

# FILES: What to Keep-What to Toss

The Frontline



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 on 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 (EMPLOYMENT RELATED)

Include the following:

- Job application and/or resume
- Reference letters
- Authorization for references to release information
- Offer of employment
- Personal skills inventory
- 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)
- Change of status forms (promotions, leaves, dismissal, etc.)
- Seminar/training attendance records
- "Not to Compete" agreement (if applicable)
- Confidentiality agreement (if applicable)
- Right to inventions agreement (if applicable)
- Commission sales agreement (if applicable)
- Performance appraisal reviews
- Vacation leave forms
- Disciplinary forms (warnings, etc.)
- Signed employee authorization to release information
- Personnel record inspection request
- Exit interview forms

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## CONFIDENTIAL FILES (IDENTITY RELATED)

- Direct deposit form
- Payroll deduction authorization forms
- W-4 IRS form
- Retirement/pension documents and investment statements
- 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;
- Physician records of examination
- Diagnostic records
- Laboratory test records
- Drug screening records
- Any other medical records with personally identifiable information about individual employees

## SEPARATE FILES: ORGANIZE CAREFULLY

Certain records must be maintained in separate files rather than in general personnel files. This helps protect confidentiality and ensures compliance with federal regulations. Employers should keep these records in individual three-ring binders for each employee. Key documents to store separately include:

- Form I-9 documentation verifying identity and employment eligibility
- Equal Employment Opportunity (EEO) data
- Voluntary self-identification forms, such as disability or veteran status

## FEDERAL RECORDKEEPING GUIDELINES

Federal law sets specific retention periods for different types of records. Understanding these timelines helps ensure compliance and reduces legal risk.

### Affordable Care Act (ACA) Requirements – 3 years

Employers must retain ACA-related forms, including:

- Form 1094-B: Transmittal of Health Coverage Information Returns
- Form 1095-B: Health Coverage

- Form 1094-C: Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns
- Form 1095-C: Employer-Provided Health Insurance Offer and Coverage

## EMPLOYER INFORMATION

Employers should retain general employment-related documents according to the following timelines:

- 1 Year: Notices of job openings, overtime work, and training programs submitted to labor organizations
- 2 Years: Supplemental wage and hour records, apprenticeship programs (2 years or the program's duration; 4 years recommended), Environmental Protection Agency (EPA) records, and ADA/rehabilitation employment records
- 4 Years: Most recent EEO-1 and VETS-100 reports, employee tax and compensation records (payroll, W-4/W-2)
- 6 Years: Reports for PCBs from employer-owned transformers or capacitors not submitted to the EPA
- 10 Years: Written Affirmative Action Programs

## HEALTH AND SAFETY RECORDS

*Health and safety documentation must be retained according to legal requirements:*

- 3 Years: FMLA-related records
- 5 Years: Workers' compensation claims and on-the-job injury or illness records (OSHA Forms 300, 301, 301A)
- Duration of Employment + 30 Years: Toxic substance exposure records, medical examinations used for employment, bloodborne pathogen exposure records, audiometric tests, and pulmonary function screens

## COLLECTIVE BARGAINING AGREEMENTS & EMPLOYEE BENEFIT PLANS

*Collective bargaining and benefit plan records also have specific retention periods:*

- Active + 6 Years: ERISA disclosure materials and employee benefit plan documents, including retirement and pension plans
- 7 Years: Collective bargaining agreements, individual contracts, trusts, and plans