

GUIDE  
TO SELECTED  
HUMAN RESOURCES / PAYROLL  
RECORD-KEEPING  
REQUIREMENTS

West Virginia Division of Personnel  
Employee Relations Section  
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## **DISCLAIMER**

This booklet is intended to be used as a reference guide and is for informational purposes only. The information is true and accurate to the best of our knowledge at the time of publication, however, the guide does not cover every law, rule, or regulation concerning record retention – only the ones most relevant to human resources practitioners. Due to the dynamic nature of the law and relevant regulations, information of this kind is subject to change at any time; therefore, a periodic review of referenced laws and rules is recommended. **Records should never be destroyed without first verifying that retention requirements have not changed and litigation is not pending.**

The general information it contains should not be construed to supercede any law, rule or policy. In the event of any inconsistencies, the statutory and regulatory provisions shall prevail. This booklet is written from a human resource perspective and is not intended as, and does not constitute, legal advice. If there is any uncertainty regarding any requirement and legal assistance is required, the services of legal counsel should be sought.

Questions concerning agency policy and procedures should be addressed to the human resources office within the employee's respective agency. For technical assistance concerning specific situations, employees and employers may contact the Division of Personnel's Employee Relations Section at (304) 558-3950, Extension 511.

# I. INTRODUCTION

## A. General Information

Employers are required by law to keep certain personnel-related records for specific periods of time. More and more frequently State agencies are asking questions concerning what personnel records they are required to maintain and for how long. In order to lessen the likelihood that State agencies will fail to maintain the proper records; destroy records that they should retain or expend large amounts of time, money and effort maintaining records longer than necessary, this guide has been prepared. The West Virginia Division of Personnel currently retains copies of certain personnel transactions regarding employees in the classified and classified-exempt service; however, employers are typically considered the custodian of all their personnel records and, as such, have the responsibility to comply with federal or State records maintenance and retention requirements. Agencies may develop internal procedures for record keeping and retention which are more stringent than those suggested in this guide, including but not limited to, how long records are kept on-site, the number of copies retained, how records are stored (hard copy or in an electronic version), and the location and person responsible for record keeping.

Generally, in addition to knowing what records to maintain and for how long, employers may wish to create a master list of personnel-related records maintained. Where there is no legal obligation to retain records, employers may keep information in active or inactive files and for arbitrarily specified periods or indefinitely. Employers should:

- Establish a schedule for reviewing, removing, and storing records whose legally mandated retention period has expired. On a cautious note, agency employment records are sometimes the only record of a person's employment, i.e. federal special works programs, pre-1961, temporary or exempt employment. It may be upon retirement age that a former employee may need some written verification of previous dates and type of employment. Destruction of such records could jeopardize a person's eligibility for benefits for life.
- Remind managers not to write derogatory handwritten notes on agency documents. Handwritten notes can become a part of the permanent record and, if negative, may be used in litigation.
- Retain documents that are relevant to anticipated, current or future litigation. When it is first realized that an employee may file legal action, the employer should immediately contact the agency's attorney to seek guidance and advice concerning records retention as it relates to that employee. Any regularly scheduled destruction of documents should be halted pending advice from legal counsel.

- Consult with legal counsel prior to removing and disposing of any records relating to a discrimination case or some other legal action, or if agency personnel are uncertain of any requirements. This includes documents in both paper and electronic form as any records pertaining to active litigation should not be destroyed. ‘Electronically stored information’ (ESI) includes e-mail, web pages, word processing files, computer databases, and any other information that is stored on a computer and exist in a medium that can only be read through the use of computers.

Consultation with an attorney is especially important since the federal courts amended the Federal Rules of Civil Procedure (“FRCP”) in December 2006, to include the discovery of company electronically stored information. “E-discovery” is defined as “[t]he identification, retrieval, preservation, review, and production of electronically stored information (“ESI”) in regulatory, criminal, and civil discovery.” Among other revisions, the amended rules require relevant electronic evidence to be identified, preserved, and disclosed at the beginning of litigation; therefore, employers need to preserve any electronically stored information as soon as a legal matter is reasonably foreseeable. At that point, employers must discontinue data destruction and backup tape recycling and not destroy relevant hardware unless an exact replica of the file is made. Passwords, decryption procedures, network access codes, identification names, manuals, tutorials, written instructions, and decompression or reconstruction software, must also be preserved. In addition to pertinent information, employers must maintain the tools needed to access, review, and reconstruct necessary access, view, and/or reconstruct all requested or potentially relevant electronic data.

- Verify current State and federal record maintenance and retention requirements prior to permanent destruction of any paper or electronic records. 148 C.S.R. 12-3(q) defines ‘Retention Period’ as “a period of time during which records must be held before they may be legally disposed. The retention period is usually stated in terms of months or years, but sometimes is contingent upon the occurrence of an event; e.g., employee termination and contract expiration. The retention period includes the life span of each record from creation to final disposition.”

- Maintain the confidentiality of records which contain personally-identifying employee information. Such information includes, but is not limited to, home and cellular telephone numbers and personal e-mail addresses, home and mailing addresses, social security numbers, credit and debit card account numbers, and driver’s license numbers.

- Forward the employment records/files of State employees to the receiving State agency when an agency is **consolidated** with, or **absorbed** by, another State agency. **NOTE:** If an individual employee is voluntarily transferring his or her employment to another State agency, the employee’s agency files are **retained** by the former employer.

- Destroy records carefully. Any records containing confidential information should be completely shredded or fully incinerated. Employees entrust to their employer highly personal information concerning themselves. This trust should not be jeopardized by an employer improperly disposing of such information.

#### B. Record-keeping Methods

Several basic systems to maintain personnel records are:

- 1) Manual (Paper); Microfilm; Microfiche
- 2) Integrated Payroll / Human Resources System,
- 3) Stand-alone Human Resource Information System (HRIS), and
- 4) Any combination of the three.

Agencies that back-up or archive files on diskettes and microfilm must remember to consider such media when decisions are made to destroy specific records. Likewise, the decision to retain required documents in such stored format should be carefully organized to ensure that relevant information can be readily accessed, if needed.

If an employer fails to retain relevant records in compliance with applicable State and federal laws, the following may result: (1) the employer could face civil penalties for destroying records before the end of the required period; (2) if sued by an employee for discrimination, records for the defense against the claim will not be available; and (3) if sued by an employee for discrimination, a court may presume intentional destruction and that discrimination has occurred since the records have been destroyed. It is vitally important that legal counsel be consulted in the development of a strategic plan and practices regarding the retention and destruction of official agency records.

