining any sex-based pay differences.
- Annuity and pension payments.
- Fringe benefits paid.
- Date of payment and the pay period covered by the payment.
- Pay structures including merit systems and bonus structures

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Record Type: **Form I-9 Records**

Retention Period: **3 years** after date of hire or **1 year** after date of termination, whichever is later.

Relevant Laws: Immigration Reform and Control Act (IRCA)
Immigration and Nationality Act (INA)

Where to Store: I-9 Records (drawer #2)

Records may Include:

- Form I-9
- Copies of documentation (if applicable).

Record Type: **Employment Benefits and COBRA Records**

Retention Period: **6 years** after the end of the plan year. If 401 K related, 6 years from when IRS Form 5500 was created from those records. COBRA has no record keeping laws, but it is recommended that records be maintained for 6 years from the date of the record to be consistent with ERISA.

For records used to determine benefits that are or will become due for each employee or named beneficiary participating in the plan, retain as long as they are relevant. This could mean **indefinitely or at least termination + 50 years.**

Relevant Laws: Employee Retirement Income Security Act (ERISA)
Consolidated Omnibus Budget Reconciliation Act (COBRA)

Where to Store: Benefit Records (drawer #5)

Records may Include:

ERISA reporting and disclosure requirements apply to all pension and welfare plans, including:

- Summary plan descriptions (updated with changes and modifications)
- Annual reports
- Notice of reportable events (ie. Plan amendments that may decrease benefits, a substantial decrease in plan participants)
- Plan terminations
- Records used to determine benefits due for each employee or named beneficiary participating in the plan
- Election forms and beneficiary forms for pension, retirement, and welfare plans
- Records of COBRA written notice to employees and their dependents of their option to continue group health plan coverage following certain qualifying events

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Record Type: **Background Check Records**

Retention Period: **1 year.** No specific retention requirement under the FRCA, but general EEOC requirements to retain hiring and selection records apply. Experts recommend retaining related information for at least **5 years** after the date of the consumer report, which is the statute of limitations in the Fair Credit Reporting Act (FCRA).

Relevant Laws: Civil Rights Act of 1964 (Title VII)
Fair Credit Reporting Act (FCRA)
**The FCRA does not apply when an employer does their own background investigation, only when it uses a third party.*

Where to Store: Active Employee Files (drawer #1)
Open Requisitions (drawer #3)
Closed Requisitions (drawer #3)

Records may Include:

- Credit Reports
- Criminal history reports
- Driving records
- Information regarding character, general reputation, personal characteristics or mode of living
- Reference checks
- Any other background check reports created by a third party
- Consent forms and required disclosures to individuals subject to background checks

Record Type: **Drug Test Records**

Retention Period: **1 year** from test date and up to **5 years** for records relating to drug testing for DOT positions.

Relevant Laws: Department of Transportation (DOT) - covered safety-sensitive transportation positions in industries such as aviation, trucking, railroads, mass transit and pipelines.

Where to Store: Active Employee Files (drawer #1)
Open Requisitions (drawer #2)
Closed Requisitions (drawer #2)

Records may Include:

- Test results
- Testing process administration
- Return-to-duty process administration
- Employee training
- Supervisor training.

(See complete list of records at 49 C.F.R. §382.401 for employees covered by the U.S. DOT)

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Record Type: **Tax Records**

Retention Period: 4 years after filing the 4th quarter for the year

Relevant Laws: Federal Insurance Contribution Act (FICA)
Internal Revenue Code

Where to Store: Employee Payroll and Tax Records (drawer #6)

Records May Include:

(This is not intended to be a comprehensive list. Always consult with your own tax professionals.)

- Employer identification number.
- Amounts and dates of all wage, annuity and pension payments
- Allocated tips/amounts of tips reported
- The fair market value of in-kind wages paid
- Names, addresses, Social Security numbers, and occupations of employees and recipients
- Any employee copies of Form W-2 that were returned as undeliverable
- Dates of employment
- Periods for which employees and recipients were paid while absent due to sickness or injury and the
- amount and weekly rate of payments the employer or third-party payers made to them
- Copies of employees' and recipients' income tax withholding allowance certificates (Forms W-4, W-4P, W4S and W-4V)
- Dates and amounts of tax deposits
- Copies of returns filed.
- Records of fringe benefits provided, including substantiation.

Record Type: **Investigation Files**

Retention Period: Keep a minimum of one year after termination of complainant or one year longer than any relevant statute of limitations. Also review and consider any litigation holds that have triggered additional record retention obligations.

