

Summary Guide™ to Record Retention and Document Destruction

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It does not constitute legal advice.

Explanatory Note

Retention Requirements

The retention periods set forth in this Summary Guide™ are those required of employers by the statutes and regulations cited. Additional retention requirements, however, are imposed for records relevant to any ongoing litigation or pending agency investigation or complaint matters. The destruction of documents under such circumstances, even pursuant to a "standard" retention policy, can be cause for significant legal liability. In the absence of ongoing litigation or agency matters, an employer is normally free to destroy documents after the expiration of the retention period specified in this Summary Guide™, but there are often good strategic or policy reasons for retaining such documents, at least through the period of employment, plus six years, and employers are certainly not required to destroy documents after the statutory retention period. In fact, because of the potential liability which could reach back several years under the 2009 Lilly Ledbetter Fair Pay Act, employers should now retain documents regarding employee compensation indefinitely.

Access to Employment Records

In general, employers can and should control and limit access to employment records. However, a few statutes, such as the Minnesota Personnel Record Review and Access Statute, Minn. Stat. §§ 181.960–181.967, provide for employee and certain third-party access to employment records under certain circumstances. Additionally, employment records must be disclosed in connection with certain proceedings or pursuant to other lawful obligation or authority, such as the employer's involvement in pending agency proceedings or litigation.

There are certain records which require more controlled access than others. For example, an employer must be especially careful about disclosure of medical and other sensitive personal information about employees. Employers should also carefully restrict access to employee I-9 forms to avoid charges of discrimination. Access to records will be covered in this Summary Guide™ under the "Where To Maintain" heading.

Potential Penalties

An employer who violates one of the retention requirements faces a number of possible penalties. First, in some cases, an employer may face civil penalties for discarding records prior to the end of the retention period. These penalties may include actual damages, costs, agency fines, and equitable relief. In addition, criminal penalties may apply. For example, employers who repeatedly fail to make, keep, and preserve records, or refuse agency access to records, are guilty of a misdemeanor under the Minnesota Fair Labor Standards Act.

Second, the employer might risk not being able to use the records in the event there is a charge of discrimination or lawsuit for which the records would be relevant. Third, a court might enter an adverse fact finding or presumption against the employer in the charge or lawsuit for which the records would be relevant. Finally, a finding of intentional destruction of documents in the case of ongoing (or potential) litigation may lead to sanctions, including fines, dismissal of claims or defenses, adverse fact findings, awards of costs and attorneys' fees, disbarment from public contracts, and even criminal penalties.

Document Destruction

All documents should be retained in accordance with applicable federal and state law. After the completion of the retention period, employers should shred all hardcopies of the document into a locked shredder. The destruction of electronic records should be conducted to preserve the confidentiality of the documents. Employers should make sure to identify and destroy all copies of the document, including but not limited to, hard copies, scanned copies, and email messages.

A document destruction policy should identify a schedule for destruction, periodic review of files, individuals with authoritative decision-making regarding destruction, and approved methods of destruction.

Documents Related to Recruitment

TYPE OF RECORD	RETENTION PERIOD	STATUTE	WHERE TO MAINTAIN
Job orders submitted by an employer to an employment agency or labor organization for recruitment of personnel for job openings	1 year from the date of the personnel action to which the record relates	29 U.S.C. § 626; 29 C.F.R. § 1627.3 (Age Discrimination in Employment Act)	"Job Order" file
Advertisements or notices to the public or to employees relating to job openings, promotions, training programs, or opportunities for overtime work	1 year from the date of the personnel action to which the record relates ①	29 U.S.C. § 626; 29 C.F.R. § 1627.3 (Age Discrimination in Employment Act)	"Advertisements and Notices" file
Criteria for selection for apprenticeship programs in recognized trade or craft; applications for participation, which contain a notation of the date received, applicant's name, address, sex, race, color, or national origin	2 years or the period of a chosen applicant's apprenticeship, whichever is longer	42 U.S.C. § 2000e-8(c); 29 C.F.R. § 1602.20 and § 1602.21 (Title VII of the Civil Rights Act of 1964)	"Apprenticeship Applicants" file. Where application is chosen for participation, maintain in individual personnel file.
Any other records made or kept relating to an apprenticeship (including requests for reasonable accommodation, test papers, and records of interviews)	2 years from the creation of the document ②	29 C.F.R. § 1602.20 and § 1602.21 ③	"Apprenticeship Applicants" file. Where application is chosen for participation, maintain in individual personnel file.
Test papers completed by applicants or candidates for any position which disclose the results of any employer-administered aptitude or other employment test considered by the employer in connection with any personnel action	1 year from the date of the personnel action to which the record relates	29 U.S.C. § 626; 29 C.F.R. § 1627.3 (Age Discrimination in Employment Act)	"Aptitude Tests" file. Where applicant is hired, maintain in individual personnel file.
Results of any physical examination where such examination is considered by the employer in connection with any personnel action	1 year from the date of the personnel action to which the record relates	29 U.S.C. § 626; 29 C.F.R. § 1627.3 (Age Discrimination in Employment Act)	"Physical Exam" file. Where applicant is hired, establish separate individual medical personnel file and maintain in a locked file cabinet separate from cabinet containing personnel files.

