

Federal Employment Recordkeeping

EMPLOYMENT, LABOR & WORKFORCE MANAGEMENT

The following should be noted in connection with these recordkeeping requirements:

1. In addition to the major federal record retention periods identified in this document, employers should account for any differing record retention requirements under state and/or local laws that may exist in the jurisdictions in which their company operates. State and local document retention requirements may, in some cases, be longer than the federal record retention periods identified in this reference document. In addition, statutes of limitations for filing lawsuits may be longer than applicable federal recordkeeping laws provide. Therefore, recordkeeping requirements may need to be extended accordingly, depending on the jurisdictions within which an employer's business operates. Further, employers that operate in more than one state should be particularly careful in establishing a record retention system that takes into account the many variations of state recordkeeping, reporting, and retention requirements.
2. Prior to crafting a comprehensive record retention policy that integrates the federal statutory and regulatory recordkeeping minimum requirements set forth in this document, employers should keep in mind not only state and local laws but also operational, policy, and risk management concerns that pertain to their business. Also, employers should be advised that the timeframes set forth in this document are minimums required by law and that it may be advisable to maintain certain records for longer than the minimum timeframes set forth in this document.
3. The Lilly Ledbetter Fair Pay Act of 2009 ("FPA") amended several antidiscrimination laws under which disparate pay claims may be brought. Since the statute of limitations for filing an equal pay lawsuit now resets with each new discriminatory paycheck or pay practice, the FPA essentially eliminates the statute of limitations applicable to such pay discrimination claims. As a result, employees may file pay discrimination claims any number of years after the alleged underlying discriminatory decision occurred, so long as the charge of discrimination is filed within 300 days of the alleged latest discriminatory paycheck (or within 180 days in a state without its own fair employment practices agency).
4. Although back pay recovery is limited to two years from the filing of the charge of discrimination, all records applicable to defending a pay discrimination claim may be relevant indefinitely. We have identified below the statutes amended by the FPA.
5. Required periods of retention for various types of employment-related records may be extended if litigation, administrative proceedings, investigations, or enforcement proceedings have been threatened or commenced.
6. Records and documents that can be considered medical records, including, but not limited to, certifications, re-certifications, medical histories of employees or their family member(s), and records containing any genetic information are to be maintained in separate files and treated (with certain exceptions) as confidential medical records that may be accessed only by authorized individuals.
7. If employees are not subject to Fair Labor Standards Act ("FLSA") recordkeeping requirements for purposes of minimum wage or overtime compliance (i.e., they are not covered by, or are exempt from, the FLSA), employers need not keep a record of actual hours worked, so long as eligibility for Family and Medical Leave Act ("FMLA") leave is presumed for any employee who has been employed for at least 12 months. For an employee who takes FMLA leave intermittently or on a reduced leave schedule, the employer and employee should agree on the employee's normal schedule or average hours worked each week and put that agreement in a written record that is maintained in accordance with FMLA requirements.
8. When reviewing this document, employers should be mindful that the jurisdictional thresholds for the laws addressed by this document vary. For example, certain federal antidiscrimination laws apply only to employers with at least 15 employees. Other laws have different thresholds, such as 20, 50, or 100 employees. State and local laws often have smaller thresholds.

Title VII

Title VII of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, sex, color, religion, and national origin.

RECORDS TO BE RETAINED	PERIOD OF RETENTION	FORM OF RETENTION
a) Personnel or employment records made or kept by the employer, including, but not limited to, requests for reasonable accommodations; application forms; applicant flow logs and data; job postings and advertisements; screening tests and results; records concerning hiring, promotion, performance appraisals, demotion, transfer, layoff, or termination; rates of pay and terms of compensation; and selection for training or apprenticeship. Records for apprenticeship programs should include a list of applicants, the chronological order in which applications were received, and a detailed description of the selection process. Documents containing employees' name, full home address, date of birth, sex, and occupation should be retained.	a) One year from the date that the record is made or personnel action is taken, or termination of employment, whichever is later. ¹	a) Documentation. Information on race, sex, or national origin may be obtained by visual surveys of a workforce or from post-hire records. Medical records and the maintenance of permanent records as to racial or ethnic identification are to be kept separate from basic personnel records and from other records available to those responsible for personnel decisions and may be accessed only in limited circumstances.
b) Personnel records relevant to an enforcement action brought against an employer i.e., documents reflecting promotions, demotions, and disciplinary actions (including terminations, layoffs, and recalls), test papers and results of all testing completed in conjunction with any of the above personnel actions, physical examination results related to requests for reasonable accommodation, and transfers.	b) When an employee has filed a charge or complaint, generally, employers must preserve all personnel records relevant to the charge or action until final disposition of the charge or action.	b) Documentation.
c) Personnel records relevant to defending Title VII equal pay claims (including "a" above). The term "personnel records relevant to the charge," for example, would include personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person and application forms or test papers completed by an unsuccessful applicant and by all other candidates for the same position as that for which the aggrieved person applied and was rejected.	c) In light of the FPA, all records applicable to defending a pay discrimination claim may be relevant indefinitely.	c) Documentation.

