

Personnel records: What to store, when to shred ... and 7 laws you must comply with



There's no sense in becoming a pack rat if you don't need to. While the legal requirements to retain records are complex, you're probably safe in dumping those 1984 vacation-day requests. Still, knowing which records to save or toss can be critical to your business, particularly in defending against a lawsuit.

Example: A part-time art teacher was able to get his age and sex discrimination lawsuit to a jury, in part because the school district had destroyed some of the paperwork from the hiring process despite the federal requirement that it be retained for two years. (*Byrnie v. Town of Cromwell*, No. 99-9389, 2nd Cir.)

A general rule: When in doubt, don't throw it out.

Here's a snapshot of the major requirements under federal employment laws:

FLSA

Under the Fair Labor Standards Act (FLSA) you must:

- For at least two years, keep basic employment and earning records like timecards, wage-rate tables, shipping and billing records, and records of additions to or deductions from wages.
- For at least three years, keep payroll records, certificates, agreements, notices, collective bargaining agreements, employment contracts, and sales and purchase records.

Equal Pay Act

In addition to the payroll records FLSA requires, you need to keep for at least two years the records that show why you may pay different wages to employees of different sexes, such as wage rates, job evaluations, seniority and merit systems, and collective bargaining agreements.

Discrimination

The Equal Employment Opportunity Commission says employers should keep all employment records for at least one year from the employee's date of termination. The federal age-bias law requires that you retain payroll records for three years.

Plus, you must keep files of benefit plans and seniority and merit systems while they are in effect and for at least a year after they end.

FMLA

If your company is covered by the Family and Medical Leave Act (FMLA), it must retain the following records for three years:

- Basic payroll data.
- Dates FMLA leave is taken, including hours of leave for times of less than a full day.
- Copies of written notices given to employees as required by the FMLA.
- Documents describing benefits, policies and practices regarding paid and unpaid leave.
- Premium payment records for employee benefits.
- Records of disputes over the designation of leave as FMLA.
- Records relating to medical certifications, recertifications or medical histories created for FMLA purposes, kept in separate files from the usual personnel files.

I-9 Forms

Under the Immigration Reform and Control Act, you must keep completed copies of an employee's I-9, Employee Eligibility Verification Form, for three years after he's hired. If he works longer than three years, hold on to the form for at least one year after he leaves.

OSHA

Under the Occupational Safety and Health Act, you need to keep records of job-related injuries and illnesses for five years. But some records, like those covering toxic substance exposure, have to be kept for 30 years.

ERISA

For benefit plans under the Employee Retirement Income Security Act, you must retain summary descriptions and annual reports for six years.

Why you need a document policy

Don't try to educate each individual employee about which records to trash, which to save and where to save them. Instead, create a document-retention policy and require everyone to follow it.

The policy should include a list of records and how long they should be kept. This will also help you know which records you have in-house and where they're stored, a big deal if you're slapped with a lawsuit.