

RECORD RETENTION GUIDELINES FOR EMPLOYERS

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These are general guidelines and relayed to you for informational purposes only. If your organization needs specific, up-to-date information, please contact your legal counsel. These guidelines do not constitute an exhaustive, in-depth review of the law, which can change from time to time.

I. Employee Wage and Related Records

Pursuant to the Fair Labor Standards Act (the "FLSA"), the West Virginia Wage Payment and Collection Act, the Age Discrimination in Employment Act (the "ADEA"), Title VII of the Civil Rights Act of 1964 ("Title VII"), the Equal Pay Act, and other statutes specifically identified below, the following employee wage and related records should be retained for five (5) years, unless otherwise noted:

- A. Full name, as used for Social Security recordkeeping purposes, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work or payroll records.
- B. Home address, including zip code.
- C. Date of birth.
- D. Occupation or job classification.
- E. Gender (gender may be indicated by use of the prefixes Mr., Mrs., Miss, or Ms.).
- F. Rate of pay.
- G. Time of day and day of week on which the employee's work begins. If the employee is part of a workforce or employed in or by an establishment all of whose workers have a workweek beginning at the same time on the same day, a single notation of the time of day and beginning day of the workweek for the whole workforce or establishment will suffice.
- H. Regular hourly rate of pay for any workweek in which overtime compensation is due.¹ Explain basis of pay by indicating the monetary amount paid on a per hour, per day, per week, per piece, commission nature of each payment which is excluded from the "regular rate" under the FLSA (these records may be in the form of vouchers or other payment data).

¹ Employers are not required to keep these records for exempt executive, administrative or professional employees.

- I. Hours worked each workday and total hours worked each workweek (for this purpose, a “workday” is any fixed period of twenty-four (24) consecutive hours and a “workweek” is any fixed and regularly recurring period of seven (7) consecutive workdays).²

Regarding employees working on fixed schedules, an employer may maintain records showing instead of the hours worked each day and each workweek, the schedule of daily and weekly hours the employee normally works. Such records must also:

1. in weeks in which an employee adheres to this schedule, indicate by check mark, statement or other method that such hours were in fact actually worked by him or her; and
2. in weeks in which more or less than the scheduled hours are worked, show the exact number of hours worked each day and each week.

- J. Total daily or weekly straight-time earnings or wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation.³

- K. Total premium pay for overtime hours.⁴ This amount excludes the straight-time earnings for overtime hours recorded under J. above.

- L. Total additions to or deductions from the wages paid each pay period including employee purchase orders or wage assignments. Also, in individual employee records, the dates, amounts, and nature of the items that make up the total additions and deductions.⁵

- M. Total wages paid each pay period.

- N. Date of payment and the pay period covered by payment.

- O. Social Security number.

- P. Method of calculating the percent of fringe benefits owed to an employee at any given time.

- Q. Retroactive Payment of Wages: Every employer who makes retroactive payment of wages or compensation under the supervision of the Administrator of the Wage and Hour Division of the U.S. Department of Labor shall:

² Under the FLSA, these records need not be kept for exempt executive, administrative or professional employees. However, the West Virginia Wage Payment and Collection Act requires employers in West Virginia to keep these records for all employees.

³ These records need not be kept for exempt executive, administrative or professional employees.

⁴ These records need not be kept for exempt executive, administrative or professional employees.

⁵ These records need not be kept for exempt executive, administrative or professional employees.

1. Record and preserve, as an entry on his payroll or other pay records, the amount of such payment to each employee, the period covered by such payment, and the date of payment; and
2. Prepare a report of each such payment on a receipt form provided by or authorized by the Wage and Hour Division, and (i) preserve a copy as part of the records, (ii) deliver a copy to the employee, and (iii) file the original, as evidence of payment by the employer and receipt by the employee, with the Administrator of the Wage and Hour Division within ten days after payment is made.

R. **Family and Medical Leave Act Records:** In addition to the basic payroll and identifying data listed above, covered employers with eligible employees must maintain and retain for three (3) years records that disclose the following:

1. Dates FMLA leave is taken by FMLA eligible employees (leave must be designated in records as FMLA leave).
2. If FMLA leave is taken by eligible employees in increments of less than one full day, the hours of the leave.
3. Copies of employee notices of leave furnished to the employer under FMLA, if in writing, and copies of all general and specific written notices given to employees as required by FMLA.
4. Any documents describing employee benefits or employer policies and practices regarding the taking of paid and unpaid leaves.
5. Premium payments of employee benefits.
6. Records of any dispute between the employer and an eligible employee regarding designation of leave as FMLA leave, including any written statement from the employer or employee of the reasons for the designation and for the disagreement.
7. If eligible employees are not subject to recordkeeping regulations because they are exempt administrative, executive and/or professional employees, then an employer need not keep a record of actual hours worked, provided that:
 - A. eligibility for FMLA leave is presumed for any such employee who has been employed for at least twelve (12) months, and
 - B. with regard to employees who take intermittent leave, the employer and employee agree on the employee's normal schedule and maintain a written record thereof.