ADEA

The Age Discrimination in Employment Act protects persons 40 years of age or older from age discrimination. Certain state statutes protect all persons from age discrimination, regardless of age.

RECORDS TO BE RETAINED	PERIOD OF RETENTION	FORM OF RETENTION
a) Payroll or other records containing employee's name, address, date of birth, occupation, rate of pay, and compensation earned per week.	a) Three years from the date of entry.	a) Documentation. Records must be kept in a safe and accessible place.

¹ The recordkeeping regulations actually refer to maintaining records for one year from the date the record is made or personnel action taken, or the involuntary termination of employment, whichever is later. Because an employer may not know that an employee will later claim that a termination was "involuntary" or if the records might be helpful as to some claim or litigation, we suggest that employers consider retaining the records for one year even if they do not have reason to think that a termination was "involuntary" at the time of the termination. Accordingly, throughout this document, we recommend the retention of pertinent records for one year from termination as a best practice.

RECORDS TO BE RETAINED	PERIOD OF RETENTION	FORM OF RETENTION
b) Personnel and/or employment records relating to (1) job applications, resumes, and records pertaining to failure or refusal to hire; (2) promotion, demotion, transfer, selection for training, layoff, recall, or discharge; (3) job orders submitted to employment agencies or unions; (4) screening tests (including physical examinations); and (5) advertisements or notices relative to job openings, including applications for temporary positions. An employment agency must keep records on placements, referrals, job orders by employers, applications, and test papers completed by applicants as part of the selection process.	b) One year from the date of the personnel action to which the record relates. Personnel records for persons in temporary positions must only be kept for 90 days after the personnel action.	b) Results of physical examinations that are part of the selection process, occupational health/medical records, and records as to age/date of birth must be maintained apart from routine personnel data, with restricted access.
c) Employee benefit plans and written seniority or merit rating systems.	c) Full period that the plan or system is in effect, plus one year after termination.	c) If plan or system is not in writing, retain summary memorandum.
d) Personnel records relevant to an enforcement action brought against an employer.	d) Until final disposition of the action.	d) Documentation.
e) Personnel records relevant to defending equal pay claims (including "a)" and "b)" above).	e) In light of the FPA, all records applicable to defending a pay discrimination claim may be relevant indefinitely.	e) Documentation.

ADA

The Americans with Disabilities Act makes it unlawful to discriminate against a qualified individual on the basis of a disability.

RECORDS TO BE RETAINED	PERIOD OF RETENTION	FORM OF RETENTION
a) Personnel or employment records made or kept by the employer, including, but not limited to, requests for reasonable accommodation; application forms; applicant flow logs and data; job postings and advertisements; screening tests and results; records concerning hiring, promotion, performance appraisals, demotion, transfer, layoff, or termination; rates of pay and terms of compensation; and selection for training or apprenticeship. Records are required for apprenticeship programs, including a list of applicants, the chronological order in which applications were received, and a detailed description of the selection process.	a) One year from the date that the record is made, personnel action is taken, or termination of employment, whichever is later. <i>See</i> fn. 1.	a) Documentation. Medical records are to be kept separate from basic personnel and other records available to those responsible for personnel decisions and may be accessed only in limited circumstances.
b) Personnel records relevant to an enforcement action brought against an employer.	b) When an employee has filed a charge or complaint, generally, employers must preserve all personnel records relevant to the charge or action until final disposition of the charge or action.	b) Documentation.
c) Personnel records relevant to defending equal pay claims (including "a)" above).	c) In light of the FPA, all records applicable to defending a pay discrimination claim may be relevant indefinitely.	c) Documentation.

FMLA

The Family and Medical Leave Act requires employers with 50 or more workers to provide eligible employees up to 12 weeks of unpaid, job-protected leave for the birth of a child; the placement of a child for adoption or foster care; serious health condition of a child, parent, or spouse; an employee's own serious health condition; or a qualifying exigency arising out of the fact that the employee's spouse, child, or parent is a covered military member on active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation. The FMLA also requires covered employers to provide up to 26 weeks of unpaid, job-protected leave for certain reasons related to the illness or injury of a covered service member.