① 2 years from the date of the making of the record or the personnel action involved, whichever occurs later, for contractors that employ more than 150 employees or with federal contracts of \$150,000. 41 C.F.R. § 60-1.12.

② Requirement differs from reasonable accommodation requests for non-apprenticeship applicants (see requirement under documents related to charges of discrimination).

③ Except "to the extent inconsistent with the law or regulation of any State or local fair employment practices agency, or of any other Federal or State agency involved in the enforcement of an antidiscrimination program in apprenticeship."

Documents Related to Employee Selection

TYPE OF RECORD	RETENTION PERIOD	STATUTE	WHERE TO MAINTAIN
Job applications, resumes, or any other form of employment inquiry whenever submitted to the employer in response to an advertisement or other notice of existing or anticipated job openings, including records pertaining to the failure or refusal to hire any individual	1 year from the date of the personnel action to which the record relates	29 U.S.C. § 626; 29 C.F.R. § 1627.3 (Age Discrimination in Employment Act)	"Application" file. Where applicant is hired, maintain in individual personnel file.
Applications, resumes, or other "expressions" of interest submitted via the Internet to contractors which employ more than 150 employees or with federal contracts of \$150,000	2 years from the date of the making of the record or the personnel action involved, whichever occurs later	41 C.F.R. §§ 60-1.3; 60-1.12 (OFCCP Regulations)	"Application" file. Where applicant is hired, maintain in individual personnel file.
Applications, resumes, or other "expressions" of interest submitted via the Internet to federal contractors which employ less than 150 employees or with federal contracts of less than \$150,000	1 year from the date of the making of the record or the personnel action involved, whichever occurs later	41 C.F.R. §§ 60-1.3; 60-1.12 (OFCCP Regulations)	"Application" file. Where applicant is hired, maintain in individual personnel file.
Promotion, demotion, transfer, selection for training, layoff, recall, or discharge of any employee	1 year from the date of the personnel action to which the record relates	29 U.S.C. § 626; 29 C.F.R. § 1627.3 (Age Discrimination in Employment Act)	Individual personnel file
INS Form I-9 (Employment Eligibility Form)	3 years from date of hire or 1 year from date of termination, whichever is later	8 U.S.C. § 1324a(b)(3) (Immigration and Nationality Act)	Maintain separate I-9 file (do not include in employee personnel file).
EEO-1 Form (for employers with 100 or more employees)	1 year	42 U.S.C. § 2000e8c; 29 C.F.R. § 1602.14 (Title VII of the Civil Rights Act of 1964)	"EEO-1" file
Written affirmative action plan, including supporting documents, evaluations, and compliance documents (Government contractors only)	Varies between local, state, and federal regulations. Recommend maintaining for 5 years	Exec. Order No. 11246 and implementing Department of Labor Regulations (federal projects); applicable municipal codes and state statutes (local and state projects)	"Affirmative Action" file
Written affirmative action program (if maintained)	1 year	29 U.S.C. § 708; 41 C.F.R. § 60-741.30; 41 C.F.R. § 60-1.12; 29 U.S.C. § 701 et seq.; 29 C.F.R. § 32.49 (Rehabilitation Act of 1973)	"Affirmative Action" file
Federal Motor Carrier Safety Regulation covered drivers' evaluations and referrals	5 years	49 C.F.R. § 382.401	"Application" file

