

Human Resources Recordkeeping

It is essential to create a written policy for managing employee records. The goals set in a recordkeeping policy should be straight-forward and simple. Use a system that encompasses the employee's employment history, medical data, confidential information, payroll records, I-9 forms, and protected status information. Employee-related files should be centrally located and appropriately secured. Additionally, develop criteria to evaluate requests to view records, using the "need to know" standard. Don't forget to review state-specific laws on file access and records retention.

The following common-sense suggestions are not mandatory; rather, they provide guidance to assist the employer in accurately completing and maintaining employee records.

Document activities

Document all employee-related activities. Employee records should be objective and contain verifiable facts. In civil court cases, the side with the best and most documentation is usually the most successful.

Essential records, including those legally required for workers' compensation, insurance audits, and government inspections must be maintained as long as the actual need exists. Keeping records of these activities, such as policy statements, training sessions for management and employees, safety and health meetings, information distributed to employees, and medical arrangements is greatly encouraged, and in some instances, required by government agencies, both federal and state.

Easy to read and understand

Records should be legible. If handwritten notes are made, it is important to remember that the person making the notes may not be the same person who reads them several years later. Ensure that all records and notations are easy to read and understand.

Up-to-date

Records need to be complete and up-to-date. Changes in processes, procedures, equipment, materials, and personnel should be reflected in pertinent records as these changes occur. Additionally, employee training, medical examinations, and information required to be provided as a condition of employment must be noted in employee personal files as soon as possible.

Complete

Records need to be complete. Original information should never be removed from a file. This practice often results in incomplete files since records may be lost or misplaced by end users or simply never returned to the master file. To prevent lost records, establish a procedure that must be followed for obtaining file information.

Formats

Most records may be kept on paper, microfiche, magnetic tape, or electronically. As long as the relevant information is always available during working hours and is retrievable on demand, these are acceptable forms of records storage.

It is advisable to keep a duplicate hard copy of employee records in a secure location for easy access in case electronic access is impaired. Shred all out-of-date personnel file records twice – ribbon and cross-hatch.

The following information provides requirements for recordkeeping under specific federal laws and regulations.

Fair Labor Standards Act (FLSA)

Every employer covered by the Fair Labor Standards Act must keep certain records for each covered, nonexempt worker. 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 the wages earned. The following is a listing of the basic records that an employer must maintain:

- Employee's full name and social security number;
- Address, including zip code;
- Birth date, if younger than 19;
- Sex and occupation;
- Time and day of week when employee's workweek begins. Hours worked each day and 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;
- Total wages paid each pay period; and
- Date of payment and the pay period covered by the payment.

Employee Polygraph Protection Act (EPPA)

Private-sector employers who conduct polygraph tests as part on an ongoing investigation must maintain, for three years, a copy of a signed statement that is provided to the examinee before the test. The statement must:

- Identify the specific economic loss or injury to the business of the employer.
- Indicate that the employee had access to the property that is the subject of the investigation.
- Describe the basis of the employer's reasonable suspicion that the employee was involved in the incident or activity under investigation.

It would be a best practice for all private-sector employers to retain records involving the rights of the examinees. These records include:

- Written evidence by a physician that the examinee has a condition or is undergoing treatment that might cause abnormal responses.
- A written notice of the date, time, and location of the test, and the examinee's right to legal counsel (or consultation with an employee representative) before each phase of the test.
- A written description of the nature of the tests and of the instruments involved.
- A written notice as to whether the testing area contains a two-way mirror, a camera, or any other recording or observation device and that the employer or the examinee may (with mutual knowledge) make a recording of the test.
- A written notice (signed by the examinee) explaining the Act's limitations and the employer's and the examinee's legal rights. The notice must also inform the examinee that he or she cannot be required to take the test as a condition of employment and that any statement made during the test may be supporting evidence for an adverse employment action.
- The questions asked during the test along with the corresponding charted responses.
- A copy of the examiner's written opinions and conclusions.

The examiner must keep all opinions, reports, charts, questions asked during the test, lists, and other records for at least three years following the test.