#### C. Maintaining Separate Files

All employee records should be kept in locked cabinets in a secure area. Certain employee records, such as medical records and history, including those related to any Americans with Disabilities Act (ADA), Family and Medical Leave Act (FMLA), Rehabilitation Act (Rehab), or Workers' Compensation (WC) work-related injury and/or illness claims, including documents and records regarding Employee Assistance Programs (EAP), should be maintained in files in locations separate from employees' personnel files. Medical records and history for an employee's family members should also be kept separate from employees' personnel files. Additionally, Immigration records, including I-9 Forms, must be kept on file and it is advisable to keep the forms in a separate file to facilitate government audits. Records related to U.S. Department of Transportation (DOT) required drug or alcohol testing must also be kept confidential and in separate files.

Job applicant files should be maintained in a filing system separate from employee

personnel files. Individuals designated by the EEOC as job applicants include persons, who apply for positions via the Internet or related technologies, if the employer has sought to fill a particular position and the person has indicated an interest in that position by following the employer's standard procedures for applying for a job. This definition applies to employer Web sites, online job listings, and Internet resume banks and job boards. [EEOC Press Release, *Recordkeeping Guidance Clarifies Definition of "Job Applicant" for Internet and Related Technologies*, March 3, 2004. A notice also appeared in the March 4, 2004 Federal Register.]

Background check information, garnishment orders and consumer reports on job applicants and employees should also be kept separate from their application or personnel files. In most cases, employers must keep these records for two years. A good general rule of thumb is that anything that cannot legally be the basis for a personnel decision should be maintained in a separate location from the employee's personnel file.

All types of employee files should be confidential, with access or disclosure limited to designated persons on a need-to-know basis, or as required by law.

#### D. Record Disposal

The Fair and Accurate Credit Transactions Act of 2003, (FACTA), 15 U.S.C. 1681, is the federal law designed to minimize the risk of identity theft and consumer fraud by mandating the proper destruction of consumer information, i.e. sensitive financial and personal information, including background-check information of applicants and employees. The Federal Trade Commission of the United States (FTC) developed the Disposal Rule in November 2004 to further implement the public policy set forth in FACTA. The Disposal Rule applies to businesses that utilize consumer information; however, it affects every person and business in the United States. This Rule, effective June 1, 2005, states that "any person who maintains or otherwise possesses consumer information for a business purpose" is required to appropriately dispose of discarded consumer information. It applies to every employer with one or more employees and to any documents, whether paper, electronic or other format, that contain consumer information received from a consumer reporting agency. If the employer conducts credit checks, background checks or maintains any type of consumer report from a consumer reporting agency regarding employees, the employer must comply with this Rule. Personal information includes, but is not limited to, telephone numbers, addresses and social security numbers, driver's license numbers, physical addresses and e-mail addresses. The rule does not apply to information that does not identify individuals, such as aggregate information.

The FTC does not mandate any specific type of disposal method but states that reasonable measures must be taken to protect against unauthorized access to or use

of the information. Shredding, pulverizing or burning paper records so that consumer information is unreadable can be appropriate disposal methods, according to the FTC. Disposal can be by personal shredding or by paying a vendor to do it for you, at the employer's discretion. A determining factor as to the appropriate entity to perform this service would be the volume of records requiring disposal. Information stored electronically, such as on computer discs or hard drives, could be overwritten or erased clean using appropriate methods or software

Every business, (regardless of size or number of employees) that obtains a consumer report or information derived from a consumer report is covered by FACTA . This includes government agencies which obtain consumer reports for employment screening or clearance purposes. Effective June 1, 2006, FACTA requires all employers to destroy personal information derived from a consumer report before disposing of it. Violations could result in substantial federal and State fines. In addition to these penalties, employees or identity theft victims could file a private or class-action lawsuit against the employer and/or persons in their official capacities. More information concerning the disposal of consumer report information and records may be found at by viewing Title 16, Chapter 1, Subchapter F, Subpart § 682, of the Code of Federal Registers.

The *Sarbanes-Oxley Act of 2002*, commonly known as SOX, requires public companies to retain all records that could possibly be subpoenaed in future civil or criminal litigation in whistle-blower cases. This means employers must retain employee records until all pertinent statutes of limitations have expired on various federal and State employment laws. It is always advisable to contact your legal counsel for guidance. **A good rule of thumb regarding former employees' personnel files is to keep such records from four to seven years after the individuals separate from employment, unless a longer period is required by law.** Employers, however, may wish to maintain certain records for a longer period of time, e.g., service credit, in the event that upon retirement eligibility, a former employee may need some written verification of previous employment.

Additionally, *W. Va. Code §5A-8-17. Disposal of records*, states:

Except as provided in section seven-a, article one, chapter fifty-seven of this code, no record shall be destroyed or otherwise disposed of by any agency of the state, unless it is determined by the administrator and the director of the section of archives and history of the division of culture and history that the record has no further administrative, legal, fiscal, research or historical value. In the event the administrator is of the opinion that the record has no further administrative, legal, fiscal, research or historical value, the administrator shall, prior thereto, give written notice of the administrator's intention to direct the destruction or other disposal of the record to the director. Upon the written request of the director,

given to the administrator within ten days of receipt of said notice, the administrator shall direct the retention of the record for a period of thirty days. In the event the director fails to retrieve the original document from the administrator or the administrator's designee within the thirty day period, the administrator may direct the destruction or other disposal of the original without further notice to the director.

(See, Discussion following the listing for the *West Virginia Public Records Management and Preservation Act*.)

## **II. STATUTORY RETENTION SCHEDULES**

### **A. General Information**

Records retention requirements are typically dictated by federal or State statutes; however, there are some situations where no time period is proscribed. Does this mean these records should be kept permanently? Not necessarily. Several other states have acted on the presumption that private businesses ought to retain records for three years. These States relied upon the guidelines of the Uniform Preservation of Private Business Records Act (UPPBRA), which sets a three-year time limit for records without a statute-specific retention period. It may be argued, however, that since this Act relates to 'private' businesses (not governmental employers), this three-year retention period should, at best, be viewed only as a rule of thumb for guidance in setting a records retention policy. To ensure that relevant records are retained, legal advice should be sought for specific guidance or situations.

When there is a charge of employment discrimination or if legal action has been instituted, records should be kept until final disposition of the charge. This means that the information should be kept until: (1) the date of expiration of the statutory period within which legal action may be taken against the employer by the employee, the EEOC, the Attorney General, or the W. Va. Human Rights Commission; or (2) the date on which any litigation is finally or conclusively resolved. The employer should always wait until his or her legal counsel provides official notification of final disposition of the case or the employee's time to sue or appeal has elapsed. All information regarding legal action or claims against the employer should be kept in a secure, separate location and accessed only by those with a legitimate need-to-know.

