

RECORDKEEPING REQUIREMENTS: WHAT DO I HAVE TO KEEP AND FOR HOW LONG?

by

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I. TITLE VII AND AMERICANS WITH DISABILITIES ACT

A. One Year From The Date The Record Is Made Or The Personnel Action Is Taken, Whichever Is Later (29 C.F.R. § 1602.14)

1. Basic Employee Data
 - a) Name,
 - b) Address,
 - c) Social Security Number,
 - d) Gender,
 - e) Date of Birth,
 - f) Occupation and
 - g) Job Classifications
2. Compensation Records
 - h) Pay Rate
 - i) Weekly Compensation

3. Employment Actions

Any personnel or employment record made or kept regarding employees, including:

- j) Date hired, separated, rehired or returned,
- k) Reason for separation,
- l) Promotions, demotions, transfers, layoffs, recalls, and training opportunities,
- m) Any tests used in employment actions (i.e., Aptitude, ability, medical, etc.),
- n) The results of any polygraph test results and records, including reasons for administering the test,
- o) Job orders to employment agencies, or labor unions,
- p) Advertisements or notices to the public or employees regarding employment on training opportunities, and
- q) Employment Applications and resumes.

NOTE: Employment applications need **not be active** or used for consideration in filling vacant positions for one year. They need only **be retained** for one year for recordkeeping purposes.

4. For ADA purposes, all requests for accommodation of a disability.

B. Two Years From Date Application Is Received Or The Period Of The Apprenticeship, Which Either Is Longer (29 C.F.R. § 1602.20 (b))

1. Apprenticeship Programs

- a) Chronological list of the names and addresses of all applicants,
- b) Dates of application,
- c) Sex,
- d) Minority group identification,
- e) Completed applications, and
- f) Any other records relating to apprenticeship applicants.

NOTE: Where a charge of discrimination has been filed, all relevant records must be retained until final disposition of the matter.

II. AGE DISCRIMINATION IN EMPLOYMENT ACT

A. Three Years From the Date Last Entry Was Made in File. Federal Contractors Must Retain From Three Years of the End of the Contract. (29 C.F.R. § 1627.3)

1. Basic Employee Data
 - a) Name,
 - b) Address,
 - c) Social Security Number,
 - d) Gender,
 - e) Date of Birth,
 - f) Occupation and
 - g) Job Classifications
2. Compensation Records
 - h) Pay Rate
 - i) Weekly Compensation

B. One Year From The Date Action Was Taken (29 C.F.R. § 1627.3)

1. Employment Actions
 - a) Date hired, separated, rehired or returned to work,
 - b) Reason for separation,
 - c) Promotions, demotions, transfers, layoffs, recalls, and training opportunities,
 - d) Any tests used in employment actions (i.e., Aptitude, ability, medical, etc.) and
 - e) The results of any polygraph test results and records, including reasons for administering the test,
 - f) Any job orders submitted to employment agencies or labor unions,
 - g) Job applications and resumes, including the failure or refusal to

hire any individual, and

h) Advertisements or job notices to either the public or employees.

C. Duration of Plan

1. Employee benefit plans, such as pension and insurance plans, as well as copies of any seniority and merit systems, must be kept for the full period the plan or system is in effect *and* for at least one year after its termination.

III. EMPLOYEE POLYGRAPH PROTECTION ACT

A. Three Years From Date of Test (29 C.F.R. § 801.30)

1. Polygraph test results and records, including the reasons for administering the test.

IV. EQUAL PAY ACT

A. Three Years From Date of Last Entry in File. Federal Contractors Must Retain From Three Years Of The End Of The Contract (29 C.F.R. § 1620.32)

1. Basic Employee Data
 - a) Name,
 - b) Address,
 - c) Social Security Number,
 - d) Gender,
 - e) Date of Birth and
 - f) Occupation.
2. Compensation Records
 - g) Daily work schedules,
 - h) Pay Rate,
 - i) Weekly compensation,
 - j) Amounts and dates of actual payment, as well as period of service covered,
 - k) Daily and weekly hours,

- l) Straight time and overtime hours of pay,
- m) Any deductions made from or additions made to an employee's pay,
- n) Merit and Seniority Systems,
- o) Job evaluations,
- p) Any collective bargaining agreements, and
- q) Any descriptions explaining any pay differentials between the sexes.