Relevant Laws: EEOC – Equal Employment Opportunity Commission
Employee Polygraph Protection Act

Where to Store: Investigation Records (drawer #2)

Records May Include:

- Employee complaints, statements, witness statements
- Evidence to support statements
- Any material relied upon in making investigation findings
- All material reviewed but deemed to be irrelevant
- Summaries, reports or records of actions taken as a result of the investigations findings

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Record Type: **Disability Accommodations**

Retention Period: **1 year** from the date of making the record or of the personnel action involved, whichever occurs later. In the case of involuntary termination, retain the terminated employee's personnel or employment records for 1 year from the date of termination. For contractors & public employers: **2 years**.

Relevant Laws:
Americans with Disabilities Act as Amended (ADAAA)
Section 503 of the Rehabilitation Act of 1973
Executive Order 11246
Vietnam Era Veterans Readjustment Assistance Act (VEVRAA)
Pregnancy Disability Act (PDA)

Where to Store: FMLA/ADA (drawer #7)

Records May Include:

- Requests for reasonable accommodation from employees or applicants
- Employer responses to requests for accommodation
- Relevant medical paperwork and notes from healthcare providers in connection with any accommodation requests

Record Type: **FMLA Leave Records**

Retention Period: **3 years** after FMLA usage is over

Relevant Laws: Family Medical Leave Act (FMLA)

Where to Store: FMLA/ADA (drawer #7)

Records May Include:

- Basic payroll and identifying employee data.
- FMLA Requests
- Medical certification forms, doctor's notes, or any information used in denying, approving or granting leave time
- 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.
- 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.
- Any documents (including written and electronic records) describing employee benefits or employer policies and practices regarding the taking of paid and unpaid leave.
- Premium payments of employee benefits.
- 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.

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Record Type: **Safety Data Records**

Retention Period: **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**). Medical records of employees who have worked for less than 1 year do not need to be retained beyond termination if they are provided to the employee upon the termination of employment.

Relevant Laws: Occupational Health & Safety Act (OSHA)
Walsh-Healy Act (Federal Contractors)

Where to Store: OSHA (drawer #8)
Workers Compensation (drawer #8)

Records May Include:

- Log of occupational injuries and illnesses
- OSHA 300 Log, OSHA 301 Incident Report Forms
- Medical exams
- Records of injuries and illnesses.
- Summary of injuries and illnesses.
- Material safety data sheets
- Exposure to toxic substances records

Record Type: **Military Leave Records**

Retention Period: **Indefinite**; there is no statute of limitations under the Uniform Services Employment and Reemployment Rights Act (USERRA)

Relevant Laws: Uniform Services Employment and Reemployment Rights Act (USERRA)

Where to Store: Military Leave Records (drawer #7)

Records May Include:

- All records related to a military leave of absence
- Requests for leave
- Copies of military orders and assignments
- All records related to reemployment and employee benefits during and upon return from a military leave

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Section 5 – Storage and Organization Tips

The File Cabinet	Storage and Organization Tips
Active Employee	These files are organized by employee. Once an employee separates from the company, move this file to the Terminated Personnel Files. They typically include: *application/resume, background check and pre-employment drug test results, offer letter, pay and bonus information, W-4's, W-2's, employment contract, equipment or other loan contracts, payroll deduction authorization, benefit plan elections, beneficiary forms (excluding pension, retirement, welfare plans), policy acknowledgements, Personnel Action Forms, salary/title/position changes, promotion/demotion records, performance appraisals, PIP plans, corrective action records, transfer/relocation records, training records, FMLA/ADA requests (exclude any medical information. The requests can be stored both here and in FMLA/ADA files)*
1-9 Records	Form 1-9 along with any accompanying documentation should be kept separate in its own file. Keep I-9's for 3 years after the date of hire or 1 year after termination, whichever is longer. This document is best stored first alphabetically by active employee, then upon termination, move the 1-9 to the terminated section of this file and organize it by purge date.
Open Requisitions	These files are best organized by requisition number or job opening. They typically include: *all hire/no-hire records, job ads, job description, applications/resumes, reference check authorizations and notes, interview notes, scoring and screening tools, aptitude test results, personality test results, anything related to assessing candidates and making a hiring decision* **Once the requisition is closed, these files are moved to the Closed Requisitions file.
Closed Requisitions	These files are best organized by requisition number, job opening and or date the job closed. Include: *Open Req. File, any failed drug test or background check results if applicable, and anything else relevant in making your hiring decision.* **Keep these files for at least 1 year after the hire/no hire decision was made, 2 years if you are a federal contractor with more than 150 employees or if you have a contract of $150, 000 or more.