B. Federal Laws

*Age Discrimination in Employment Act of 1967*

29 U.S.C. § 621, et seq., 29 C.F.R. § 1627.3

[www.eeoc.gov](http://www.eeoc.gov)

Primary purpose is to protect job applicants and employees who are at least 40 years of age from discrimination on the basis of age in hiring, promotion, discharge, compensation, terms, conditions or privileges of employment.

ADEA RECORDS TO BE RETAINED	RETENTION PERIOD
<p><i>Payroll records</i> (includes basic employment information, i.e., employee's name, address, birth date, occupation, rate of pay, and weekly compensation)</p>	<p>3 years after the last date of entry or termination of the worker's employment</p>
<p><i>Personnel records</i> (includes, but is not limited to, job advertisements, recruitment documents, postings, testing information, applications and records relating to service credit, promotion, demotion, transfer, testing, training, layoff, recall or dismissal)</p>	<p>1 year after the record is made or the personnel action is taken, whichever occurs later</p>
<p><i>Employee benefit plans, written seniority systems and written merit plans</i></p>	<p>Entire duration that a particular plan is in effect, plus 1 year after termination of the plan</p>
<p><i>Documents concerning EEOC charges, Human Rights complaints, or legal action</i></p> <p>Employers may want to keep critical employment records longer than government regulations require, indefinitely in some cases, since the courts have determined that the federal EEOC may file discrimination claims years after the alleged discrimination took place</p>	<p>Until final disposition of the charge and/or legal action</p>

***Americans With Disabilities Act of 1990, effective 1992***  
 42 U.S.C. § 12101, *et seq.*, 29 C.F.R. Parts 1602 and 1630, 14(d)  
[www.ada.gov](http://www.ada.gov)

Primary purposes are to require equal employment opportunity and reasonable accommodation for employees with disabilities, and to prohibit discrimination in all aspects of employment against qualified individuals with disabilities. A qualified individual with a disability is defined as an individual with a disability who meets the skill, education, experience and other job-related requirements of a position held or desired, and who, with or without a reasonable accommodation, can perform the essential functions of the job.

ADA RECORDS TO BE RETAINED	RETENTION PERIOD
<p><i>Personnel records</i> (includes applications and documents relating to hiring, promotion, demotion, transfer, reduction in force, dismissal, compensation, and training)</p> <p><i>Requests for reasonable accommodation</i>            Medical records or history regarding the medical condition of an applicant or employee must be kept confidential, on separate forms, apart from their personnel files with access limited to designated persons</p> <p><i>Documentation concerning discrimination charge or legal action</i></p>	<p>1 year after the date the record is made or the employment action is taken, whichever is later</p> <p>Not specified for medical information</p> <p>Until final disposition of the charge or legal action</p>

***Civil Rights Act of 1964, Title VII***

42 U.S.C. § 2000e, *et seq.*, 29 C.F.R. Parts 1600 - 99, particularly §§ 1602 and 1607  
[www.eeoc.gov](http://www.eeoc.gov)

Primary purpose is to prohibit private employers, state and local governments, and educational institutions, and companies with 15 or more employees from discriminating against their employees and job applicants on the basis of race, religion, color, sex and national origin. Public employment agencies must abide by the law, which is enforced by a federal agency, the EEOC, which also has regulations regarding harassment.

CIVIL RIGHTS ACT RECORDS TO BE RETAINED	RETENTION PERIOD
<p><i>Personnel or employment records</i> (includes applications, test papers completed by applicants, results of pre-employment physical examinations, advertisements or notices relating to job openings, training programs, driving records, opportunities for overtime work and records of promotions, transfers, demotions, layoffs, and dismissals) Requests for reasonable accommodations</p>	<p>1 year after the date the record is made or the employment action is taken, whichever is later (longer if a charge is brought – see below)</p>
<p><i>Apprenticeship programs</i>                      (1)chronological list of names and addresses of all applicants, dates of application, applicant sex, and minority group identification, or file of written applications containing same information; and other records pertaining to the apprenticeship applicants,                      (2) any other record made solely for completing EEO-2 or similar reports</p>	<p>2 years or duration of apprenticeship program, whichever is later and 1 year from the date of the report</p>
<p><i>EEO-1 Employer Information Reports and Affirmative Action Report Forms</i>                      (Under Title VII, a copy of the most recent Employer Information Report must be retained at all times at each reporting unit, or at company or divisional headquarters)</p>	<p>3 years or at least 1 year after date of last EEO-2 or similar report</p>
<p><i>Annual reports</i> of number of applicants, hirings, promotions, and dismissals, broken down by race, sex, and national origin</p>	<p>3 years (must be filed annually)</p>

CIVIL RIGHTS ACT RECORDS TO BE RETAINED	RETENTION PERIOD
<p><i>Information relevant to any complaint or actions</i> (records relevant to bias charge brought by the EEOC, the Attorney General, or the Human Rights Commission against the employer, including, for example, records relating to charging party and all other employees holding similar positions, personnel or employment records, job applications, records pertaining to the failure or refusal to hire any individual, promotions, demotions, recalls, transfers, layoff or termination, rates of pay, selection for training, or apprenticeship. Also included are test papers completed by unsuccessful applicants and all other candidates for the same position.)</p> <p><b>NOTE:</b> Employers may want to keep critical employment records longer than government regulations require, indefinitely in some cases, since the EEOC may file discrimination claims years after the alleged discrimination took place</p>	<p>Until final disposition of the charge or legal action</p>

***Driver’s Privacy Protection Act of 1994***

18 U.S.C. § 2721, *et seq.*

[www.accessreports.com/statutes/DPPA1.htm](http://www.accessreports.com/statutes/DPPA1.htm)

Primary purpose is to regulate how the Department of Motor Vehicles (DMV) releases and shares the information in DMV records. The DPPA regulates how DMV releases driver records and vehicle records and how **recipients of DMV records** can share information with another person.