RECORDS TO BE RETAINED	PERIOD OF RETENTION	FORM OF RETENTION
<p>Employers covered by the FMLA must make and preserve the same records as are required under the FLSA, including, but not limited to, an employee's name, address, occupation, rate or basis of pay, terms of compensation, daily and weekly hours worked per pay period, additions to or deductions from wages, and total compensation paid.</p> <p>In addition, employers must maintain records of requests for FMLA leave and their processing, dates and hours (if less than a full day) of FMLA leave taken, copies of employer notices to employees, documents describing benefits and policies regarding paid and unpaid leave, records of premium payments of employee benefits, and records (such as emails or other written statements regarding a disagreement on the designation of the employee's FMLA leave request) of disputes with employees over FMLA benefits.</p>	<p>Three years.</p>	<p>Records and documents relating to certifications, recertifications, or medical histories of employees or employees' family members, created for purposes of the FMLA, must be maintained as confidential medical records in separate files/records from the usual personnel files.</p> <p>Medical records are to be kept separate from basic personnel and other records available to those responsible for personnel decisions and may be accessed only in limited circumstances.</p> <p>Documentation may be maintained and preserved on microfilm or other basic source document of automated data processing memory, provided adequate projection or viewing equipment is available, reproductions are clear and identifiable, and transcriptions are available upon request.</p>

USERRA

The Uniform Services Employment and Reemployment Rights Act protects employees who serve in the military from discrimination in employment and provides them with certain benefits and reemployment rights when they return from military duty.

RECORDS TO BE RETAINED	PERIOD OF RETENTION	FORM OF RETENTION
<p>No specific requirements. We recommend retaining all records regarding any employee's request for an absence due to military service and return from such service, including handling of benefits during and after service.</p>	<p>Indefinitely, as USERRA now specifically states that no statute of limitations will apply to allegations made under the statute.</p>	<p>Documentation.</p>

GINA

The Genetic Information Nondiscrimination Act prohibits discrimination based on genetic information in hiring, promotion, discharge, compensation, fringe benefits, job training, classification, referral, and other terms, conditions, or privileges of employment.

RECORDS TO BE RETAINED	PERIOD OF RETENTION	FORM OF RETENTION
<p>a) Personnel or employment records made or kept by the employer, including, but not limited to, requests for reasonable accommodations; application forms; applicant flow logs and data; job postings and advertisements; screening tests and results; records concerning hiring, promotion, performance appraisals, demotion, transfer, layoff, or termination; rates of pay and terms of compensation; and selection for training or apprenticeship. Records are required for apprenticeship programs, including a list of applicants, the chronological order in which applications were received, and a detailed description of the selection process.</p>	<p>a) One year from the date that the record is made or personnel action is taken, or termination of employment, whichever is later. <i>See</i> fn. 1.</p>	<p>a) Documentation. Genetic information should be treated as confidential medical records and must be kept separate from basic personnel records and from other records available to those responsible for personnel decisions and may be accessed only by authorized individuals.</p>
<p>b) Personnel records relevant to an enforcement action brought against the employer.</p>	<p>b) When an employee has filed a charge or complaint, generally, employers must preserve all personnel records relevant to the charge or action until final disposition of the charge or action.</p>	<p>b) Documentation.</p>

REHABILITATION ACT

Section 503 of the Rehabilitation Act prohibits job discrimination and requires affirmative action to employ, and advance in employment, qualified persons with disabilities. The Rehabilitation Act is applicable to employers holding federal government contracts and subcontracts in excess of \$10,000 for the purchase, sale, or use of personal property or nonpersonal services (including construction).