Documents Related to Employee Exposure to Toxic Substances

TYPE OF RECORD	RETENTION PERIOD	STATUTE	WHERE TO MAINTAIN
OSHA 300 Log, the privacy case list, the annual summary, and the OSHA 301 Incident Report Forms	5 years following the end of the calendar year that the records cover	29 U.S.C. § 657; 29 C.F.R. § 1904.33(a) (Occupational Safety and Health Act)	"OSHA 300 Log" file
Medical records required by law	Duration of employment, plus 30 years, unless OSHA requires otherwise	29 U.S.C. § 657(c); 29 C.F.R. § 1910.1020(d)(1)(i) (Occupational Safety and Health Act)	"OSHA Medical Exams" file (Do not include in employee personnel file.)
Records of exposure to toxic substances or harmful physical agents	30 years, unless OSHA requires otherwise	29 U.S.C. § 657(c); 29 C.F.R. § 1910.1020(d)(1)(ii) (Occupational Safety and Health Act)	"Hazardous Materials Monitoring" file
Records of employees' significant adverse reactions to health or environment (manufacturers, processors, or distributors of chemical substances)	30 years from date of first reported or when first known to employer	15 U.S.C. § 2607(c) (Toxic Substances Control Act)	"Significant Chemical Reactions" file
Records of adverse reactions (note absence of "significant") ☉	5 years from date of first report or when first known to employer	15 U.S.C. § 2607(c) (Toxic Substances Control Act)	"Adverse Chemical Reactions" file
Records of significant adverse reactions to health or the environment ☉	30 years for employee claims of occupational disease or occupational health problems	15 U.S.C. § 2607(c) (Toxic Substances Control Act)	"Occupational Disease and Health Reports" file

☉ Records include, but are not limited to, consumer allegations of personal injury or harm to health, reports of occupational disease or injury, and reports or complaints of injury to the environment submitted to the manufacturer, processor, or distributor from any source.

Documents Related to Health Insurance Portability and Accountability Act's (HIPAA) Privacy Rules

TYPE OF RECORD	RETENTION PERIOD	STATUTE	WHERE TO MAINTAIN
Plan documents, policies and procedures with respect to protected health information (PHI), documentation regarding individual rights, signed authorization, privacy notice, individual complaints and outcome, employer sanctions, entity information and business associate contracts	6 years from date created or date last in effect, whichever is later An individual may request records of disclosures for a period less than six years from the date of the request.	45 C.F.R. § 164.530(j)(2) (HIPAA Regulation)	General HIPAA file in secured location with controlled access. Can be retained in either written or electronic form.

Documents Related to Charges of Discrimination

TYPE OF RECORD	RETENTION PERIOD	STATUTE	WHERE TO MAINTAIN
Personnel records concerning charges of discrimination or actions brought by an individual or agency, including, for example, employment records relating to the complainant and to all other similarly situated employees, applications and testing materials, and information related to unsuccessful applicants for the same or similar position	Until final disposition of the charge or action. Generally, final disposition of the charge means the date of expiration of the statutory period within which the aggrieved person may bring an action in a U.S. District Court or the date on which such litigation is terminated.	29 C.F.R. § 1602.14 (Title VII of the Civil Rights Act of 1964 and the Americans With Disabilities Act)	Individual charge file for duplicate records submitted to agency; see specific record entries for original records.
Personnel or employment records made or kept by an employer (including requests for reasonable accommodation)	1 year from the date of making the record 2 years from the date of the making of the record or the personnel action involved, whichever occurs later for contractors that employ more than 150 employees or with federal contracts of \$150,000. 41 C.F.R. § 60-1.12	29 C.F.R. § 1602.14 (Title VII of the Civil Rights Act of 1964 and the Americans With Disabilities Act)	Individual personnel file. Where record includes employee medical information, establish separate individual medical personnel file and maintain in a locked file cabinet separate from cabinet containing personnel files.
Personnel records of involuntarily terminated employees	1 year from the date of termination	29 C.F.R. § 1602.14 (Title VII of the Civil Rights Act of 1964 and the Americans With Disabilities Act)	Individual personnel file
Records concerning complaints of handicap discrimination and relevant employment records of charging party and employees in similar positions	3 years from the date of the complaint	29 U.S.C. § 701; 29 C.F.R. § 32.49 (Rehabilitation Act of 1973)	"Disability Discrimination Complaints"

