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Record Retention: What to Keep, What to Shred, and Where to Put It All?

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Employers must maintain numerous employee records to comply with federal, state, and local laws and to help administer HR policies and practices with greater efficiency. Many employers have questions about their record retention requirements, including what must be retained, how to properly maintain records, how long to retain them, and how to properly dispose of them.

The following frequently asked questions address some of these concerns.

Q: What federal laws govern recordkeeping requirements?

A: Several federal laws require employers to maintain certain records for a specified duration. These laws include but are not limited to:

Federal Law	Records	Retention Period
Equal employment opportunity laws, including Title VII of the Civil Rights Act and the Americans with Disabilities Act	Employment records include, but are not limited to, requests for reasonable accommodations, resumes and job applications, records relating to promotions, demotions, and performance appraisals	One year from the date the records were made, or from the date of the personnel action involved, whichever is later (in the case of involuntarily termination, the employer must retain the employee's personnel records for one year from the date of termination).
Fair Labor Standards Act (FLSA)	Time cards, work schedules, and other records on which wage calculations are based	Two years
Fair Labor Standards Act (FLSA) **Age Discrimination in Employment Act (ADEA)** **Family Medical Leave Act (FMLA)**	Compensation records, which include, total hours worked each day and workweek; total daily or weekly straight-time earnings; total overtime pay for the workweek; deductions from, or additions to, wages; total wages paid each pay period; and date of payment and the pay period covered by the payment	Three years **Note:** Payroll records required for tax purposes should be retained for at least four years.
Occupational Safety and Health Act (OSHA)	Certain employers must record work-related injuries and illnesses using OSHA Forms 301, 300, and 300-A	Five years following the year in which they relate
Immigration Reform and Control Act (IRCA)	Form I-9	Three years from the date of hire or one year following separation, whichever is later

Q: What state laws govern record retention requirements?

A: An employer's record retention requirements vary by state. Many states have laws requiring employers to retain, among other things, records pertaining to compensation, state mandated leave of absences, non-discrimination, workers' compensation, and unemployment. To help ensure compliance, it is important for employers to understand their recordkeeping requirements at the federal, state and local level.

Q: Can all information pertaining to one employee be kept in the same file, or do employers need to maintain certain information in separate files?

A: It is a best practice to maintain several separate files. For example, many employers maintain a personnel file for each employee, a confidential medical or health information file for each employee, and an I-9 file. It is also a best practice for employers to maintain a separate investigation file should the employee initiate or be the subject of any complaint requiring investigation.

Q: What information should be included in an employee's personnel file?

A: An employee's personnel file generally contains records related to:

- Hiring (e.g. application and resume), promotion, demotion, transfer, lay-off or termination;
- Rates of pay or other terms of compensation;
- Training records;
- Job descriptions;
- Employee handbook acknowledgment; and
- Performance reviews and any disciplinary actions taken against the employee.

Q: What should not be included in an employee's personnel file?

A: The following information should not be kept in personnel files:

- Any information reflecting an employee's membership in a protected group, such as their voluntary self-identification of gender, ethnicity, or race, veteran's status or as an individual with a disability. These types of records should be kept in a separate file.
- Any document relating to an employee's health or medical condition, including any leave of absence requests based on an employee's injury or disability. These records should also be maintained in a separate file.
- I-9 forms and other immigration-related documents. It is a best practice to store all I-9 forms together in one file, since they must be produced promptly following an official request.

Q: Are employers permitted to retain employee records electronically?

A: In general, employers are permitted to store employee records electronically, and should ensure that their electronic storage system includes controls to protect the integrity, accuracy, and security of the records retained.

Depending on the type of record, electronic storage may be subject to specific federal and state rules. For example, the Employee Retirement Income Security Act of 1974, as amended (ERISA), requires that systems storing benefit plan records in electronic form meet very specific security requirements. Additionally, employers that maintain I-9 forms electronically must meet certain system requirements. Employers should consult with legal counsel if they have questions about complying with these specific security requirements.

Note: Employee records should never be transmitted electronically unless it is over a secure network and the records are encrypted. Additionally, if employee records are stored electronically, you should be able to control and log when the records are accessed and by whom.

Q: If an employer stores documents on a cloud-based or another electronic system, can it destroy paper copies of those same documents?

A: Generally, an employer that stores documents electronically can destroy the paper copies of the documents that it has scanned and stored in that system, if:

- It is their business practice to do so (which should be articulated in a policy);
- The electronic copy accurately reproduces the original record; and
- The employer can recreate a paper copy from the electronic form of the document.

However, an employer that chooses to destroy its original paper documents and rely solely on an electronic system of record should consider the impact of not having a paper back up. For this reason, employers who have embraced the electronic system of record often consider retaining a small paper file of

critical documents containing original signatures. Often original signatures play an important role in authenticating a document, and can assist an employer who is faced with a claim of discrimination or an EEOC investigation. Note: Employers should always consult with legal counsel to discuss the risks involved in document destruction, and what - if any - documents that employer should consider retaining in hard copy.

Q: What is done with records once the retention period ends?

A: When it comes time to dispose of employment records, employers must be sure to do so in a manner that ensures the records cannot be read or reconstructed. Reasonable measures for disposing of employee records may include, but are not limited to, the following:

- Burning, pulverizing, or shredding papers containing employee information;
- Destroying or erasing electronic files or media containing employee information; or
- Hiring a reputable document destruction contractor to properly dispose of employee records.

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