RECORDS TO BE RETAINED	PERIOD OF RETENTION	FORM OF RETENTION
<p>a) Personnel or employment records made or kept by federal contractors and subcontractors, including, but not limited to, records relating to requests for reasonable accommodation, the results of any physical examination, job advertisements and postings, applications and resumes, tests and test results, interview notes, and other records as to hiring, assignment, promotion, demotion, transfer, layoff or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship.</p>	<p>a) Two years from the date that the record is made or personnel action occurred, whichever occurs later; one year if the contractor or subcontractor has fewer than 150 employees or does not have a contract for at least \$150,000.</p>	<p>a) Records must be accessible during normal business hours at place(s) of business, for purposes of on-site compliance reviews and complaint investigations, and for inspection and copying of documents, including computerized records, books, accounts, and other material relevant to a matter under investigation. Records containing medical information are to be kept separate from personnel files.</p>
<p>b) Records of employees involuntarily terminated.</p>	<p>b) Two years from the date of termination; one year if the contractor or subcontractor has fewer than 150 employees or does not have a contract for at least \$150,000.</p>	<p>b) Documentation.</p>
<p>c) Records relevant to complaints, compliance reviews, and enforcement actions, including personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person and application forms or test papers completed by an unsuccessful applicant and by all other candidates for the same position as that for which the aggrieved person applied and was rejected.</p>	<p>c) Where the contractor has received notice that a complaint of discrimination has been filed, that a compliance evaluation has been initiated, or that an enforcement action has been commenced, the contractor must preserve all personnel records relevant to the complaint, compliance evaluation, or action until final disposition of the complaint, compliance evaluation, or action.</p>	<p>c) Documentation.</p>
<p>d) Contractors and subcontractors with 50 or more employees and with at least one contract of \$50,000 or more are required to develop a written affirmative action plan ("AAP").</p>	<p>d) Two years from the date that the record is made; one year if the contractor or subcontractor has fewer than 150 employees or does not have a contract for at least \$150,000.</p>	<p>d) The AAP must be available for inspection by the OFCCP or to any employee or applicant, upon request.</p>
<p>The AAP must include an audit and reporting system to measure and document the effectiveness of, and compliance with, the AAP.</p> <p>The AAP requires annual data collection analysis, including the number of:</p> <ul style="list-style-type: none"> • applicants who self-identified, or are otherwise known, as individuals with disabilities; • job openings and jobs filled; • applicants for all jobs; • applicants with disabilities hired; and • applicants hired. <p><i>Continued...</i></p>	<p>Three years for records concerning annual data collection analysis, outreach and recruitment activities, and the external dissemination of the AAP.</p>	

RECORDS TO BE RETAINED	PERIOD OF RETENTION	FORM OF RETENTION
<p>Employers must also annually conduct a utilization analysis, evaluating the representation of individuals with disabilities in each job group within the contractor’s workforce, with a goal set by the Office of Federal Contract Compliance Programs (“OFCCP”) of 7 percent.</p> <p>In addition, employers must send written notification of company policy related to its AAP to all subcontractors.</p>		
<p>External outreach and recruitment efforts: The contractor must, on an annual basis, review the outreach and recruitment efforts it has taken over the previous 12 months to evaluate their effectiveness in identifying and recruiting qualified individuals with disabilities. The contractor must also document each evaluation, including, at a minimum, the criteria it used to evaluate the effectiveness of each effort and the contractor’s conclusion as to whether each effort was effective.</p>	<p>Evaluate yearly and retain for three years.</p>	<p>Documentation of each evaluation.</p>

VEVRAA

The Vietnam Era Veterans’ Readjustment Assistance Act prohibits job discrimination and requires affirmative action for the employment of qualified protected veterans of the U.S. Armed Forces, including disabled veterans, recently separated veterans, active duty wartime or campaign badge veterans, and Armed Forces service medal veterans. VEVRAA is applicable to employers holding federal government contracts and subcontracts of \$100,000 or more.

RECORDS TO BE RETAINED	PERIOD OF RETENTION	FORM OF RETENTION
<p>a) Personnel or employment records made or kept by federal contractors and subcontractors, including, but not limited to, requests for reasonable accommodations, results of any physical examination, job advertisements and postings, applications and resumes, tests and test results, interview notes, and other records concerning hiring, assignment, promotion, demotion, transfer, layoff or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship.</p>	<p>a) Two years from the date that record is made or personnel action occurred, whichever occurred later; one year if the contractor or subcontractor has fewer than 150 employees or does not have a contract for at least \$150,000.</p>	<p>a) Records must be accessible during normal business hours at place(s) of business for purposes of on-site compliance evaluations and complaint investigations and for inspection and copying of documents, including books, accounts, computerized records, and other material relevant to a matter under investigation. Records containing medical information are to be kept separate from personnel files.</p>
<p>b) Records of employees involuntarily terminated.</p>	<p>b) Two years from the date of the termination; one year if the contractor or subcontractor has fewer than 150 employees or does not have a contract for at least \$150,000.</p>	<p>b) Documentation.</p>
<p>c) Records relevant to complaints, compliance evaluations, and enforcement actions.</p>	<p>c) Until final disposition of the complaint, compliance evaluation, or enforcement action.</p>	<p>c) Documentation.</p>

