

Federal Record Retention Requirements 2020



COMPLIANCE & LEGAL



TABLE OF CONTENTS

1.	NOTICES OF JOB OPPORTUNITIES	2
2.	APPLICATION MATERIALS.....	2
3.	I-9 FORMS	2
4.	EMPLOYMENT TESTING	2
5.	CERTIFICATES OF AGE FOR MINORS.....	3
6.	EMPLOYEE CONTRACTS	3
7.	TERMINATED EMPLOYEES' PERSONNEL RECORDS.....	3
8.	PERSONNEL DECISIONS/POLICIES.....	3
9.	PAYROLL AND COMPENSATION.....	4
10.	EEO RECORDING/REPORTING.....	4
11.	REASONABLE ACCOMMODATION	4
12.	FMLA LEAVE RECORDS.....	5
13.	OCCUPATIONAL INJURIES	5
14.	HAZARDOUS SUBSTANCE EXPOSURE.....	5
15.	BENEFITS-RELATED RECORDS*	6
16.	MISC. WAGE-HOUR RECORDS	6
17.	LABOR CERTIFICATION FOR IMMIGRATION COMPLIANCE	6

FEDERAL RECORD RETENTION REQUIREMENTS

Type of Record	Period	Notes	Source of Law
Notices of Job Opportunities	1 years	Includes advertisements and notices related to job openings, promotions, training, and overtime opportunities.	29 C.F.R. § 1602.14 (Title VII, ADA) 29 CFR § 1627.3(b)(1)(i), (iii), (vi) (ADEA)
	2 years	Federal contractors or subcontractors with 150 employees, and contract of \$150,000 or more, or 1 year if fewer than 150 employees or contract less than \$150,000.	41 C.F.R. § 60-741.80
Application Materials	1 years	Includes employment inquiries, applications, resumes, records pertaining to the failure or refusal to hire, and job orders by employers.	29 C.F.R. § 1602.14 (Title VII, ADA) 29 C.F.R. § 1627.3(b)(1)(i), (iii), (vi) (ADEA)
	2 years	Federal contractors or subcontractors with 150 employees, and contract of \$150,000 or more, or 1 year if fewer than 150 employees or contract less than \$150,000. OFCCP regulations require federal contractors to collect additional information about the gender, race, and ethnicity of each applicant for employment (including those obtained via the internet).	41 C.F.R. § 60-741.80
I-9 Forms	3 years	For applicants who are not hired, retention period is 3 years from recruitment or referral date. For those hired, retention period is 3 years from hire, or 1 year from termination, whichever is later. May be stored electronically.	8 U.S.C. 1324a(b)(3) Immigration Reform & Control Act of 1986
Employment Testing	1 years	Includes test papers, results of employer-administered tests, and results of physical/medical examinations considered by the employer in connection with any personnel action.	29 C.F.R. § 1602.14 (Title VII, ADA) 29 C.F.R. § 1627.3(b)(1)(iv)-(v) (ADEA)
	2 years	Federal contractors or subcontractors with 150 employees, and contract of \$150,000 or more, or 1 year if fewer than 150 employees or contract less than \$150,000.	41 C.F.R. § 60-741.80

Type of Record	Period	Notes	Source of Law
Certificates of Age for Minors	Minor's employment	For duration of minors' employment, then returned to minor.	29 C.F.R. § 570.6(b) (FSLA)
Employment Contracts	3 years	From last effective date. Includes collective bargaining agreements (CBAs) and individual contracts.	29 C.F.R. § 516.5 (FLSA)
Terminated Employees' Personnel Records	1 years	From termination.	29 C.F.R. § 1602.14 (Title VII, ADA)
	2 years	Federal contractors or subcontractors with 150 employees, and contract of \$150,000 or more, or 1 year if fewer than 150 employees or contract less than \$150,000.	41 C.F.R. § 60-741.80
Personnel Decisions/Policies <ul style="list-style-type: none"> • General 	2 years	Any records that could be pertinent to the explanation of a wage differential between employees of different sexes in the same establishment, including job evaluations, job descriptions, merit systems, seniority systems, CBAs, and descriptions of practices.	29 C.F.R. § 1627.3(b)(1)(ii) (ADEA) 29 C.F.R. § 1620.32 (Equal Pay Act)
	2 years	From the later of the date the record was created or the date the action was taken, or 1 year if fewer than 150 employees or contract less than \$150,000. For this purpose, personnel and employment records include requests for reasonable accommodation, results of physical exams, job advertisements and postings, applications and resumes, tests and test results, interview notes, and other records pertaining to hiring, assignment, promotion, demotion, transfer, lay-off, termination, compensation, and selection for apprenticeship.	41 C.F.R. § 60-741.80