<b><i>DPPA</i></b> DRIVING RECORDS TO BE RETAINED	RETENTION PERIOD
<p><i>Documentation of any DPPA-protected information which is disclosed</i>, including the name of the recipient, date of the disclosure, legal purpose or basis of the disclosure, and the items of information disclosed</p>	<p>Record must be made available to the State Division of Motor Vehicles for inspection for not less than 5 years</p>

**NOTE:** The U.S. DOT drug and alcohol testing regulations, as they relate to employees, impose a number of record-keeping requirements on covered employers. Under the general DOT procedural regulations, employers must keep certain records for five years, i.e., alcohol tests showing an alcohol concentration of 0.02 or higher; verified drug tests; documentation of refusals to take required tests; employee evaluations and referrals; and follow-up tests. Consult with legal counsel or the U.S. D.O.T. for retention time of records relating to that agency as time frames differ.

***Employee Retirement Income Security Act of 1974 (ERISA)***  
 29 U.S.C. § 1001, *et seq.*, 29 C.F.R. Parts 2500 - 99  
[www.dol.gov](http://www.dol.gov)

Primary purpose is to govern qualified benefit plans including health and retirement plans. ERISA ensures employee benefits plans are created fairly, administered and maintained appropriately, and provided to retiring employees as promised by their employers.

ERISA RECORDS TO BE RETAINED	RETENTION PERIOD
<p><i>Data used to support Summary Plan descriptions and other records supporting plans or reports (includes vouchers, worksheets, receipts, and applicable resolutions)</i></p> <p><i>Employee and beneficiary records relevant to benefits</i></p> <p><b>NOTE:</b> Consolidated Omnibus Budget Reconciliation Act (COBRA), 29 U.S.C. § 1161-69, 26 C.F.R. Part 54, amends <i>ERISA</i> and requires employers with more than 20 employees and their insurance companies to provide covered employees and family members, the opportunity for a temporary extension of health insurance benefits when the coverage is lost due to certain “qualifying events”</p>	<p>6 years after the filing date of the documents</p> <p>Duration of plan participation or as long as data remains relevant to the benefit determination</p> <p>Unspecified retention period for COBRA records</p>

***Executive Order 11246 (1965, as amended)***  
 41 C.F.R. Ch. 60  
[www.dol.gov](http://www.dol.gov)

Primary purposes are to prohibit job discrimination on the basis of race, color, religion, sex, or national origin and to require affirmative actions to ensure equality of opportunity in all aspects of employment. The Order was signed in 1964 and created Affirmative Action.

E.O. 11246 RECORDS TO BE RETAINED	RETENTION PERIOD
<p><b>Federal contractors and subcontractors</b> must maintain: <i>Written Affirmative Action Plans</i>, and supporting documentation, including work force analyses and utilization evaluations</p> <p><i>Applications and other personnel records</i> that form the basis of employment decisions and relate to compliance with applicable EEO non-discrimination and affirmative action requirements</p>	<p>Affirmative Action Plans must be updated annually and should be retained for at least 2-3 years</p> <p>Personnel and employment records should be retained for at least 2 years after the individual separates from employment</p>

***Equal Pay Act of 1963, (EPA) (part of the Fair Labor Standards Act)***

29 U.S.C. § 206

[www.eeoc.gov](http://www.eeoc.gov)

Primary purpose is to amend the minimum wage portion of the Fair Labor Standards Act by forbidding employers from paying male and female employees different wages for equal work in jobs which require equal skill, effort, and responsibility, and are performed under similar working conditions in the same establishment.

EQUAL PAY RECORDS TO BE RETAINED	RETENTION PERIOD
<p><i>Records regarding workweek definition, number of hours each employee works, pay rates, total wages, and total deductions</i></p> <p><i>Time cards and sheets; records explaining any wage differentials (includes job descriptions, job evaluations, merit, incentive and seniority systems, etc.)</i></p>	<p>3 years after the last date of entry or when record is made</p> <p>3 years</p>

EQUAL PAY RECORDS TO BE RETAINED	RETENTION PERIOD
<p><i>Other Supplementary Payroll Data, (includes wage rate tables, work-time schedules; orders; shipping and billing records)</i></p> <p><i>Collective bargaining agreements, if any</i></p> <p><i>Information relevant to any complaint or actions</i> Employers may want to keep critical employment records longer than government regulations require, indefinitely in some cases, since the courts have determined that EEOC may file discrimination claims years after the alleged discrimination took place</p>	<p>2 years after the date the record is made</p> <p>3 years</p> <p>Until final disposition of the charge or legal action</p>

***Fair Credit Reporting Act (FCRA)***

15 U.S.C. § 1681, et seq.

[www.ftc.gov](http://www.ftc.gov)

Primary purpose is to prohibit employers from using credit information found in investigative consumer reports, including those provided by a consumer reporting agency, against an employee or applicant without having a legitimate business need or without notifying applicants and obtaining from them a written acknowledgment of the notification before requesting their credit reports.

FCRA RECORDS TO BE RETAINED	RETENTION PERIOD
<p><i>Records gathered concerning credit information (for applicants and current employees - includes disclosure and consent form to request consumer report information; pre-adverse action notices; and adverse action notices)</i></p> <p>Employers may wish to keep these records in a separate file for the duration of an individual's employment, or longer</p>	<p>Statute of Limitations to sue under the FCRA is the lesser of either 5 years or 2 years after it is discovered that an adverse decision was made because of information in a consumer report</p>

***Fair Labor Standards Act of 1938, as amended (FLSA)***

29 U.S.C. § 201, *et seq.*, 29 C.F.R. Parts 500 - 899 and 1620.32

[www.dol.gov](http://www.dol.gov)

Primary purpose is to establish minimum wage, overtime pay, record-keeping requirements, and child labor standards for non-exempt employees in both the public and private sectors.

FLSA RECORDS TO BE RETAINED	RETENTION PERIOD
<p><i>Basic payroll records</i> (includes employee name, address, birth date, gender, and occupation, workweek schedules, daily and weekly hours worked [straight time and overtime], pay rate tables, total daily and weekly straight-time wages, overtime wages, date of payments and pay period covered by the payments, additions to or subtractions from employees' pay, and any employment agreements)</p> <p>Applicable <i>certificates and notices</i> of the Wage-Hour Administrator</p> <p><i>Certificate of age</i></p> <p><i>Supplementary basic records</i>, including wage rate tables; work time schedules; records of additions to or deductions from wages paid; and documentation of basis for payment of any wage differential to employees of opposite sex in the same establishment; customer orders, and shipping, and billing records</p> <p><i>Written training agreements</i></p> <p><i>Payroll records concerning trainees, learners and apprentices, students and working minors</i> must be segregated from regular workers on the payroll and the records should indicate their status using a code or symbol</p>	<p><b>See cautionary note</b></p> <p>3 years after the last date of entry or until termination of employment, whichever is later</p> <p>Termination of employment</p> <p>Termination of employment</p> <p>3 years after the date the record is made</p> <p>Duration of the training program</p> <p>3 years after the date the record is made</p>