RECORDS TO BE RETAINED	PERIOD OF RETENTION	FORM OF RETENTION
<p>d) Contractors and subcontractors with 50 or more employees and with at least one contract of \$150,000 or more are required to develop a written AAP.</p> <p>The AAP must include an audit and reporting system to measure and document the effectiveness of, and compliance with, the AAP.</p> <p>The AAP requires annual data collection analysis, including the number of:</p> <ul style="list-style-type: none"> • applicants who self-identified, or are otherwise known, as protected veterans; • job openings and jobs filled; • applicants for all jobs; • protected veteran applicants hired; and • applicants hired. <p>Employers must also set annually a hiring benchmark, using the percentage published by the OFCCP, or establish a benchmark taking into account multiple factors that affect the availability of veterans.</p> <p>In addition, employers must send written notification of company policy related to its AAP to all subcontractors.</p>	<p>d) Two years from the date that the record is made; one year if the contractor or subcontractor has fewer than 150 employees or does not have a contract for at least \$150,000.</p> <p>Three years for records concerning annual data collection analysis, outreach and recruitment activities, the external dissemination of its AAP, and the hiring benchmark.</p>	<p>d) The AAP must be available for inspection by the OFCCP, or to any employee or applicant, upon request.</p>
<p>As part of the AAP, employers must engage in outreach and recruitment activities that are designed to reach protected veterans, documenting efforts and effectiveness.</p>	<p>Evaluate yearly and retain for three years.</p>	<p>Documentation of each evaluation.</p>

Executive Order 11246

E.O. 11246, as amended, prohibits job discrimination and requires affirmative action based on race, color, religion, national origin, or sex. This executive order is applicable to employers holding federal government contracts and subcontracts in excess of \$10,000 in one year.

RECORDS TO BE RETAINED	PERIOD OF RETENTION	FORM OF RETENTION
<p>a) Personnel or employment records that include, but are not limited to, (1) records pertaining to hiring, assignment, promotion, demotion, transfer, layoff or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship, and (2) other records having to do with requests for reasonable accommodation, the results of any physical examination, job advertisements and postings, applications, resumes, and any and all expressions of interest through the Internet, records identifying job seekers contacted regarding their interest in a particular position (for internal resume databases, the contractor and subcontractor must maintain a record of each resume added to the database, the date each resume was added to the database, the position for which each search of the database was made, and the substantive search criteria used and the date of the search; for external resume databases, the contractor and subcontractor must maintain a record of the position for which each search of the database was made and the substantive search criteria used, the date of the search, and the resumes of job seekers who met the basic qualifications and who are considered), regardless of whether the individual qualifies as an Internet applicant under 41 C.F.R. 60-1.3, tests, test results,</p> <p><i>Continued...</i></p>	<p>a) Two years from the date of the termination; one year if the contractor or subcontractor has fewer than 150 employees or does not have a contract for at least \$150,000.</p>	<p>a) Records must be made available to the OFCCP, upon request.</p>

RECORDS TO BE RETAINED	PERIOD OF RETENTION	FORM OF RETENTION
and interview notes. For any record required to be maintained as indicated above, the contractor or subcontractor must be able to identify (i) the gender, race, and ethnicity of each employee and (ii) where possible, the gender, race, and ethnicity of each applicant or Internet applicant, whichever is applicable to the particular position.		
b) Records of complaints, compliance evaluations, and enforcement actions, including personnel or employment records relating to the complainant and to all other employees holding positions similar to that held or sought by the complainant and application forms or test papers submitted by unsuccessful applicants and by all other candidates for the same position as that for which the complainant unsuccessfully applied.	b) Until final disposition of the complaint, compliance evaluation, or enforcement action.	b) Documentation.
c) Non-construction contractors and subcontractors with 50 employees or more and with at least one contract of \$50,000 or more are required to develop a written AAP (including a workforce analysis or organizational display, job group analysis, availability analysis, comparison of incumbency to availability, placement goals, identification of problem areas, action-oriented programs, documentation of good faith efforts, and internal audit and reporting systems).	c) Must maintain the current AAP and the AAP for the immediately preceding year.	c) Records must be made available to the OFCCP, upon request.

FLSA

The Fair Labor Standards Act requires covered employers to pay nonexempt employees minimum hourly rates, plus time and a half after 40 hours (“overtime”); the FLSA also contains child labor restrictions and addresses equal pay coverage.