V. EXECUTIVE ORDER 11246: AFFIRMATIVE ACTION

A. No Specified Period (41 C.F.R. § 60 -1.7)

- 1. Written affirmative action programs, and its supporting documentation, including a workforce analysis and utilization evaluation, and
- 2. Other records relating to EEO and affirmative action compliance, including:
 - a) Records and documents on the nature and use of tests,
 - b) The results of these tests, and
 - c) Any records pertaining to construction industry EEO plans and requirements, if applicable.

VI. FAIR LABOR STANDARDS ACT

A. Three Years From the Date the Record is Made or the Personnel Action is Taken, Whichever is Later (29 C.F.R. § 516.5)

- 1. Basic Employee Data
 - a) Name,
 - b) Address,
 - c) Social Security Number,
 - d) Gender,
 - e) Date of Birth,
 - f) Occupation, and
 - g) Job Classifications

NOTE: Federal Contractors must retain these records for three years past the end of the contract.

2. Compensation Records

- h) Daily work schedules,
- i) Pay Rate,
- j) Weekly compensation,
- k) Amounts and dates of actual payment, as well as period of service covered,
- l) Daily and weekly hours,
- m) Straight time and overtime hours of pay,
- n) Tips,
- o) Any deductions made from or additions made to an employee's pay,
- p) Any individual contracts, including any Belo Agreements, or other working hour agreements,
- q) Any collective bargaining agreements,
- r) Any applicable certificates or notices from Wage and Hour, including those pertaining to learners, apprentices, handicapped or disabled persons, student workers, home workers, child laborers and those employees connected with seasonal overtime pay exceptions,
- s) Any plans, trusts or agreements involving exclusions from the employee's regular rate of pay, and
- t) Any written agreements or memos summarizing the terms of any agreements which base overtime pay on piece work or on a 14-day, 8/80 period with respect to health care employees.

B. Two Years From Last Date Of Entry (29 C.F.R. § 516.6)

1. Supplementary basic employment and earnings records, including employee time and earnings sheets, which include the daily starting and ending times of individual employees,
2. Supplementary wage-rate tables or schedules which show other factors or rates used in computing straight time or overtime rates (i.e., Piece rate scale),
3. Order, shipping and billing records, including customer orders or invoices received, incoming or outgoing shipping or delivery records, bills of lading, and billings to customers, other than individual sales slips, cash register tapes, and the like, which the employer retains or makes in the course of business. Either originals or copies will suffice.
4. Supplementary records pertaining to employee wage deductions or additions, including:
 - a) Individual employee accounts,
 - b) Employee purchase orders,
 - c) Assignments made by employees,
 - d) Copies of deduction or addition statements furnished to employees, and
 - e) Records substantiating costs and charges involved in wage deductions or additions.
5. Any documentation forming the basis of any wage differential to employees of the opposite sex at the same establishment (Equal Pay Act).

NOTE: Many states require employers to retain any certificates of age, or work permits, for minor employees until the employee reaches the age of majority or leaves. Other states may require longer retention periods.