- S. **Immigration Reform and Control Act Records:** All employers must require employees to execute and provide the identification listed in INS Form I-9 (Employment Eligibility Verification Form). These forms, with copies of the identification provided, must be retained for three (3) years after the date of hiring or one (1) year after the date of the employee's termination, whichever is later.

II. Retention of Additional Employee Wage and Related Records

- A. The FLSA requires that the following additional records be retained by employers for a period of at least three (3) years:
1. All collective bargaining agreements and any amendments or additions thereto.
 2. All employee welfare benefit plans, employee pension benefit plans, and any similar plans and/or policies.
 3. Employment contracts.
 4. A record of the following:
 - A. Total dollar volume of sales or business;
 - B. Total volume of goods purchased or received during such periods (weekly, monthly, quarterly, etc.) in such form as such records are maintained in the ordinary course of business.
- B. The FLSA requires that the following additional records be retained by employers for a period of at least two (2) years:
1. Time and earning cards or sheets.
 2. All tables or schedules that provide the piece rates or other rates used in computing straight-time earnings, wage or salary, or overtime pay compensation.
 3. The originals or true copies of all customer orders or invoices received, incoming or outgoing shipping or delivery records, and all bills of lading and all billings to customers that are maintained in the ordinary course of business operations.
 4. Records of addition to or deductions from wages paid.

III. Special Recordkeeping Requirements for Employee Medical Records

- A. The Americans with Disabilities Act of 1990 (the "ADA") imposes specific restrictions regarding the gathering and storage of information regarding the medical history or condition of any employee. Any such information in the possession of an employer must be collected and maintained on separate forms and in separate medical files and be treated as a confidential medical record, except that:
1. Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;
 2. First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and
 3. Government officials investigating compliance with the ADA shall be provided relevant information on request.
- B. The ADA requirement that employers keep medical information confidential and separate from other personnel information also applies to the following records kept in compliance with other statutes, including but not limited to:
1. All medical information and records compiled in connection with the FMLA; and
 2. All medical information and records compiled in connection with the Occupational Safety and Health Act.

IV. Reporting and Recordkeeping for the Equal Employment Opportunity Commission

- A. Each year, any employer subject to Title VII and that has 100 or more employees shall file with the Equal Employment Opportunity Commission (the "EEOC") executed copies of Standard Form 100, otherwise known as "Employer Information Report EEO-1." Information regarding the EEO-1 is from the EEOC at the following address: <http://www.eeoc.gov/eeo1survey/index.html>.
- B. Employers may acquire the information necessary for completion of items 5 and 6 of Report EEO-1 either by visual surveys of the work force, or at their option, by the maintenance of post-employment records as to the identity of employees where such records are permitted by State law. In the latter case, the maintenance of a permanent record as to the racial or ethnic identity of an individual for purpose of completing the report form may be done separately from the employee's basic personnel form or other records available to those responsible for personnel decisions.
- C. Employers must retain a copy of the most recently filed EEO-1. In addition, any personnel or employment record made or kept by an employer shall be preserved by the employer for one (1) year from the date of the making of the record or the personnel action involved, whichever occurs later. "Personnel or employment records" include but are not necessarily limited to the following:

1. requests for reasonable accommodation;
 2. application forms, resumes and/or responses to advertisements submitted by applicants and all other records having to do with hiring (including refusals), promotion, demotion, transfer, lay-off, discharge or termination, rate of pay or other terms of compensation and selection for training or apprenticeship;
 3. job orders submitted to employment agencies or labor organizations for recruitment for job openings;
 4. test papers completed by applicants or candidates for any employment test considered by the employer in connection with any personnel action;
 5. advertisements or notices to the public or employees relating to job openings, promotions, training programs, or opportunities for overtime work.
- D. Employers must retain employee benefits plans and written seniority or merit rating systems for the full period that such plans or systems are in effect, plus one (1) year after its termination.
- E. Employers must preserve any record that it makes in the regular course of business operation that relates to the payment of wages, wage rates, job evaluations, job descriptions, merit systems, seniority systems, collective bargaining agreements, description of practices or other matters that describe or explain the basis for payment of any wage differential to employees of the opposite sex in the same establishment and that may be pertinent to a determination whether such a differential is based on a factor other than sex for two (2) years.
- F. Uniform Guidelines on Employee Selection Procedures. In 1978, the EEOC and three other federal agencies adopted these Guidelines, which do not have the force of law. However, employers who fail to keep the suggested hiring records do so at their peril: The Guidelines specifically state that "federal enforcement agencies may draw an inference of adverse impact of the selection process from a failure of" an employer to maintain such data.
1. The Guidelines instruct employers to maintain records regarding the impact their selection procedures have on women and minorities. Records should be kept by gender and for the following racial and ethnic groups: blacks, American Indians (including Alaskan native), Asians (including Pacific Islanders), Hispanics, and whites.
 2. If the information compiled by an employer shows that its overall selection process has an adverse impact on women or minority groups, employers are advised to evaluate the individual components of the process.
 3. If no adverse impact is shown in the overall process, employers generally will not be required to evaluate or validate the individual components.