RECORDS TO BE RETAINED	PERIOD OF RETENTION	FORM OF RETENTION
a) Records containing basic employee information, including name; Social Security number; address, including zip code; date of birth if under 19; sex; occupation; payroll records, including regular rate of pay; work schedule, including time and day of week when employee’s workweek begins; hours worked each workday; total additions or deductions from wages paid for each pay period; basis of pay (pay period); amount and nature of each payment excluded from the employee’s regular rate; total daily or weekly straight-time earnings; total overtime paid for the workweek; date of payment and pay period covered; individual contracts or collective bargaining agreements; if not in writing, then a written memorandum summarizing the terms of each such contract or agreement; applicable certificates; notices of wage/hour administrator; and sales and purchase records.	a) Three years from the last date of working time entry for payroll records. For all certificates, agreements, plans, and notices, three years from last effective date. Note: The Internal Revenue Service (“IRS”) may require a longer retention period (six to seven years).	a) Documentation, including any reasonably reproducible computer records. Records must be kept in a safe and accessible location at the place of employment. A central recordkeeping place is permissible, so long as such records are made available within 72 hours. Microfilm is permissible if the employer is willing to provide adequate viewing facilities and make any extension, recomputation, or transcript of film that may be requested. Punched tape is permissible if records can be converted readily.
See footnote below as to tipped employees and certain health care employees. ²		

² Note: There are special recordkeeping requirements for tipped employees. Employers with tipped employees should consult the U.S. Department of Labor’s regulations for recordkeeping requirements for tipped employees. Similarly, there are recordkeeping requirements for health care employees with 14-day work periods, which records must be maintained for two years.

RECORDS TO BE RETAINED	PERIOD OF RETENTION	FORM OF RETENTION
b) From the date of last entry, all time cards or sheets, or records of the amounts of work completed when those amounts determine wages in whole or in part; from the last effective date, all wage rate tables or schedules that provide the rates used in calculating earnings; order, shipping, and billing records; records of additions to or deductions from wages paid; and time records and documentation of basis for payment of any wage differential between employees of opposite sex in the same establishment.	b) Two years.	b) Documentation, including any reasonably reproducible computer records. Records must be kept in a safe and accessible location at the place of employment. A central recordkeeping place is permissible, so long as such records are made available within 72 hours. Microfilm is permissible if the employer is willing to provide adequate viewing facilities and make any extension, recomputation, or transcript of film that may be requested. Punched tape is permissible if records can be converted readily.
c) General payroll records relevant to defending equal pay claims.	c) In light of the FPA, all records applicable to defending a pay discrimination claim may be relevant indefinitely.	c) Documentation.

EPA

The Equal Pay Act prohibits sex-based wage discrimination and requires equal pay for equal work.

RECORDS TO BE RETAINED	PERIOD OF RETENTION	FORM OF RETENTION
Employers are required to make and preserve identical records required of employers by the FLSA, which include name, Social Security number, address, date of birth if under 19, sex, and occupation; payroll records including regular rate of pay, work schedule, hours worked, basis of pay, total straight-time paid, total overtime paid, date of payment, and pay period covered; individual contracts or collective bargaining agreements, applicable certificates, and notices of wage/hour administrator; and sales and purchase records. In addition, employers must retain records made in the course of business that relate to payment of wages, wage rates, job evaluations, job descriptions, merit and seniority systems, collective bargaining agreements, and descriptions explaining pay differentials between the sexes.	Under FLSA recordkeeping requirements applicable to the EPA, employers must keep payroll records for at least three years. Employers must keep for at least two years all records (including wage rates, job evaluations, seniority and merit systems, and collective bargaining agreements) that explain the basis for paying different wages to employees of opposite sexes in the same establishment. However, in light of the FPA, all records applicable to defending a pay discrimination claim may be relevant indefinitely.	Documentation.

FICA

The Federal Insurance Contribution Act requires both employees and employers to pay taxes to fund Social Security and Medicare.

RECORDS TO BE RETAINED	PERIOD OF RETENTION	FORM OF RETENTION
Records containing an employee's name, Social Security number, and address; payroll records including total wages paid per pay period, taxable wages, and date and period of time covered; the amount of each employee's FICA contribution; and the reason for any discrepancy between FICA owed and FICA collected.	Four years after the later of the due date of the return or the date that the tax is paid.	Documentation.

FUTA

The Federal Unemployment Tax Act imposes a tax on employers that help to fund state workforce agencies.