FLSA RECORDS TO BE RETAINED	RETENTION PERIOD
<p><i>Documentation concerning charges related to alleged wage and hour disputes or any violation(s) of the FLSA</i></p> <p><b>CAUTIONARY NOTE:</b> Although the retention requirement is generally 3 years for liability for general damages, the Statute of Limitations for civil monetary penalties for FLSA violations is 5 years; therefore, it is recommended that FLSA records be retained for at least 5 years</p>	<p>Until final disposition of the charge or legal action</p>

***Family and Medical Leave Act of 1993 (FMLA)***  
29 U.S.C. § 2601, *et seq.*, 29 C.F.R. Part 825  
[www.dol.gov](http://www.dol.gov)

Primary purpose is to provide eligible employees the right to take up to 12 weeks of unpaid leave, or paid leave if it has been earned, in any 12-month period for certain qualifying events. Events include: (1) the birth of a child or placement of a child with the employee for adoption or foster care; (2) the need to care for a family member (spouse, son, daughter, or parent) with a serious health condition, and (3) the employee’s own serious health condition if it renders him or her unable to do his or her job.

FMLA RECORDS TO BE RETAINED	RETENTION PERIOD
<p><i>Basic employee data</i> (includes name, address, occupation, rate of pay, terms of compensation, daily and weekly hours worked per pay period, deductions from wages, and total compensation paid)</p> <p><i>Records pertaining to compliance with FMLA's general requirements for leave</i>, include: dates and amount (in hours if less than a full day) of FMLA leave taken by eligible employees</p> <p>Written <i>general and specific notices</i> of leave furnished to employees under FMLA</p> <p>Any documents describing employee benefits, including premium payments, or employer policies and practices related to the taking of paid and unpaid leaves; this includes written and electronic records</p>	<p>3 years after the date the record is made.</p> <p>Records must be available for inspection, copying, and transcription by representatives of the U.S. Department of Labor, upon request</p>

FMLA RECORDS TO BE RETAINED	RETENTION PERIOD
<p><i>Records of any FMLA disputes</i> between the employer and an eligible employee regarding the designation of leave as FMLA leave and other FMLA benefits (includes any written statement from the employer or employee relating to the reasons for the designation and/or disagreement)</p>	<p>3 years after the date the record is made.</p> <p>Records must be available for inspection, copying, and transcription by representatives of the U.S. Department of Labor, upon request</p>
<p><b>NOTE:</b> Records and documents relating to medical certifications, re-certifications, or medical histories of employees or their family members, must be maintained in files or records separate from their personnel files and are to be treated as confidential medical records. (See, Health Insurance Portability and Accountability Act [HIPAA] standards)</p>	

***Federal Insurance Contributions Act (FICA)***

26 U.S.C. Subtitle C., Ch. 21 (§§ 3101-3128)

[www.socialsecurity.gov](http://www.socialsecurity.gov)

Primary purpose of the FICA tax is establish a payroll tax to be used to fund federal programs for retirees, the disabled, and children or elderly spouses of deceased workers.

***Social Security Administration (SSA)***

20 C.F.R. § 404, 1225[a] and [b].

[www.socialsecurity.gov](http://www.socialsecurity.gov)

Primary purpose is to provide a social insurance program funded through a dedicated payroll tax. The three main benefits provided are for retirement, disability and death.

<b>FICA and SSA RECORDS TO BE RETAINED</b>	<b>RETENTION PERIOD</b>
<p><i>Records of all remuneration</i> (whether in cash or in a medium other than cash) paid to employees performing services which shall include: (1) the employee's name, address and social security number; (2) the total amount of remuneration (including any amount withheld as contribution or for any other reason) and the date the remuneration was paid and the period of services covered by the payment; (3) the amount of remuneration which constitutes wages; and (4) the amount of the employee's contribution, if any, withheld or collected, and if collected at a time other than the time such payment was made, the date collected</p> <p>Copies of all <i>returns, reports, schedules and statements</i>, copies of claims for refund or credit and copies of documents <i>about any adjustments made</i></p> <p><i>Wage payment records</i> subject to Social Security and Medicare taxes</p>	<p>4 years after the later of:  (1) employment and withheld income taxes are due or  (2) the date those taxes are actually paid</p>

***Federal Unemployment Tax Act (FUTA)***

26 U.S.C. Subtitle C., Ch. 23

[www.dol.gov](http://www.dol.gov)

Primary purpose of the Act is to authorize the Internal Revenue Service to collect a federal employer tax used to fund state workforce agencies, covering the costs of administering the unemployment insurance and job service programs in all states.

<b>FUTA RECORDS TO BE RETAINED</b>	<b>RETENTION PERIOD</b>
<p><i>Payroll/Wage records</i> (including all information required to be shown on the FUTA tax return and the amount of the tax)</p> <p>Records include the following information: employees' names, addresses, and Social Security numbers; employer's identification number; copies of all filed tax returns; original W-2's and the envelopes in which they were mailed, if returned as undeliverable; copies of canceled checks, deposit coupons, and confirmation numbers, if taxes are deposited via electronic funds transfer; dates and amounts of tax deposits; records of taxable fringe benefits, plus substantiation of the taxable amounts; records of employees' substantiations of travel and entertainment expenses; and correspondence from the Internal Revenue Service regarding any employee's withholding</p>	<p>4 years after the tax due date or payment date, whichever is later</p>

***Health Insurance Portability and Accountability Act of 1996 (HIPAA)***  
 42 U.S.C. § 1324, et seq., 45 C.F.R. § 164.530  
[www.hipaa.org](http://www.hipaa.org)

Primary purpose is to improve portability and continuity of health insurance coverage in the group and individual markets; combat waste, fraud, and abuse in health insurance and health care delivery; promote the use of medical savings accounts; improve access to long-term care services and coverage; and simplify the administration of health insurance. Further, the law establishes standards to provide patients protection and control over the privacy and release of individually identifiable medical records and health information.