Documents Related to Employee Leaves of Absence

TYPE OF RECORD	RETENTION PERIOD	STATUTE	WHERE TO MAINTAIN
Basic payroll and identifying employee data, including name, address, and occupation; rate or basis of pay and terms of compensation; daily and weekly hours worked per pay period; additions to or deductions from wages; and total compensation paid	3 years	29 U.S.C. § 2601; 29 C.F.R. § 825.500 (Family and Medical Leave Act of 1993)	General accounting file; individual personnel file
Dates FMLA leave is taken by eligible employees. If such leave is taken in less than one full day, the hours of such leave.	3 years	29 U.S.C. § 2601; 29 C.F.R. § 825.500 (Family and Medical Leave Act of 1993)	Individual personnel file
Copies of employee notices of leave furnished to the employer under FMLA and copies of all general and specific written notices given to employees as required under the FMLA	3 years	29 U.S.C. § 2601; 29 C.F.R. § 825.500 (Family and Medical Leave Act of 1993)	Individual personnel file
Any documents (written and electronic) describing employee benefits or employer policies and practices regarding the taking of paid and unpaid leaves	3 years	29 U.S.C. § 2601; 29 C.F.R. § 825.500 (Family and Medical Leave Act of 1993)	"Benefits" or "Handbook" file
Premium payments of employee benefits	3 years	29 U.S.C. § 2601; 29 C.F.R. § 825.500 (Family and Medical Leave Act of 1993)	"Benefits" file
Records of any dispute between the employer and an eligible employee regarding the 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	3 years	29 U.S.C. § 2601; 29 C.F.R. § 825.500 (Family and Medical Leave Act of 1993)	Individual personnel file. If the record includes employee medical information, establish separate individual medical personnel file and maintain in a locked file cabinet separate from cabinet containing personnel files.
Records and documents relating to medical certifications, recertifications, or medical histories of employees or employees' family members	3 years	29 U.S.C. § 2601; 29 C.F.R. § 825.500 (Family and Medical Leave Act of 1993)	Maintain employee medical records in separate file/records from individual personnel files.

Documents Related to Drug and Alcohol Testing Under Federal Motor Carrier Safety Regulations

TYPE OF RECORD	RETENTION PERIOD	STATUTE	WHERE TO MAINTAIN
Records of alcohol test results indicating an alcohol concentration of 0.02 or greater	5 years	49 C.F.R. § 382.401	General "drug and alcohol testing" file in a secure location with controlled access; employee medical personnel file for individual records
Records of verified positive controlled substances test results	5 years	49 C.F.R. § 382.401	General "drug and alcohol testing" file in a secure location with controlled access; employee medical personnel file for individual records
Documentation of refusals to take required alcohol and/or controlled substances tests	5 years	49 C.F.R. § 382.401	General "drug and alcohol testing" file in a secure location with controlled access; employee medical personnel file for individual records
Equipment calibration documentation	5 years	49 C.F.R. § 382.401	General "drug and alcohol testing" file in a secure location with controlled access
Records related to the administration of the alcohol and controlled substances testing program	5 years	49 C.F.R. § 382.401	General "drug and alcohol testing" file in a secure location with controlled access
Copies of each annual year summary	5 years	49 C.F.R. § 382.401	General "drug and alcohol testing" file in a secure location with controlled access
Records related to alcohol and controlled substances collection process (except calibration of evidential breath testing devices)	2 years	49 C.F.R. § 382.401	General "drug and alcohol testing" file in a secure location with controlled access
Records of negative and canceled controlled substances test results and alcohol test results with a concentration of less than 0.02	1 year	49 C.F.R. § 382.401	General "drug and alcohol testing" file in a secure location with controlled access; employee medical personnel file for individual records
Records related to the education and training of breath alcohol technicians, screening test technicians, supervisors, and employees	Duration of time in which individual performs functions requiring training and for two years after ceasing to perform those functions	49 C.F.R. § 382.401	General "drug and alcohol testing" file in a secure location with controlled access

Documents Related to Employee Compensation

TYPE OF RECORD	RETENTION PERIOD	STATUTE	WHERE TO MAINTAIN
Payroll or other records for each employee containing name, address, date of birth, occupation, rate of pay, and compensation earned each week	3 years	29 U.S.C. § 626; 29 C.F.R. § 1627.3 (Age Discrimination in Employment Act)	Individual personnel file
Name, address, occupation, rate of pay, amount paid per pay period, and hours worked each day and each work-week for each employee	3 years	Minn. Stat. § 177.30(a)	General payroll reports
Payroll records; collective bargaining agreements; individual contracts or agreements under the Fair Labor Standards Act; sales and purchase records; notices required to be posted by the U.S. Department of Labor Wage and Hour Division.	3 years	29 U.S.C. §§ 206 and 211; 29 C.F.R. § 516.5 (Fair Labor Standards Act and National Labor Relations Act)	General payroll reports; "collective bargaining agreement" file; individual personnel file for FLSA contracts or agreements; "Wage and Hour Cert/Notice" file
Basic employment and earning records, including time cards reflecting daily start and stop time of individual employees; wage rate tables utilized to calculate hours worked (straight and overtime); order, shipping and billing records; records of additions to or deductions from wages paid, including records used to determine costs and charges in the additions or deductions	2 years	29 U.S.C. §§ 206 and 211; 29 C.F.R. § 516.6 (Fair Labor Standards Act and National Labor Relations Act)	General accounting files

