

The most common employee documents used at trial



Human Resource record-keeping requirements can be confusing. What do you have to keep? How long do you have to keep it? How do you protect your company in the event you go to trial? Maintaining HR documents is an essential step in protecting your company, and yourself, in the event you go to court for civil litigation, criminal charges, or other investigations.

In the U.S., [laws](#) require companies to keep documents for specific timeframes. Additionally, your state may also have its record-keeping requirements. Without the right documentation, you could be held [personally liable](#) by the court. Compliance with these laws is essential for both your company and yourself. Consistent and thorough employee documentation, training, and policies can help you avoid employee litigation.

Employee files

Employee files are one of the most important documents you will maintain during your career. The documentation in an employee file can help protect the company in the event of a lawsuit. The contents of an employee file should consist of:

- Application for employment.
- Payroll authorization form.
- Details of any promotions.

- Exempt or non-exempt status.
- Pay rates.
- Notices of paid time off, layoff, or leave of absence.
- Salary history.
- Job descriptions.
- Transfers.
- Annual reviews – it is particularly important that managers are open and honest in employee evaluations.
- Improvement plans and disciplinary actions – clear documentation is needed in the event the employee disputes these actions.
- Training.
- Firing decisions.
- Non-compete/confidentiality agreements and more.

These documents are some of the most critical records if you must go to court. It is recommended to keep employee contracts for at least seven years, disability and sick benefit information for four years, and group and employee insurance records for six years.

Equal Employment Opportunity records

Equal Employment Opportunity (EEO) and civil rights laws are in place to prevent employment discrimination. These records should be kept separately from employee files or medical records and only be accessed by those doing reporting. [EEO data](#) should be kept for each position filled at your company. These files should include:

- Job advertisements.
- Resumes received.
- Applications.
- Employment test results.
- Reference checks.
- Requests for reasonable accommodation.
- Affirmative action self-indication for race, gender, and veteran status.
- Equal opportunity self-identification for gender and race.
- Interview evaluation forms, and more.

All of these documents have to be retained for hired employees – and for those who were not. Potential employees who are not hired can sue the company if they are asked about protected topics during the interview process. It is typically recommended to keep hiring records for at least two years after the hiring decision.

In the event of an EEO complaint, the HR team must produce the EEO files. Employee discrimination suits are some of the most commonly filed lawsuits against employers.

From harassment and wrongful termination to discrimination based on sexual orientation, it is not uncommon for Human Resources practitioners to find themselves in court for a discrimination case. Most cases involve retaliation, race, sexual discrimination, and disability discrimination. If employers are found to be in violation, it can have serious financial implications. Having the right documentation on hand can help you to be as prepared as possible in the event of a lawsuit.

In this type of case, the employer must prove that any adverse action against the employee was not due to their protected status but for business purposes.

Medical information

Trust is placed in the HR team to keep sensitive employee documents secure. The Americans with Disabilities

Act (ADA) ensures that employee medical records are maintained securely and separately from their general employee file. This file should contain:

- Health insurance enrollment and COBRA forms if the employee has left the company.
- History of any worker's compensation claims of illness or injuries.
- Requirements for ADA accommodations.
- Fitness for duty results.
- Participation in company-sponsored wellness programs.
- Results of drug screenings.
- Any requests for referrals related to behavioral health.

Many lawsuits are filed that are related to personal injuries, which are often covered by Worker's compensation insurance. It is essential to have a documented culture of safety to avoid being found negligent in this type of case.

Payroll information

The HR department is also charged with keeping records of payroll information. This includes records of employee pay rate, hours worked, timecards, overtime, total wages per pay period, and more.

This information must be retained under the Fair Labor Standards Act (FLSA) and following rules from the Department of Labor (DOL). Pay is one of the most common areas of grievance among employees. Maybe they want a higher salary, or they feel that someone else is being paid more unfairly – or perhaps they want reimbursement for travel or other expenses.

No matter what the cause, pay is one of the most contentious and sensitive employee areas, so it is imperative to keep excellent records in the event of a lawsuit.

Another area where suits are common is in the field of overtime compensation. Non-salaried, hourly employees must be paid overtime in certain situations per FLSA. Keeping accurate records of overtime and ensuring that employees are paid overtime when required is the key to avoiding this type of lawsuit.

It is often recommended to keep payroll documentation for three years or more.

I-9 documents

It is a best practice to keep I-9 documents separately from other files. This form is required by U.S. law and must be retained for at least three years or for one year after the employee leaves the company. These documents cannot be used to discriminate against a potential employee based on their national origin, citizenship, or immigration status.

Also, employers must ensure that they only use the documents needed for I-9 employee eligibility verification – asking for additional documents or more documents than required can be cause for a lawsuit.

Maintain good employee document records

HR departments receive an influx of records daily. Having a comprehensive records management program is vital to ensuring the company, and you, are protected in the event of a trial. There are a variety of ways to keep HR documents secure and organized, but many HR departments are going paperless using software or cloud-based solutions. These tools can enable better organization, access management, and compliance. Using an electronic solution can help free up the Human Resources department from focusing on managing employment documents on a day-to-day basis while still maintaining all of the necessary files in the event of a lawsuit.

In the event of a legal dispute, never destroy HR documents. Create a system to ensure that any files related to ongoing legal cases are marked so that they are not altered or deleted during proceedings. When in doubt, go by the state or federal law that requires the most extended retention rate. Compliance with federal and state laws protects both you and your company when you go to court.