<b>HIPAA RECORDS TO BE RETAINED</b>	<b>RETENTION PERIOD</b>
<p><i>Group health plans</i> (includes summary plan descriptions and statements concerning COBRA and ERISA rights)</p> <p><i>Certificates of prior group health plan coverage</i></p> <p><i>Health information concerning an employee's medical condition</i></p> <p>NOTE: Medical records or history regarding the medical condition of employees must be kept confidential, on separate forms, apart from the employees' personnel files, with access limited to designated persons</p> <p>NOTE: Specific questions regarding HIPAA privacy issues may be addressed to:            Privacy Officer, WV Health Care Authority, 100 Dee Dr.,            Charleston, WV 25311 (304) 558-7000 or 1-888-558-7002;  <a href="http://www.hcawv.org">www.hcawv.org</a></p>	<p>6 years after the date of its creation, or 6 years from the date when it was last in effect, whichever is later</p>

***Immigration Reform and Control Act of 1986 (IRCA)***  
 8 U.S.C. § 1324

***Immigration and Nationality Act***  
 8 U.S.C. §1101, as amended, Section 274A

[www.dol.gov](http://www.dol.gov)

Primary purpose is to make all employers responsible to verify the employment eligibility and identity of all employees hired to work in the U.S. after November 6, 1986. To implement the law, employers are required to complete Employment Eligibility Verification forms (I-9 Form) for all employees, including U.S. citizens.

IRCA RECORDS TO BE RETAINED	RETENTION PERIOD
<p><i>I-9 Forms</i> for new hires (signed by employee and employer) and previously employed individuals who are re-hired, including the information collected to verify identity and eligibility to work in the U.S.</p> <p><i>Certifications of employment eligibility</i> furnished by State employment services.</p> <p><b>NOTE:</b> I-9 files should be kept separate from personnel files, with access limited to designated individuals</p>	<p>3 years after hire or 1 year after termination of employment, whichever comes later</p>

***Rehabilitation Act of 1973***

29 U.S.C. § 701, *et seq.*, 41 C. F.R. 60-741.52

***Rehabilitation Act of 1992***

29 U.S.C. § 791, *et seq.*

[www.dol.gov](http://www.dol.gov)

Primary purposes are to prohibit job discrimination against individuals with a disability and to require the establishment of an affirmative action plan for qualified individuals with a disability.

Rehab RECORDS TO BE RETAINED	RETENTION PERIOD
<p><i>Personnel and employment records</i> (includes requests for accommodation, physical exams, job advertisements and postings, applications, resumes and records regarding hiring, assignments, promotions, demotions, transfers, layoffs, terminations, rates of pay and selection for training)</p> <p><i>All records relating to a charge or lawsuit</i>, which has been filed</p>	<p>2 years from the date on which the record was made or the personnel action involved was taken, whichever is later</p> <p>Until final disposition of the charge or lawsuit</p>

Rehab RECORDS TO BE RETAINED	RETENTION PERIOD
<p><i>Affirmative Action Plan</i></p> <p><b>NOTE: Federal contractors and subcontractors must maintain</b> for disabled applicants and employees, complete and accurate employment records</p>	<p>1 year</p>

***Uniformed Services Employment and Re-employment Rights Act of 1994 (USERRA)***  
38 U.S.C. §§ 4301, *et seq.*  
[www.dol.gov/vets](http://www.dol.gov/vets)

Purpose is to guarantee employees who enter the military, voluntarily or involuntarily, for specific periods of service, can return to their jobs with no loss of seniority or benefits.

***Uniformed Services Employment and Re-employment Rights Act of 1994 Amendment (Veterans' Benefits Improvement Act of 2004)***  
42 U.S.C. § 201, 203  
[www.dol.gov/vets](http://www.dol.gov/vets)

Purposes are to extend the period for continuation of group health care coverage to 24 months (on and after December 10, 2004), and to require annual notice to covered employees of their USERRA rights by posting such in the workplace.

USERRA RECORDS TO BE RETAINED	RETENTION PERIOD
<p><i>Payroll/Wage records</i></p> <p><i>Copies of Military Orders</i> used to calculate military leave during State service</p> <p><i>Group health care documents</i></p>	<p>Period of continued coverage - (24 months )</p>

C. State Laws

**W. Va. Division of Labor**

*W. Va. Code § 21-1-1, et seq.*

*W. Va. Code § 21-5C-1, et seq.*, Minimum Wage and Maximum Hours Standards for Employees.

**Wage Payment and Collection Act**, W. Va. C.S.R. Tit. 42-5-4

**Minimum Wage and Maximum Hours Standards Act**, W. Va. C.S.R. Tit.

42-8-4 [www.labor.state.wv.us](http://www.labor.state.wv.us)

One of the primary purposes is to govern the terms and conditions of employment such as the West Virginia Parental (PLA), Wage Payment and Collections, etc.

LABOR RECORDS TO BE RETAINED	RETENTION PERIOD
<p>Wage and Hour: Records showing employees' names, addresses, sex and occupations or job classifications; rates of pay; hours worked each day and week; times and days of beginning of workweek; wage information, including regular hourly rates of pay for any week when overtime is worked and amount of overtime due; total weekly straight-time earnings and overtime earnings; total deductions from wages each pay period, itemized; dates of payment and pay periods covered; and any retroactive wage payments</p>	<p>5 years (DOL's Legislative Rule No.42-05)</p>
<p><i>Wage Payment and Collection information</i> including all records listed above under Wage and Hour</p> <p><i>Unclaimed Wages</i> – Records necessary for the filing of reports</p>	<p>2 years</p> <p>10 years after the date the wages became reportable</p>

**W. Va. Public Employees Retirement Act**

*W. Va. Code § 5-10-1, et seq.*,

W. Va. C.S.R. Tit. 162-5-1, et seq. (Public Employees Retirement System)

[www.wvretirement.com](http://www.wvretirement.com)

Primary purpose is to provide for the orderly retirements of employees, of the state and the other participating public employers, who become eligible because of age or total and permanent disability, and to provide certain survivor benefits and to administer the several State retirement plans.

<b>Retirement RECORDS TO BE RETAINED</b>	<b>RETENTION PERIOD</b>
<p><i>Employment Records</i> of employees enrolled in the retirement system, including but not limited to accrued sick and/or annual leave balances used for retirement purposes</p> <p><i>Records regarding Employee and Employer contributions</i></p> <p><i>Benefit plans</i></p> <p><i>Service Credit Records</i> of all service rendered to participating public employers by each of its employees and by any retirant who is working for the employer on a contractual basis (These statements must be filed periodically with the Consolidated Public Retirement Board.)</p>	<p>Unspecified in the rules - consult Consolidated Public Retirement Board for current requirements</p>

***W. Va. Human Rights Act (WV HRA)***

*W. Va. Code § 5-11-1, et seq., W. Va. C.S.R. Tit. 77-2-3.14*

[www.wvf.state.wv.us/wvhrc](http://www.wvf.state.wv.us/wvhrc)

Primary purpose is to address discrimination and complaints regarding public accommodation and employment discrimination. The West Virginia Human Rights Commission’s goal is to eliminate discriminatory practices based upon sex, race, color, ancestry, national origin, age, disability, religion, blindness and familial status.

