

## FILES: What to Keep - What to Toss

Employers often wonder what employment information they need to keep and/or throw away (shred) with respect to current and past employees. Employers must maintain so many types of employment records, it is sometimes difficult to determine what should be kept and for how long. Both federal and state laws outline the requirements for keeping records.

To maintain confidentiality and privacy, consider keeping several different files on each employee. Files, such as the results of an employee medical test or Form I-9, should be kept separate from personnel files. To maintain confidentiality to avoid charges of discrimination, information that could reveal an employee's health or protected status should never be kept in a personnel file or even in the same file cabinet.

Frontline supervisors contribute information to and use employee files. Therefore, you must know what the files should and should not contain. Do not maintain your own separate files, as the law requires employers to keep certain employee information confidential to avoid the risk of discrimination lawsuits.

Employee personnel files do more than meet government recordkeeping requirements. They help document performance as well as pay, promotion, transfer, layoff and disciplinary actions. The law requires some records, such as those on toxic substance exposure and bloodborne pathogens, to be kept for decades. Even without legal requirements, an employer may need records on past employees for reference checks, pension benefit data and clarification. Keep files accurate, objective and current. Generally, files should be maintained and accessed by the human resource department or the office manager and be reviewed by authorized personnel on a need to know basis only.

### **FAMILIES FIRST CORONAVIRUS RESPONSE ACT**

Employers must maintain FFCRA documentation for four years, regardless of whether leave was granted or denied. Employers must also document information the employee provides orally.

FFCRA regulations require employees to provide notice to their employers of their need to take either paid sick leave or expanded family and medical leave, and the notice must include the following information:

- ▲ Employee's name;
- ▲ Date(s) for which leave is requested;
- ▲ Qualifying reason for the leave; and
- ▲ Oral or written statement that the employee is unable to work because of the qualified reason.
- ▲ Employees must also provide additional information specific to the qualifying reason for leave.

### **EMPLOYEE PERSONNEL FILES**

Include the following:

- ▲ Job application and/or resume
- ▲ Reference letters
- ▲ Authorization for references to release information
- ▲ Offer of employment
- ▲ Personal skills inventory
- ▲ W-4 IRS form
- ▲ Employee emergency contact information
- ▲ Signed drug-free workplace policy statement
- ▲ Signed receipt of Employee Handbook
- ▲ Employee orientation checklist
- ▲ Company-issued property checklist
- ▲ Authorization to put employee on payroll
- ▲ Employment status (date employment begins, job title, work schedule, wage/salary)
- ▲ Authorization for automatic deposit (if applicable)
- ▲ Change of status forms (promotions, leaves, dismissal, etc.)
- ▲ Seminar/training attendance records
- ▲ Agreement "Not to Compete" (if applicable)
- ▲ Confidentiality agreement (if applicable)
- ▲ Right to inventions agreement (if applicable)
- ▲ Commission sales agreement (if applicable)
- ▲ Retirement/pension documents and investment statements
- ▲ Performance appraisal reviews
- ▲ Vacation leave forms
- ▲ Disciplinary forms (warnings, etc.)
- ▲ Payroll deduction authorization forms
- ▲ Signed employee authorization to release information
- ▲ Personnel record inspection request
- ▲ Exit interview forms

### **MEDICAL FILES**

Include the following:

- ▲ Job-related illness/injury
- ▲ Job-related exposure to possible toxic substances
- ▲ Results of post-offer employment medical exam
- ▲ Medical history record
- ▲ Results of substance abuse tests
- ▲ Group health coverage forms
- ▲ Designation of beneficiary(ies)
- ▲ FMLA applications and return from leave documents
- ▲ Workers' compensation claims
- ▲ Authorization for release of medical information
- ▲ Medical Records including;
  - o Physician records of examination
  - o Diagnostic records
  - o Laboratory test records
  - o Drug screening records
  - o Any other medical records with personally identifiable information about individual employees

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**SEPARATE FILES—MAKE INDIVIDUAL 3 RING BINDERS**

- ▲ Form I-9 documentation of identity and employment eligibility verification
- ▲ EEO data information
- ▲ Invitation to identify – disabled or veterans status

**FEDERAL RECORDKEEPING GUIDELINES****ACA REQUIREMENTS****3 YEARS** (or be able to reconstruct the data for that time period)