Documents Related to Employee Benefit Plans

TYPE OF RECORD	RETENTION PERIOD	STATUTE	WHERE TO MAINTAIN
Employee benefit plans, such as pension and insurance plans, and written seniority or merit systems	Duration of plan and at least 1 year after termination of the plan	29 U.S.C. § 626; 29 C.F.R. § 1627.3 (Age Discrimination in Employment Act)	"Benefits" file
Memorandum fully outlining the terms of any unwritten employee benefit plans or seniority or merit systems, including notations relating to manner in which communicated to employees and recording any changes	Duration of plan and at least 1 year after termination of the plan	29 U.S.C. § 626; 29 C.F.R. § 1627.3 (Age Discrimination in Employment Act)	"Benefits" file
Basic information supporting plan descriptions, including vouchers, worksheets, receipts, applicable resolutions and participants' elections and deferrals. Additionally, all records pertaining to agency filings or to participant or beneficiary disclosures.	6 years after filing date of such documents	29 U.S.C. § 1027; 29 C.F.R. § 2520 (Employee Retirement and Income Security Act)	"Benefits" file

Documents Related to Medical Records *

TYPE OF RECORD	RETENTION PERIOD	STATUTE	WHERE TO MAINTAIN
All medical records and other individually identifiable health information, whether communicated electronically, on paper, or orally	6 years from date created or date last in effect, whichever is later	45 C.F.R. § 164.105(c)(2)	Individual medical personnel file in a secured location with controlled access
* Applies only to health plans, health care clearinghouses, and those health care providers who conduct certain financial and administrative transactions electronically.			

Documents Related to the Affordable Care Act

TYPE OF RECORD	RETENTION PERIOD	STATUTE	WHERE TO MAINTAIN
ALE members should maintain detailed records to demonstrate that an offer of health coverage was made and to whom.	IRS guidance recommends to keep all records of employment taxes, including records of fringe benefits, for at least 4 years.	IRS Publication 15 (2018), Circular E.	"Benefits" file
Records documenting the terms of the plan or health insurance coverage in connection with the coverage in effect on March 23, 2010, and any other documents necessary to verify, explain, or clarify its status as a grandfathered health plan.	As long as the plan or health insurance coverage takes the position that it is a grandfathered health plan.	45 C.F.R. § 147.140	"Benefits" file

Additional Document Retention Requirements

TYPE OF RECORD	RETENTION PERIOD	STATUTE	WHERE TO MAINTAIN
Age certification for employed minors.	During the duration of the minor's employment.	Minn. Stat. § 181A.06, subd. 4	Keep age certificates, copies of birth records, or copies of drivers' licenses where they can be easily examined by an agent of the Division of Labor Standards, such as the personnel file.

American Bar Association Model Rule 1.15: Safekeeping Property

TYPE OF RECORD	RETENTION PERIOD	STATUTE	WHERE TO MAINTAIN
Property or books or records of property of clients or third parties	6 years after termination of the representation	MN ST RPC Rule 1.15	"Client" file
Books and records sufficient to demonstrate income derived from, and expenses related to, the lawyer's private practice of law	6 years following the end of the taxable year to which they relate	MN ST RPC Rule 1.15	"Client" file

New Minnesota Wage Theft Document Retention Requirements

TYPE OF RECORD	RETENTION PERIOD	STATUTE	WHERE TO MAINTAIN
Personnel policies provided to employees, date personnel policies provided, description of personnel policies	3 years after policies provided or, for companies working on public works projects, 3 years after the contracting authority has made final payment.	Minn. Stat. § 177.30(a)	Individual personnel file, and generally "in the premises where an employee works."
Notice detailing the employee's rate of pay and basis, allowances, paid vacation, sick, or other PTO, employment status and exemption status	3 years after policies provided or, for companies working on public works projects, 3 years after the contracting authority has made final payment.	Minn. Stat. § 181.032(d); Minn. Stat. § 177.30(a)(5, 7)	Individual personnel file, and generally "in the premises where an employee works."