<b>WV HRA RECORDS TO BE RETAINED</b>	<b>RETENTION PERIOD</b>
<p>All employment records relevant to an investigation of a filed complaint</p>	<p>From the time the complaint is served until final adjudication</p>

***W. Va. Occupational Safety and Health Act (OSHA)***

*W. Va. Code § 21-3A-1, et seq., 29 C.F.R. § 1900-1999 (See § 1904.33 and 1904.37)*

[www.labor.state.wv.us](http://www.labor.state.wv.us)

One of the primary purposes of the Act is to assure the safety and health of America’s workers by setting and enforcing workplace safety standards and providing training, outreach, and education; establishing partnerships; and encouraging continual improvement in workplace safety and health.

States operating OSHA-approved State Plans must have occupational injury and illness recording and reporting requirements that are substantially identical to the requirements in 29 C.F.R. 1900, *et seq.*. State Plan recording and reporting requirements for State and local government entities may differ from those for the private sector, but have the same requirements as federal OSHA for determining which injuries and illnesses are recordable and how they are recorded. OSHA does not apply to the Division of Corrections, Hospitals, and Education. Although federal regulations do not apply to other State agencies, the State has adopted the federal regulations and guidelines, except for the accident reporting and posting requirements.

<b>WV OSHA RECORDS TO BE RETAINED</b>	<b>RETENTION PERIOD</b>
<p><i>Records regarding DOL inspections; Records and reports relating to work-related deaths, injuries and illnesses, other than minor injuries not requiring medical attention, i.e., OSHA 300 Log; the privacy case list (if one exists); the annual summary; and the OSHA 301 Incident Report forms</i></p> <p>Medical examination records and records of exposure to toxic substances</p>	<p>5 years following the end of the calendar year that these records cover</p> <p>Duration of an worker's employment <b>plus</b> 30 years</p> <p>(Medical records of employees employed less than 1 year do not have to be retained beyond the term of employment <b>if</b> they are provided to the employee.)</p>
<p><b>NOTE:</b> Health insurance claims and first aid records are to be maintained separate from an employer's medical program, however, the records need not be retained for any specific period of time</p>	

**W. Va. Public Records Management and Preservation Act**

*W. Va. Code* § 5A-8-1, *et seq.*, *W. Va. C.S.R.* Tit. 148-12, 13 and 14

[www.wvculture.org](http://www.wvculture.org)

Personnel records of the State of West Virginia, its agencies and departments are subject to the maintenance, retention and disposal provisions of the Public Records Management and Preservation Act (PRMPA). *W. Va. Code* §5A-8-7(c) includes in its list of duties of the administrator that he or she “[e]stablish standards for the preparation of schedules providing for the retention of state records of continuing value and for the prompt and orderly disposal of state records no longer possessing sufficient administrative, legal, or fiscal value to warrant their further keeping.”

<b>WV PRMPA RECORDS TO BE RETAINED</b>	<b>RETENTION PERIOD</b>
Records possessing any administrative, legal, fiscal, research or historical value	Until no longer of significant value (Consult with State Records Administrator)
Reports; Records Retention and Disposal Schedules	As defined by the State Records Administrator (See, <i>C.S.R.</i> 148-12, 13 and 14)
List of records which are destroyed	Forever (per 148 <i>C.S.R.</i> 13-8.5)

Currently Helen Wilson, Director of the Information Services and Communications Division, has been appointed by the Secretary of Department of Administration to act as his designee as State Records Administrator. As such, she is responsible for obtaining reports and Record Retention and Disposal Schedules from the Records Managers for State agencies. Further, she assists the State Archivist in determining whether or not a record has archival value and coordinates the transfer of all such records from an agency to the Section of Archives and History within the West Virginia Division of Culture and History. Thus, agency personnel should contact its designated Records Manager, who is the liaison with the Records Administrator, regarding retention and disposal schedules and the possible archiving of records.

**Compensation Division (UCD)**

**(formerly W. Va. Bureau of Employment Programs)**

*W.Va. Code § 21A-10-4, W. Va. C.S.R. Tit. 83-1-5 and*

Section 5.01 of the Regulations of the Commissioner, Unemployment

Compensation

[www.wvbep.org](http://www.wvbep.org)

Primary purpose is to administer unemployment compensation services through the collection of employer contributions and the payments of benefits to eligible people.

<b>WV UCD RECORDS TO BE RETAINED</b>	<b>RETENTION PERIOD</b>
<i>All books, records, and accounts relating to public/State employment programs</i>	Later of 4 years after a report is filed or required to be filed
<i>Employee Employment Records (including but not limited to: UC Forms; Quarterly Contribution Reports and Quarterly Wage Reports; Low Earnings Reports; correspondence related to benefits eligibility of former employees; rate notices; Separation Reports; period covered by each payroll; place of employment within the State; wage rates; travel expenses and dates covered; time lost due to reasons other than lack of work; exact dates of employment; and cause of separation)</i>	Not less than 5 years
<i>Payroll records (includes: period covered by the payroll; place of employment within the state; scheduled hours per day or week; employees' name, social security account numbers, wage; dates employees were hired, rehired, or returned to work after a temporary lay-off; dates when work was terminated by lay-off, quitting, discharge, or death; employees' wages for all periods ending in each calendar quarter, showing separately [1] money wages, [2] the cash value of other remuneration, and [3] any special payments for services other than those rendered exclusively in a given quarter, such as annual bonuses, gifts, prizes, etc., showing separately money payments, other remuneration and the nature of said payments; cause of any separation or lay-off; if the employee is on a variable pay basis, the hours worked and wages earned, in each week, and cause of all lost time for each individual in each week)</i>	5 years

WV UCD RECORDS TO BE RETAINED	RETENTION PERIOD
<p><i>Income Tax Withholding</i> books, records, accounts, and information necessary to determine a tax liability (includes: forms; Annual Reconciliations; Copy D of employees' Forms W-2; federal Forms 1099-R and 1096; copies of canceled checks, and payroll records)</p> <p><i>State withholding certificates</i> (includes: WV Employee's Withholding Exemption Certificate; and WV Low-Income Earned Income Exclusion Certificate Election to Not Withhold State Income Tax; and WV Application for Registration Certificate (as long as an employer remains in business in State)</p>	<p>5 years after a return is filed or required to be filed, whichever is later</p> <p>Employees' State withholding certificates must be kept as long as they are current; inactive certificates should be retained for at least 5 years after new certificates are filed or employees separate</p>

W. Va. Workers' Compensation Commission (WCC) has been mutualized and is now known as BrickStreet Insurance

*W.Va. Code § 23-1-1, et seq.*

W. Va. C.S.R. Tit. 85, Series 1 - 16

**(Rules of former WCC - now enforced by the West Virginia Insurance Commission)**

[www.brickstreet.com](http://www.brickstreet.com)

Primary purpose is to provide benefits to employees injured on the job, including medical benefits, disability benefits for lost wages, death benefits for dependents, and in some circumstances, job retraining necessitated by the work-related injury.