4. If an employer's selection procedures are found to have an adverse impact on women or minorities, the procedures may still be allowable if their use can be properly validated.
5. The Guidelines provide simplified recordkeeping requirements for employers with fewer than 100 employees.

V. Reporting and Recordkeeping for the Occupational Safety and Health Administration (OSHA)

- A. **OSHA Forms 300 and 300A:** On OSHA Forms 300 and 300A (or equivalent forms), an employer must maintain in each establishment a log and summary of all recordable occupational injuries and illnesses for that establishment, and enter each recordable injury and illness on the log and summary as early as practicable but no later than 7 calendar days after receiving information that a recordable injury or illness has occurred. Each year, the summary for the previous year (Form 300A) must be posted by February 1 and kept posted until April 30.
- B. In addition to OSHA Forms 300 and 300A, employer shall have available for inspection at each establishment within six (6) working days after receiving information that a recordable case has occurred, a supplementary record for each occupational injury or illness for that establishment. Such record shall be in the detail prescribed in the instruction accompanying OSHA Form 301. Workers' compensation reports are acceptable substitutes for this record in they contain the information prescribed by OSHA Form 301.
- C. All OSHA Forms 300, 300A and 301 must be retained for five (5) years following the end of the year to which they relate.
- D. The following records must be preserved and maintained during the term of an employee's employment, plus thirty (30) years:
 1. Employee medical records, except for the following:
 - A. physical specimens that are routinely discarded as a part of normal medical practice and are not required to be maintained by other legal requirements;
 - B. records concerning health insurance claims if maintained separately from the employer's medical program and its records and if not accessible to the employer by employee name, Social Security number or other direct personal identifier; or
 - C. records concerning voluntary employee assistance programs if maintained separately from the employer's medical program and its records.
 2. Employee exposure records, which are records containing information concerning employee exposure to toxic substances or harmful physical agents.
 3. Analyses using exposure or medical records.

VI. Employee Benefits Information

In addition to the specific requirements set forth above as to the retention of employee welfare benefit plans and/or employee pension benefit plans, employers should maintain detailed records of employer contributions and payments under retirement or benefit plans for six (6) years, based on the Employee Retirement Income Security Act ("ERISA"). Summary records of contributions, years of service and benefits should be retained for as long a period as is necessary in order to administer the benefit plan.

VII. Recordkeeping and Reporting by Federal Contractors and Subcontractors

- A. Executive Order 11246 requires federal contractors and subcontractors to establish and maintain the following records:
1. written affirmative action programs and supporting documents, including required workforce analysis and utilization evaluation; and
 2. other records and documents relating to compliance with applicable equal employment opportunity nondiscrimination and affirmative action requirements, including records and documents on nature and use of tests, validations of tests, and test results as required.
- B. The Rehabilitation Act of 1973 requires federal contractors and subcontractors to establish and maintain for handicapped applicants and employees, complete and accurate employment records (including, it is suggested, records indicating vacancies, promotions and training programs for which they were considered, including statement of reasons for rejection that compares handicapped individual's qualifications to those of person selected, as well as accommodations considered and descriptions of accommodations actually undertaken). Such records should be maintained at least one year.
- C. The Vietnam-Era Veterans' Readjustment Assistance Act requires federal contractors and subcontractors with contracts of \$10,000 or more to maintain the following records:
1. copies of reports made to state employment service on number of individuals hired during reporting period;
 2. number of Vietnam-era veterans, both disabled and non-disabled;
 3. total number of disabled veterans hired;
 4. related documentation, such as personnel records on job openings, recruitment and placement; and
 5. copies of annual report (Form VETS-100), which must be filed yearly with the EEOC.

DISCLAIMER

These materials are presented with the understanding that the information provided is not legal advice. Due to the rapidly changing nature of the law, information contained in this presentation may become outdated. Anyone using information contained in this presentation should always research original sources of authority and update this information to ensure accuracy when dealing with a specific matter. No person should act or rely upon the information contained in this presentation without seeking the advice of an attorney.