RECORDS TO BE RETAINED	PERIOD OF RETENTION	FORM OF RETENTION
Every employer liable for tax under FUTA for any calendar year must keep records regarding the following: the total amount of remuneration paid to employees; the amount of such remuneration that constitutes wages subject to the tax; the contributions paid into each state unemployment fund (showing separately payments made and neither deducted nor to be deducted from employee remuneration, and payments made and deducted or to be deducted from employee remuneration); records containing an employee's name, Social Security number, and address; payroll records, including total wages paid during the calendar year; total wages subject to FUTA and the reason for any discrepancy between the total amount paid to employees and the amount subject to FUTA; and the amount of FUTA taxes paid as shown on Form 940 (Employer's Annual Federal Unemployment (FUTA) Tax Return, and the employer's FUTA tax liability.	Four years after the later of the due date of the return or the date that the tax is paid.	Documentation.

IRCA

The Immigration Reform and Control Act requires employers to verify that employees are eligible to work in the United States.

RECORDS TO BE RETAINED	PERIOD OF RETENTION	FORM OF RETENTION
U.S. Citizenship and Immigration Services Form I-9, Employment Eligibility Verification Form. Note: Retaining copies of supporting documents is voluntary but could be helpful in an audit or litigation.	Three years after date of hire or one year after date of termination, whichever is later.	Forms I-9 may be maintained electronically (with acceptable electronic signatures or original paper scanned into an electronic format), provided that the employer follows government requirements. Those kept manually should be stored in a secure location, separate from the employee's personnel file, so that they are available to the government on three days' notice.

ERISA

The Employee Retirement Income Security Act sets minimum standards for pension plans and health plans in private industry. While ERISA does not obligate any employer to establish a pension plan or health plan, it requires that those that establish plans meet certain minimum standards. Also, ERISA requires plans to regularly provide participants with information about the plan, including important information about plan features and funding. ERISA provides participants a right to sue for benefits and breaches of fiduciary duty.

RECORDS TO BE RETAINED	PERIOD OF RETENTION	FORM OF RETENTION
a) Records of any description, report, or certification of information filed with the IRS or Department of Labor or that would have been filed if not for an exemption or simplified reporting requirement. Records include documents and reports subject to ERISA's reporting and disclosure requirements (e.g., annual reports, Form 5500 and audited financial statements, summary annual reports, summary plan descriptions ("SPDs"), summaries of material modifications, non-discrimination testing results, and participant elections and deferrals) and supporting documents with enough detail to allow verification or clarification (e.g., vouchers, worksheets, receipts, board resolutions, and committee notes).	a) Not less than six years after filing the report or document (based on information contained therein), or six years after the report or document would have been filed if not for an exemption or simplified reporting requirement. Best practice is to retain for at least seven years.	a) Records may be kept electronically if the recordkeeping system has reasonable controls to ensure its integrity, accuracy, authenticity, and reliability; the electronic records are maintained in reasonable order so they may be readily inspected; the electronic records can be readily converted into readable paper copy; adequate record management practices are established and implemented; and the electronic recordkeeping system is not subject to any agreement or restriction limiting the ability to comply with ERISA's reporting and disclosure requirements. Original paper reports may be disposed of after they are transferred to an electronic recordkeeping system that meets the above requirements, except original records may not be discarded if they have legal significance or inherent value as original records such that electronic reproduction would not constitute a duplicate record (e.g., notarized documents, insurance contracts, stock certificates, and documents executed under seal).

RECORDS TO BE RETAINED	PERIOD OF RETENTION	FORM OF RETENTION
b) Records pertaining to each employee for determinations of benefits that are due or may become due, including “a)” above. They include employment history records, hours of service and vesting determinations, birth records, payroll records, marital status records (including a qualified domestic relations order), and original signed plan documents and plan amendments, including SPDs.	b) As long as is relevant to the determination of benefit entitlement, but not less than six years (or with respect to a benefit claim if longer, the expiration of the analogous statute of limitations under state law, typically, for a contract claim). Best practice is to retain for the life of the plan.	b) Documentation.

COBRA

The Consolidated Omnibus Budget Reconciliation Act requires employers to make available to employees and their dependents certain information as to the continuation of group health care coverage following termination and other qualifying events.

RECORDS TO BE RETAINED	PERIOD OF RETENTION	FORM OF RETENTION
No specific requirements. We recommend retaining written notices to employees and their dependents of their option to continue group health plan coverage following qualifying events and other records pertaining to the employees’ or their dependents’ exercise or failure to exercise this option.	We recommend six years from the date of the record to be consistent with ERISA requirements.	Same as ERISA.

FCRA

The Fair Credit Reporting Act regulates the collection and use of background information obtained by third-party consumer reporting agencies to make employment decisions. FCRA provides notice and consent requirements in order to perform background checks, as well as specific notice and an opportunity to respond prior to the employer’s ability to use the results in connection with adverse employment decisions.