- ▲ 1094-B, Transmittal of Health Coverage Information Returns,
- ▲ 1099-B, Health Coverage,
- ▲ 1094-C, Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns, and
- ▲ 1095-C, Employer-Provided Health Insurance Offer and Coverage

**EMPLOYER INFORMATION****1 YEAR**

- ▲ Notices of job openings, overtime work & training programs submitted to labor organizations

**2 YEARS**

- ▲ Supplemental wage and hour records
- ▲ Apprenticeship programs (2 years or program duration, whichever is longer - 4 years recommended)
- ▲ Environmental Protection Agency (EPA) records
- ▲ ADA & rehabilitation employment or personnel records

**4 YEARS**

- ▲ Most recent copy EEO-1 report
- ▲ Most recent copy Vets 100 report
- ▲ Employee tax & compensation records (i.e., pay records, W-4/W-2)

**6 YEARS**

- ▲ Reports for PCBs from employer-owned transformers and capacitors (not sent to EPA)

**10 YEARS**

- ▲ Written Affirmative Action Programs (AAPs)

**BUSINESS RECORDS****3 YEARS**

- ▲ Sales and purchase records
- ▲ Orders, shipping and billing records

**INDEFINITELY**

- ▲ Sarbanes-Oxley (records relevant to legal actions once investigation begins)

**CHILD LABOR RECORDS (employment of minors)****UNTIL EMPLOYMENT TERMINATION**

- ▲ Certificate of age

**NOT SPECIFIED**

- ▲ General minors records (i.e., name, Social Security number, home address, date of birth, sex, job description, time and payroll records, date of employment and any other records pertaining to employment of minors)
- ▲ Permits, notices, certificates (to work and to employ)

**PERSONNEL INFORMATION****1 YEAR**

- ▲ Job applications – rejected (current year + 1 year)
- ▲ Job advertisements/job orders submitted to employment agencies

- ▲ Individual personal records (i.e., qualifications, promotion, bonus, termination, discipline; 1 year from date of action)

- ▲ Employment test and physical exams

**2 YEARS**

- ▲ Documentation on which wage computations are based: Time cards (attendance records), wage differential documentation (includes wage rates, job evaluations, job descriptions, merit & seniority systems, etc.)

**3 YEARS**

- ▲ Job applications – hires (employee termination + 3 years)
- ▲ Employee evaluations
- ▲ Payroll records (includes payday records, wages paid, age, address, date of birth, occupation, rate of pay, etc.)
- ▲ Employment eligibility Form I-9 (or 1 year after date of termination; whichever is longer)
- ▲ Family leave documentation (FMLA) (3 years after leave ends)

**4 YEARS**

- ▲ Employee Information (Name, Social Security number, home address, date of birth, sex, occupation, time and date that the work week begins, regular hourly pay rate, hours worked each week, total daily/weekly straight-time earnings, weekly overtime earnings, total wages paid each pay period)

**5 YEARS**

- ▲ Apprenticeship records
- ▲ DOT and Drug & Alcohol testing records (includes positive test results, refusals to test, equipment calibration, etc.)

**6 YEARS**

- ▲ Equal Employment Opportunity Forms

**10 YEARS**

- ▲ Employment and contractor agreements (includes non-competes, non-disclosures, agreements for temporary labor, independent contractors, consultants, etc.)

**UNTIL FINAL DISPOSITION**

- ▲ Personnel records (relevant to charges of discrimination filed with agency federal, state or local administration)
- ▲ Records relative to legal actions

**HEALTH AND SAFETY****3 YEARS**

- ▲ Family and Medical Leave Act (related information specific to employee's leave)

**5 YEARS**

- ▲ Workers' compensation claims and records (Active + 5 years)
- ▲ On-the-job injuries and illness (OSHA Form 300, 301 & 301A)

**DURATION OF EMPLOYMENT PLUS 30 YEARS**

- ▲ Toxic substance exposure records, medical records or analysis of both
- ▲ Medical examinations used for employment
- ▲ Bloodborne pathogen exposure records
- ▲ Audiometric tests
- ▲ Pulmonary function screens

**COLLECTIVE BARGAINING AGREEMENTS & EMPLOYEE****BENEFIT PLANS****ACTIVE + 6 YEARS**

- ▲ Disclosure material – ERISA plan
- ▲ Employee benefit plans (includes benefit, retirement, ERISA and pension plans, and records relating to the administration thereof)

**7 YEARS**

- ▲ Collective bargaining agreements, plans, trusts and individual contracts