VII. FAMILY AND MEDICAL LEAVE ACT

A. Three Years From The Last Entry In File (29 C.F.R. § 825.500)

1. Basic Employee Data, such as:
 - a) Name,
 - b) Address,
 - c) Occupation or Job Classification,
 - d) Rate or basis of pay,
 - e) Daily and weekly hours worked employees per pay period,
 - f) Terms of compensation,
 - g) Any additions made to or deductions made from employees' wages, and
 - h) Total compensation paid to employees.
2. FMLA Leave Data
 - a) Dates FMLA leave is taken,
 - b) Hours of FMLA taken in increments of less than one full day,
 - c) Copies of employee notices of leave in writing,
 - d) Copies of all notices given to employees under FMLA rules,
 - e) Documents describing employee benefits or employer policies regarding paid and unpaid leave.
 - f) Premium payments of employee benefits, and
 - g) Any records of any dispute regarding designation of leave as FMLA leave.
3. Exempt Employees
 - a) Records of the actual hours worked by employees who are not subject to the FLSA's minimum wage or overtime compliance need not be kept if:

- (1) FMLA eligibility is presumed for any employee who has been employed for at least 12 months and,
- (2) As for purposes of intermittent leave or reduced schedule leave, the employer and the employee agree on the employee's normal schedule or average hours worked each week and maintain a written record of their agreement.

B. Medical Records

1. Any records or documents relating to any medical certifications, recertifications or medical histories of employees or their family members must be maintained in files separate from the employees' personnel records and treated as being confidential. Such information can be released to:
 - a) Supervisors or managers of the employee when any accommodations are needed or if any restrictions have been placed on the employee's duties,
 - b) First aid or medical personnel if the employee's condition might require emergency medical treatment from these persons, and
 - c) Any government officials investigating the employer's FMLA compliance.

VIII. IMMIGRATION REFORM AND CONTROL ACT

A. Longer of Three Years From Hire or One Year From Termination

1. Basic Employee Data
 - a) I-9 Form

IX. PREVAILING WAGE ACTS

A. Davis-Bacon Act

1. Three Years From Date of Last Entry in File or Three Years From End of Contract, Which Either is Longer. (29 C.F.R. § 3.4)
 - a) Basic Employee Data
 - (1) Name,
 - (2) Address, and
 - (3) Occupation or Job Classification.
 - b) Compensation Records

- (1) Pay Rate,
- (2) Amounts and dates of actual payment of wages, as well as period of service covered,
- (3) Daily and weekly hours worked, and
- (4) Any deductions or additions made to employee's pay.

B. Service Contract Act of 1965

1. Three Years From Completion of the Service Contract (29 C.F.R. § 4.6(g))

a) Basic Employee Data

- (1) Name,
- (2) Address,
- (3) Social Security Number, and
- (4) Job or Work Classification.

b) Compensation Records by Employee

- (1) Pay rate,
- (2) Fringe benefits,
- (3) Total daily and weekly compensation,
- (4) Number of daily and weekly hours worked, and
- (5) A list of wages and fringe benefits paid to those classes of employees not included in the wage determination included in this contract.

c) Other Data

- (1) A list of employees who had been furnished to employer by the contract holder, and
- (2) The contract itself.

C. Walsh-Healy Public Contracts Act

1. Three Years From Date of Last Entry in File (41 C.F.R. § 50-201.501)
 - a) Basic Employee Data
 - (1) Name,
 - (2) Address,
 - (3) Gender,
 - (4) Date of birth of each employee,
 - (5) Occupation, and
 - (6) Job Classification.
 - b) Compensation Records
 - (1) Amounts and dates of actual payment of wages, as well as period of service covered,
 - (2) Daily and weekly hours worked, and
 - (3) Straight time and overtime hours of pay.
2. Two Years From Date of Last Entry in File or Last Effective Date (41 C.F.R. § 50-201.501)
 - a) All basic employment and earnings records (i.e., daily time and earning cards or sheets),
 - b) All wage or piece rate tables used to calculate wages and overtime, and
 - c) Work time scheduled which establish days and hours of work.
3. Five Years From the End of the Calendar Year in Which Record Was Made (41 C.F.R. § 50-201.502)
 - a) Health, Medical and Safety Data = Job-related inquiries and illnesses, including logs with dates, summaries of illnesses and details of accidents.
4. Keep Until Employee Leaves or Reaches Edge of Majority.
 - a) Certificates of Age, or Work Permits.