RECORDS TO BE RETAINED	PERIOD OF RETENTION	FORM OF RETENTION
No specific requirements in FCRA to maintain copies of background reports received, but general Equal Employment Opportunity Commission requirements to maintain personnel or employment records apply. We recommend retaining records of background checks (including consumer reports and investigative consumer reports), such as authorizations to obtain those reports and notices to applicants/employees regarding intent to obtain reports, intent to take an adverse action based on information in a report, and reliance on the report to take an adverse action.	Consistent with requirements under Title VII, at least one year, regardless of whether the applicant was hired. However since the applicable statute of limitations can be as long as five years, we recommend retaining for five years.	Documentation. Disposal of reports and any information gathered from them must be done securely—burning, pulverizing, and shredding paper documents and disposing of electronic information so that it cannot be read or reconstructed.

OSHA

The Occupational Safety and Health Act requires employment and a place of employment that are free from recognized hazards that are causing or are likely to cause death or serious physical harm.

RECORDS TO BE RETAINED	PERIOD OF RETENTION	FORM OF RETENTION
“Covered employers,” as defined by 29 C.F.R. 1904, must retain “a),” “b),” and “c)” below. All employers are subject to “d).”		Note: The records in items “a),” “b),” and “c)” below must, if requested, be provided to current and former employees or their representatives.
a) Log of Work-Related Injuries and Illnesses, briefly describing recordable cases of injury and illness, including the extent and severity of each case.	a) Five years following the end of the calendar year that the form covers.	a) OSHA 300 Form: Log of Work-Related Injuries and Illnesses.
b) Summary of Work-Related Injuries and Illnesses that indicates the total injuries and illnesses for each year at each establishment.	b) Five years following the end of the calendar year that the form covers.	b) OSHA 300A Form: Summary of Work-Related Injuries and Illnesses.
c) Supplemental record, which provides more detailed information for each injury and illness, including circumstances surrounding the injury or illness.	c) Five years following the end of the calendar year that the form covers.	c) OSHA 301 Form: Injury and Illness Incident Report. Note: Substitute forms, such as workers’ compensation or insurance reports, may be used to satisfy this requirement if they include all the information required by the OSHA 301 Form.
d) To the extent that an employer makes, maintains, contracts for, or has access to, employee exposure or medical records pertaining to employees exposed to toxic substances or harmful physical agents, the employer must retain all such medical and exposure records.	d) Exposure records must be retained for 30 years. Medical records of employees must be retained for the duration of employment, plus 30 years, except that records of employees employed for less than one year need not be retained after employment (but only if such records are provided to the former employee in question).	d) OSHA does not mandate the form in which an employer must preserve such records, except that chest X-rays must be preserved in their original form. These medical records may be accessed only by certain authorized individuals.

FPA

The Lilly Ledbetter Fair Pay Act of 2009 amends several antidiscrimination laws under which disparate pay claims may be brought. The FPA clarifies that the statute of limitations for filing an equal pay lawsuit resets with each new discriminatory paycheck or pay practice.

RECORDS TO BE RETAINED	PERIOD OF RETENTION	FORM OF RETENTION
<p>Recordkeeping requirements of the statutes amended by the FPA (Title VII, the ADEA, the ADA, and the Rehabilitation Act) include:</p> <ul style="list-style-type: none"> • Personnel or employment records made or kept by the employer, such as payroll or other records containing an employee’s name, address, date of birth, occupation, rate of pay, compensation per week, and terms of compensation. • Personnel and/or employment records relating to the hiring process, such as (1) job applications, resumes, screening tests and results, applicant flow logs and data, and records pertaining to failure or refusal to hire; (2) promotion, demotion, transfer, selection for training, layoff, recall, or discharge; (3) job orders submitted to employment agencies or unions; and (4) advertisements or notices relative to job openings, including applications for temporary positions. An employment agency must keep records on placements, referrals, job orders by employers, applications, and test papers completed by applicants as part of the selection process. • Records relating to selection for training or apprenticeship programs. Records for apprenticeship programs should include a list of applicants, the chronological order in which applications were received, and a detailed description of the selection process. • Records relating to employee benefit plans and written seniority or merit rating systems. • Records of employees involuntarily terminated. • Records relevant to complaints, compliance reviews, and enforcement actions. 	Recommend indefinitely as FPA claims do not have a statute of limitations.	Documentation: Electronic or paper.

This document has been provided for informational purposes only and is not intended and should not be construed to constitute legal advice. Please consult your attorneys in connection with any fact-specific situation under federal law and the applicable state or local laws that may impose additional obligations on you and your company.