WORKERS' COMPENSATION RECORDS TO BE RETAINED	RETENTION PERIOD
<p>WC insurance and related forms, e.g., premium payments or lost work time and injury claim forms</p> <p>All expenditures for gross wages and the separation of such expenditures in the various classifications of the employers' business</p>	<p>5 years, or if involved in a dispute, until the dispute is settled, whichever is longer</p>

**III.  
RETENTION SCHEDULES BY RECORD TYPE**

General categories of records may include those pertaining to personnel actions (hiring; promotions; transfers; testing; payroll, and discipline); leave benefits (medical, personal, military, certified disaster relief, and donated); safety and health; and reference checks (employment references; motor vehicle records, and background investigations, etc.). The list below includes some of those various types of records, the length of time those records must be retained, and the law requiring the record's retention.

**In many cases, several laws require the retention of particular records. To avoid the risk of inadvertently discarding something that should have been retained, always observe the longest of any overlapping retention periods. Some professionals suggest that certain records be retained for longer periods than required to maintain the integrity of personnel files. When uncertain, it is always prudent to consult your legal counsel.**

<b>TYPE OF RECORD</b>	<b>LONGEST RETENTION REQUIREMENT</b>	<b>LAWS REQUIRING RETENTION OF RECORDS</b>
Job orders submitted to a state agency	1 year	ADA; ADEA
Job advertisements, notices concerning openings, and job postings	1 year	ADA; ADEA; Civil Rights Act; FLSA; Rehab
Employment applications/resumes, including attachments (if the individual is not hired)	3 years	ADA; ADEA; EEOC; FLSA; Rehab
Biographical data (name, address, birth date, sex, etc.)	3 years	ADA; ADEA; EPA; FLSA; FMLA; IRCA OSHA; Rehab; WC
Certificates of Age	Duration of employee's employment	FLSA
Applicant information	1 year or 2 years after any Affirmative Action adverse impact is eliminated	ADA; ADEA; Civil Rights Act; Rehab

<b>TYPE OF RECORD</b>	<b>LONGEST RETENTION REQUIREMENT</b>	<b>LAWS REQUIRING RETENTION OF RECORDS</b>
Job Descriptions	3 years	ADA ; ADEA; EPA
Job Evaluations	3 years	ADA; EPA; FLSA
Merit, Incentive, and Seniority System Records	Whichever is longer: period the system is in effect plus 1 year or 3 years	ADA; ADEA; EPA; FLSA
Medical records	3 years	ADA; ADEA; Civil Rights Act; Rehab; WC
Records relating to discrimination charges	Until final disposition of the charge	Rehab; EPA; ADA; HRA; FMLA
Job offers and hiring records	1 year or 2 years after any Affirmative Action adverse impact is eliminated	ADA; EO 11246; Civil Rights Act; Rehab; Vets Act (USERRA)
Employment history, i.e., promotions, demotions, and transfers	1 year or 2 years after any Affirmative Action adverse impact is eliminated  (NOTE: Former employees may later need these records for retirement purposes, so may wish to retain for a longer period of time)	ADA; ADEA; Civil Rights Act
Qualified (welfare or retirement) plan records; annual reports and summaries	6 years	ERISA
Accommodation requests	2 years	ADA; Civil Rights Act; Rehab
Training opportunities, agreements	Duration of training or 1 year after personnel action	ADA; ADEA; FLSA
Apprenticeship Program Records	2 years	Civil Rights Act; EO 11246
FMLA records	3 years	FMLA
Affirmative Action Plans	3 years	Civil Rights Act; EO 11246; Rehab

<b>TYPE OF RECORD</b>	<b>LONGEST RETENTION REQUIREMENT</b>	<b>LAWS REQUIRING RETENTION OF RECORDS</b>
Layoffs	2 years	ADA; ADEA; Civil Rights Act; Rehab; 143 CSR 1
Garnishment Orders	7 years	DHHS
Payroll records; wages	5 years	ADA; ADEA; EPA; FLSA; DOL; FICA; FMLA; BEP; UC; WC
Time cards	3 years	ADEA; FLSA; EPA; DOL
Pay check receipts	Forever	IRS; FLSA
I-9 Forms	3 years after hire or 1 year after dismissal, whichever comes later	IRCA
Employment contracts	3 years	ADEA; EPA; FLSA
Employee pay and benefit plans	3 years	FMLA; ERISA
Employee terminations	2 years	ADA; ADEA; EO 11246; and Civil Rights Act; Rehab
Record of employee disputes	Until resolved, plus 3 years	ADA; FMLA; Rehab
EEO-1 Reports	3 years	ADA; EO 11246; Civil Rights Act

Notes: Medical records related to a leave granted under the FMLA must be maintained for 3 years.

Since the courts have determined that EEOC may file discrimination claims years after the alleged discrimination took place, employers should keep critical employment records longer than government regulations require, indefinitely in some cases.

Certain employee records should be maintained in files in secure locations separate from employees' personnel files to protect employees' privacy rights and to insulate employers from liability. These records must also be kept confidential, with restricted access or limited disclosure, and then, only to designated persons on a need-to-know basis, or as required by law. These documents include, but are not limited to, the following:

CONFIDENTIAL RECORDS TO BE KEPT SEPARATE FROM PERSONNEL FILE
Supervisor's administrative file
Medical records and medical history of employees regarding ADA, FMLA, Rehabilitation, or work-related injury and/or illness claims and reports, and referrals concerning employees' participation in Employee Assistance Programs
Medical records and medical history of family members of employees
Medical results from required examinations, e.g., drug and alcohol testing, psychological testing, and agility examinations
Functional capacity assessments
Fitness for duty examination results
Immigration forms
Background check information and consumer reports
Garnishment Orders
Family court documents or orders
Employee grievance and any records regarding lawsuits
Discrimination claims and/or reports, including investigative materials
Investigative reports concerning alleged misconduct
Equal employment opportunity documents