X. NATIONAL LABOR RELATIONS ACT (NLRA)

A. Indefinitely

1. Labor contracts

XI. OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA)

A. Five Years From The End Of The Calendar Year In Which The Record Was Made (29 C.F.R. § 1904.6)

Job-related injuries and illnesses, including OSHA logs with dates, details of the accidents and summaries of the illnesses, lost time, name, address, social security number, age, sex, occupation and department of the affected employee, and final resolution of employee's job status.

B. Records To Be Retained As Long As Person Is Employed By The Employer Plus Thirty (30) Years.

Audiometric test results.

C. Depending On The Test, Forty (40) Years Or the Duration of Employee's Employment Plus Twenty (20) Years After Employee is Employed by Employer, Which Either Is Longer, Or Thirty (30) Years Past The Employee's Tenure With The Employer.

1. Information regarding specific hazards or activities, including location of affected area, substance involved, employees involved, and how substance was exposed to employees,
2. Information regarding the employees' exposure, including dates, number and the results of any tests performed, how any tests were performed and samples taken, types of protective equipment used, and the name, social security number, and job classification of all affected employees, and any
3. Medical records, including any physician opinions, employee complaints, and each employee's work and medical history.

XII. REHABILITATION ACT OF 1973

A. Two Years = Employers with \$150,000 or more in government contracts per year and 150 employees or more,

and

**One Year = Employers with less than these threshold amounts
(41 C.F.R. § 60 - 741.80)**

2. Any personnel or employment records, including:
 - a) Requests for reasonable accommodation,
 - b) Results of any physical examinations,
 - c) Job Advertisements and job postings,
 - d) Applications and resumes,
 - e) Tests and test results,
 - f) Interview notes,
 - g) Rates of pay or other forms of compensation,
 - h) All records relating to hiring, assignments, promotions, demotions, transfers, layoffs, or terminations, and
 - i) Selections for training or apprenticeship programs.
3. Employers must also retain any and all employment records relevant to any complaints or compliance reviews initiated.

XIII. VIETNAM-ERA VETERANS READJUSTMENT ASSISTANCE ACT

A. One Year

All records relating to any complaints made under the Act (38 U.S.C. § 4212(d)).

B. Indefinitely

Any records used by employers to complete Form VETS-100.

XIV. MISCELLANEOUS RECORDKEEPING REQUIREMENTS

A. COBRA

Records of COBRA election or rejection of coverage must be retained for six years under ERISA.

B. EMPLOYEE RETIREMENT INCOME SECURITY ACT (ERISA) OF 1974

1. Six years from end of Plan Year

a) All records supporting disclosures required by the Internal Revenue Service, Department of Labor, and the Pension Benefit Guaranty Corporation, which includes:

(1) Copies of plan descriptions (i.e., health, retirement, pension, etc.) and

(2) Annual reports or summary of annual reports.

C. FEDERAL INSURANCE CONTRIBUTION ACT (FICA), FEDERAL UNEMPLOYMENT TAX ACT (FUTA), AND FEDERAL INCOME TAX WITHHOLDING

1. Four Years From Date Tax is Due or Tax is Paid, Which Either Comes Later

a) Basic Employee Data

(1) Name,

(2) Address,

(3) Social Security Number,

(4) Gender,

(5) Date of Birth,

(6) Occupation and

(7) Job Classifications

NOTE: Federal Contractors must retain these records for three years past the end of the contract.

b) Compensation Records

- (1) Amounts and dates of actual payment of wages, as well as the period of service covered,
- (2) Straight and overtime hours of pay,
- (3) Annuity and pension payments,
- (4) Accident and health plan payments,
- (5) Fringe benefits paid,
- (6) Tips, and
- (7) Deductions and additions to the employee's wages.