Type of Record	Period	Notes	Source of Law
Payroll and Compensation <ul style="list-style-type: none"> Basic Payroll Records 		Employers must retain any supplemental records that they have, such as wage rate tables, time sheets, earnings cards, documents indicating daily start/end times.	29 C.F.R. 1627.3(a) (ADEA)
EEO Recording/ Reporting <ul style="list-style-type: none"> 100 or more Employees: EEO-1 Chronological Apps Records Higher Education: EEO-6 	2 years	<p>Employers must maintain either a chronological list of applicants or a file of applications indicating race, ethnicity, sex, date of application for 2 years from date of application. Where an annual report is required, must maintain for 2 years or period of successful applicant's apprenticeship, whichever is longer.</p> <p>Other records that an employer uses solely for filling out an EEO-2 are kept from 1 year from the filing date of the EEO-2.</p>	<p>29 C.F.R. § 1602.15 (Title VII)</p> <p>29 C.F.R. § 1602.21 (Title VII)</p> <p>29 C.F.R. § 1602.50 (Title VII)</p>
Reasonable Accommodation	1 year	Includes requests for accommodation, records related to accommodation attempts.	29 C.F.R. § 1602.14 (Title VII, ADA)
	2 years	Federal contractors or subcontractors with 150 employees, and contract of \$150,000 or more.	41 C.F.R. § 60-741.80

Type of Record	Period	Notes	Source of Law
FMLA Leave Records	3 years	Employers must create and keep records that indicate dates and hours of FMLA leave taken, notices of leave from employees, practices or policies on paid and unpaid leave, premium payments on employee benefits, and records of eligibility disputes.	29 C.F.R. § 825.500 (FMLA)
Occupational Injuries	5 years	From the end of year to which the records relate. Employers must maintain: (1) OSHA 300 Log; (2) privacy case list (if one exists); (3) annual summary; and (4) OSHA 301 Incident Report forms. Employer must update the OSHA 300 Log during the five-year retention period.	29 C.F.R. § 1904.33 (OSHA)
Hazardous Substance Exposure	30 years	Exposure records, medical records, and analyses of these records must be retained 30 years from end of employment. Employers must maintain records of employees' exposures to hazardous substances, as well as records of substances that are used and where. There are many specific requirements for employers using specific toxic substances. Employers should consult OSHA regulations at 29 C.F.R. § 1910.1000 et. seq. Employers need not preserve records of health insurance claims and certain first-aid records made on-site by non-physicians if maintained separately from medical records. Employers need not retain beyond the term of employment medical records of employees who work less than 1 year for employer. Background data to environmental monitoring need only be maintained 1 year.	29 C.F.R. § 1910.1020(d) (OSHA)

Type of Record	Period	Notes	Source of Law
Benefits-Related Records*			29 U.S.C. § 1161 (COBRA)
Misc. Wage-Hour Records	3 years	From last effective date. Certificates and notices of Wage-Hour administrators, sales and purchase records kept in ordinary course of business indicating total dollar volume of sales or business, and total volume of goods purchased or received in recording period.	29 C.F.R. § 516.5 (FLSA)
Labor Certification for Immigration Compliance	5 years	From date of filing labor application. Must retain job postings, advertising, proof of additional steps for professional positions, original recruitment reports signed by employer, and all applicant resumes.	20 C.F.R. §§ 655-656

NOTE: If a charge or action is filed under an employment statute, all relevant records must be maintained until the final disposition of the charge or action. 29 C.F.R. § 1602.14; 29 C.F.R. § 1627.3(b)(1).

*Medical records of employees for FMLA, employment testing or other disability-related purposes must be maintained in separate files and kept confidential. 29 C.F.R. § 825.500(g) (FMLA); 29 C.F.R. § 1630.14(c)(1) (ADA).

NOTE: This chart is current as of March 1, 2019. It is offered by Marathas Barrow Weatherhead Lent LLP for informational purposes only and is not intended nor should it be deemed to constitute legal advice or a comprehensive treatment of any of the items discussed. For more information, please contact Peter Marathas at pmarathas@marbarlaw.com or Stacy Barrow at sbarrow@marbarlaw.com.

©2019 Marathas Barrow Weatherhead Lent LLP. All rights reserved. MVPOT-8270b



© 2020 Marathas Barrow Weatherhead Lent LLP. All Rights Reserved. – The information provided above is not, is not intended to be, and shall not be construed to be, either the provision of legal advice or an offer to provide legal services, nor does it necessarily reflect the opinions of the agency, our lawyers or our clients. This is not legal advice. No client-lawyer relationship between you and our lawyers is or may be created by your use of this information. Rather, the content is intended as a general overview of the subject matter covered. This agency and Marathas Barrow Weatherhead Lent LLP are not obligated to provide updates on the information presented herein. Those reading this guide are encouraged to seek direct counsel on legal questions.