Search for Employer Reports: Form LM-10

Employers must file annual reports to disclose certain specified financial dealings with their employees, unions, union agents, and labor relations consultants. Employer Report, Form LM-10, must be filed by employers to disclose:

- Payments or other financial arrangements (other than those permitted under section 302(c) of the Labor Management Relations Act, 1947, and payments and loans by banks and similar institutions) which they made to any union, its officers, or its employees;
- Payments to any of their employees for the purpose of causing them to persuade other employees with respect to their bargaining and representation rights, unless the other employees are told about these payments before or at the same time they are made;
- Payments for the purpose of interfering with employees in the exercise of their bargaining and representation rights, or obtaining information on employee or union activities in connection with labor disputes involving their company; and
- Arrangements (and payments made under these arrangements) with a labor relations consultant or any other person for the purpose of persuading employees with respect to their bargaining and representation rights, or for obtaining information concerning employee activities in a labor dispute involving their company.

Such reports are quite rare. You should consult your attorney if you believe that such a report needs to be filed.

Family Medical Leave Act (FMLA)

An employer must develop and retain two basic types of FMLA records. The first encompasses various personnel information, and the second type includes those relating to medical certifications, re-certifications, or medical histories of employees or employees' family members. All medical information is to be kept confidential and separate from regular personnel files. FMLA-related records are to be retained for at least three years.

Internal Revenue Service (IRS)

IRS requires that employers keep all records of employment taxes for at least four years. These should be available for IRS review. Records should include:

- Employer identification number (EIN).
- Amounts and dates of all wage, annuity, and pension payments.
- Amounts of tips reported.
- Records of allocated tips.
- The fair market value of in-kind wages paid.
- Names, addresses, social security numbers, and occupations of employees and recipients.
- Any employee copies of Forms W-2 and W-2c 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, W-4S, and W-4V).
- Dates and amounts of tax deposits that the employer made and acknowledgment numbers for deposits made by EFTPS.
- Copies of returns filed, including Form 941TeleFile Tax Records and confirmation numbers.
- Records of fringe benefits provided, including substantiation.

Unemployment

While unemployment regulations vary from state to state, some recordkeeping requirements are common to all programs. To verify that payroll was correctly reported for unemployment insurance (UI) purposes, an auditor may look at a variety of documents and records. Payments to workers are made differently and through different accounts from employer to employer. These payments may be considered payroll for UI purposes. Thus, the auditor may ask to look at any records that may contain payroll information or payments for services.

Affirmative Action

According to the affirmative action regulations, contractors must maintain and make available to OFCCP, upon request, documentation of their compliance with 41 CFR sections 60-2.11 through 60-2.17. This documentation must include:

- Organizational profile
- Job group analysis

- Placement of incumbents in job groups
- Determining availability
- Comparing incumbency to availability
- Placement goals.
- Additional required elements of affirmative action programs.

In addition, during a compliance review, a compliance officer examining the contractor's affirmative action program may ask to see personnel, payroll, and other employment records.

I-9 Retention

Unlike tax forms I-9 forms are not filed with the U.S. government. Employers must maintain I-9 records in its own files for 3 years after the date of hire or one year after the date the employee's employment is terminated, whichever is later, for all current employees, as well as terminated employees whose records remain within the retention period.

Social Security Administration (SSA)

Along with other personal information, the employer must keep a record of the employee's SSA number, and the amount and date of the employee's tax contribution for four years from the tax due date, or payment of tax, whichever is later.

Fair Credit Reporting Act

The Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.) regulates the handling and disposal of paper, electronic, or other forms of consumer reports and records, consumer consent forms, and consumer complaints. The regulations require covered entities to take reasonable measures to protect against unauthorized access to, or use of, the information in connection with its disposal.

ERISA

The Employee Retirement Income Security Act of 1976 has requirements to file a Form 5500 annual report, and retain this information for at least six years after the form is filed. The Form 5500 is filed with the Department of Labor's Employee Benefits Security Administration. Employers must also maintain all records required to document the accuracy of the information required by the Form 5500. The Form 5500 filed by plan administrators are due by the last day of the 7th month after the end of the plan year.

HIPAA

Like ERISA, the Health Insurance Portability and Accountability Act has records that need to be retained. Also like ERISA, the retention period is at least six years.

State Agencies

Various state agencies also impose their own retention requirements.