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The File Cabinet	Storage and Organization Tips
Terminated Personnel	These files are best organized alphabetically by employee name. and should be kept 5 years from the date of termination. One option for Termed Personnel files is to maintain a sortable record with employee termination dates and file purge dates. Audit quarterly which files have hit the 5-year mark, then pull and purge.
Investigations	These files are best organized by case, complainant or person being investigated. They should be kept separate from other employee files. Investigation records may include: *Employee complaints, statements, witness statements, evidence to support statements, any material relied upon in making investigation findings, all material reviewed but determined to be irrelevant, any summaries or reports.* Keep investigation files for a minimum of one year after termination. Longer if there are litigation holds.
Affirmative Action Plans	If you have Federal Contracts and need further assistance with AAP record retention, call Helpside's HR Team at: 801.769.7472
Benefit Plan Records	For companies who maintain their own benefit plans, these files are typically organized by plan type and kept separate from other files. Special retention rules apply with retirement, pension or welfare plans. Benefit Plan Records may include: *Updated SPD's, annual reports, plan amendments, plan terminations, any records used to determine benefits due to employees.* COBRA Records may include: *Records of notices to employees and dependents of COBRA rights and options.* Retirement Records: *Plan documents, participant files, Plan year documents, pension eligibility records, employee retirement beneficiary forms* Keep these records at least 6 years (if 401 K related, 6 years from when IRS Form 5500 was created from those records). Keep records necessary to a participant's or beneficiary's claim as long as they are relevant (this could mean indefinitely depending on the plan but at least termination + 50 years).

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The File Cabinet	Storage and Organization Tips
Employee Payroll and Tax	Many payroll and tax documents are kept within a software or data system, while some records may be might be kept in traditional files. Organize by file type. Records may include: *Compensation analysis information, pay structures, merit systems, bonus structures, annuity, fringe and pension payments. Records explaining any gender pay differences. W-2's and any returned marked undeliverable (this can also be kept in personnel files). Dates and amounts of tax deposits, copies of filed returns.* Keep these files for 5 years after termination of either the employee or the compensation plan.
Medical Files General **ADA** **FMLA**	These files are best organized by file type, then employee. Once closed employers can also choose to organize by purge dates. Medical information should be kept separate from employee personnel files. Employers can also choose to organize by purge dates. Medical Files General* may include: *doctors notes related to absences that do not qualify under FMLA/ADA/Workers Compensation* ADA*: *all requests for accommodation, employer responses to those requests, accommodations granted, medical certifications, records proving undue hardship and why accommodation was not granted* FMLA**: *all FMLA leave records including requests, notices provided, medical certifications, communication between employee and employer, records of any disputes, FMLA hours/days taken, records of benefits maintenance* *Keep Medical Files General and ADA records these records 1 year after termination for private employers 2 years for public employers. **Keep FMLA records for at least 3 years from the end of each FMLA event.
Military Leave	Military leave records should be kept separate from other files because they must be kept indefinitely. They are typically organized by employee. These would be considered permanent files. Military leave records may include: *All records related to a military leave of absence, requests for leave, copies of military orders and assignments, all records related to reemployment and employee benefits during and upon return from a military leave*

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The File Cabinet	Storage and Organization Tips
OSHA	OSHA record keeping requirements vary depending on the industry. When workplace injuries or illnesses are involved it is possible that some medical records might need to be kept in multiple places including OSHA, Workers Compensation, ADA, and FMLA. OSHA records are typically organized by different record type and date or by employee if applicable. For example*: incident logs, safety training logs/acknowledgements, material safety data, exposure to toxic substance records, medical exam records* OSHA records should be kept 5 years following the year the record pertains to. For medical exams, material safety data sheets and exposure to toxic substances records, retain for 30 years after termination.
Workers Compensation	Workers Compensation records are typically organized by case or employee and are kept separate from other employee files. Records kept may include: *incident reports, medical exams and certifications, drug tests, claims filed, response to claim filings, records of disputes* There is no record retention requirement specifically for Workers Compensation records, however, records should be kept in accordance with OSHA requirements and for as long as the Workers Compensation claims are active.

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