

# **FEDERAL RECORD RETENTION REQUIREMENTS FOR EMPLOYERS**

## **Introduction**

There has always been some confusion among employers concerning the legal requirements for record keeping and retention of employee files and other employment-related records. Not only do various federal agencies have their own record retention requirements, but individual states also have requirements that have to be followed. Some of the requirements apply to most employers, while others apply primarily to government contractors and subcontractors. Many of these requirements are dependent on the number of employees or the purposes for which the record keeping is designed.

This paper will address record keeping requirements under federal laws and provide definite guidelines that comply with current requirements. The accompanying chart provides a reference for HR practitioners regarding what records must be kept under each federal law, the retention period for those records and the applicability of each federal law.

## **Federal Tax and Compensation Records**

A number of federal laws, including the Federal Insurance Contribution Act (FICA), the Federal Unemployment Tax (FUTA) and Federal Income Tax Withholding regulations, require that employee records related to mandatory federal taxes be retained for at least four years. These records would include basic employee demographic records (such as name, address, social security number, gender, date of birth, occupation and job classification) along with records of total compensation, tax forms, records of hours worked (straight time and overtime), and payments to annuity, pension, accident, health, or other fringe benefit plans, as well as all wages subject to withholding and the actual taxes withheld from wages. These records must be retained for four years.

The Equal Pay Act and the Fair Labor Standards Act both require retention of payroll record information for three years.

Federal contractors and subcontractors are also subject to the Davis-Bacon Act, the Service Contract Act and the Walsh-Healy Public Contracts Act, all of which require retention of employee demographic information and compensation records for a period of three years.

## **Employment Actions**

Under the Civil Rights Act of 1964, Title VII and the Americans with Disabilities Act (ADA), employers with at least fifteen employees must retain applications

and other personnel records relating to hires, rehires, tests used in employment, promotion, transfers, demotions, selection for training, layoff, recall, terminations or discharge for one year from making the record or taking the personnel action. The Age Discrimination in Employment Act (ADEA) requires the same length of retention for the same employment related records for employers with twenty or more employees. In addition, Title VII and the ADA require that basic employee demographic data, pay rates and weekly compensation records be retained for at least one year. ADEA requires the same information to be retained for at least three years.

The Immigration Reform and Control Act (IRCA) requires that the Employee Eligibility Verification Form (INS Form I-9) be maintained for three years after date of hire or one year after date of termination, whichever is later. Since they must be available for inspection during an audit from either the Immigration & Naturalization Service or Department of Labor, it is advisable to keep I-9 forms separate from the employee's personnel file.

The Employee Polygraph Protection Act requires polygraph test results and records be retained for at least three years under the Employee Polygraph Protection Act.

Federal contractors and subcontractors are subject to Executive Order 11246, the Vietnam Era Veterans' Readjustment Act and the Rehabilitation Act of 1973. These laws require that affirmative action plans be prepared and annually updated. Contractors are required to maintain the current year's AAP and documentation of good faith efforts as well as its AAP for the prior year along with good faith efforts documentation.

The Uniform Guidelines on Employee Selection Procedures (UGESP) provide guidance for employers subject to Title VII or Executive Order 11246. These guidelines require the collection of data regarding applicants' and employees' race and sex. Information regarding an employee's race and sex as well as veteran and disabled status should be maintained separate from the employee's personnel file to avoid personnel decisions being made on the basis of these factors.

In addition, the USESP requires records showing the impact of employment selection processes on minorities and females. Information with respect to employment transactions (records with respect to applicants, offers, hires, rehires, tests used in employment, promotions, transfers, demotions, selection for training, layoff, recall, terminations or discharge) **MUST** be retained.

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**

The Employee Retirement Income Security Act (ERISA) requires that employers maintain related records including summary plan descriptions, annual reports and reports of plan termination for a minimum of six years.

The 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. Please refer to the chart accompanying this paper.

The Occupational Safety and Health Act requires that records of job-related injuries and illnesses be kept for five years. Employers are also required to fill out and post an annual summary (OSHA No. 200-S) [Editor Note: After 1/1/2002, OSHA No. 300 A is to be used]. In addition, records related to medical exams along with toxic substances and blood-borne pathogen exposure must be retained for thirty years after termination of employment.

## **Conclusion**

While this paper discusses federal record keeping and retention requirements, you are encouraged to investigate individual state requirements in those states where your company does business. Many states have laws that parallel the federal statutes. Be aware that many states have laws regulating employee access to their personnel files. It is important that you are aware of these state laws.

In reviewing the accompanying chart, you will notice that the same or similar records are often required under more than one law. However, the period of retention for this information may vary. If that is the case, you are advised to retain the information for the longer period of time.

It is also advisable to establish a system for auditing your company's record keeping, including personnel files, as well as a consistent program for record destruction. However, be cautious that even with such a standard practice in place, when a discrimination charge or lawsuit is filed, all records relevant to the charge must be kept until "final disposition" of the charge or lawsuit.

Law	Records/Reports	Retention Requirements
<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 (for Federal contractors with 50 or more employees, non-contract employers with 100 or more).</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</p>	

	death or divorce of the employee (that would cause dependents to lose coverage under the employer's plan).	
<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. -- 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 &amp; 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</li> </ul>	<p>Employers must maintain ERISA-related records used to develop all required plan descriptions or reports, as well as other materials needed to certify information for a minimum of six years.</p> <p>Records used to determine benefits that are or will become due for each employee participating in the plan must be retained</p>

	<p>modifications).</p> <ul style="list-style-type: none"> <li>• Annual reports.</li> <li>• Notice or reportable events (such as plan amendments that may decrease benefits, a substantial decrease in the number of plan participants, etc.).</li> <li>• Plan termination.</li> </ul>	as long as they are relevant.
Employee Polygraph Protection Act	Polygraph test results and the reasons for administering.	Three years.
Equal Pay Act	Payroll records including time cards, wage rates, additions to and deductions from wages paid and records explaining sexually based wage differentials.	Three years.
Executive Order 11246  Applies to federal contractors.	<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>AAPs 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 150 employees or contract is less than \$150,000, the retention period is one year.</p>
<a href="#">Fair and Accurate Credit Transactions Act (FACTA)</a>	Consumer credit reports.	<p>Recently written rules for the <a href="#">Fair and Accurate Credit Transactions Act (FACTA)</a> will require every employer that employs one or more employees to shred any and all documents that contain information derived from a credit report. These provisions will go into effect on June 1, 2005. Penalties for failing to obey</p>

		<p>the shredding provisions could be severe.</p> <p>The penalties for failure to observe the shredding rules include: civil liability in which an employee can recover actual damages from his/her employer for all damages incurred from identity theft; statutory damages of up to \$1,000 per employee; an employer may open itself to class action liability if a large number of employees are affected; federal fines of up to \$2,500 for each violation; and state fines of up to \$1,000 per employee.</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</li> </ul>	<p>For at least three years.</p>

	<p>from wages for each pay period</p> <ul style="list-style-type: none"> <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 that 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>Family &amp; 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 &amp; 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 &amp; 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 &amp; 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</li> </ul>	<p>Five years.</p> <p>Employee's job tenure plus thirty years.</p>

	records of exposure to toxic substances for each employee.	
<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 percent of the labor force in the relevant labor area or 2 percent 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,</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>demotion, training and termination.</p> <p>Adverse impact analysis of selection process must be conducted annually.</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>AAPs 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>