NOTE: Federal Contractors must retain these records for three years past the end of the contract.

c) Tax Records

- (1) Amount of wages subject to withholding,
- (2) Agreements with employees to withhold additional taxes,
- (3) Actual taxes withheld and dates withheld, and
- (4) The reasons for any difference between total and actual tax payments.

- d) For only Federal Income Tax Withholding purposes, employers must retain all withholding forms for four years from the date the tax is due or the tax is paid, which ever is later.

D. State Laws

Even though the record keeping requirements for these federal laws may be met, employers must also remember to comply with the record keeping requirements of their home state. Each state has its own set of employment and/or labor laws to some extent, and the record keeping requirements of these various state laws may be longer than is required under federal law.

It is also important to remember that employees may also sue their employers under the common law tort action of breach of contract. In many states, the statute

of limitations for such actions is six years, so many employers retain payroll and personnel records for that period of time in order to be able to defend themselves.

XV. EEOC FORMS

A. Indefinitely Retained

1. Employers may be required to complete EEO forms (EEO-1 to EEO-6), depending on their status as employers. These forms must be retained indefinitely.
2. A listing of these forms is as follows:
 - a) EEO-1 = Employers Information Report
 - (1) Completed annually by all employers with 100 or more employees and all federal contractors with 50 or more employees holding at least \$50,000 or more in annual federal contracts.
 - b) EEO-3 = Local Union Report
 - (1) Completed biennially by all labor unions with 100 or more members.
 - c) EEO-4 = State and Local Government Information Report
 - (1) Completed biennially by all state and local governments covered by Title VII (15 or more employees).
 - d) EEO-5 = Elementary and Secondary School Report
 - (1) Completed biennially by all elementary and secondary schools with 100 or more employees, and some selected schools with 15 or more employees.
 - e) EEO-6 = Higher Education Staff Information Report
 - (1) Completed biennially by all “institutions of higher learning” covered by Title VII (15 or more employees).

For more information, or to receive copies of these forms, contact:

Joint Reporting Committee
P.O. Box 779
Norfolk, VA 23501
(804) 461-1213

XVI. POSTING REQUIREMENTS

A. In General

Many federal laws require employers to post in a “prominent” or “conspicuous” place for employees, job applicants and sometimes union members to view. These posters may be purchased from private commercial vendors or they may be obtained free of charge from the U.S. Government. A consolidated poster may also be obtained from the EEOC which combines many of these laws on one single posting. This poster can be obtained by contacting the EEOC at:

**EEOC
1801 L St., N.W.
Washington, D.C. 20507**

B. Must Be Displayed In A Conspicuous Place For Viewing By Employees And Job Applicants.

1. Age Discrimination in Employment Act of 1967.
2. Americans With Disabilities Act of 1990.
3. Employee Polygraph Protection Act 1988.
4. Executive Order 11246 (as amended).
5. Rehabilitation Act of 1973 (for covered employers).
6. Title VII of the Civil Rights Act of 1964.
7. Vietnam-Era Veterans’ Readjustment Assistance Act of 1974 (for covered government contractors).

C. Must Be Displayed In A Conspicuous Place For Viewing By Employees

1. Equal Pay Act of 1963.
2. Family and Medical Leave Act of 1993.

Notice: Legal Advice Disclaimer

The purpose of these materials is not to act as legal advice but is intended to provide human resource professionals and their managers with a general overview of some of the more important employment and labor laws affecting their departments. The facts of each instance vary to the point that such a brief overview could not possibly be used in place of the advice of legal counsel.

Also, every situation tends to be factually different depending on the circumstances involved, which requires a specific application of the law.

Additionally, employment and labor laws are in a constant state of change by way of either court decisions or the legislature.

Therefore, whenever such issues arise, the advice of an attorney should be sought.

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Scott Warrick, JD, MLHR, CEQC, SHRM-SCP (www.scottwarrick.com & www.scottwarrickemploymentlaw.com) is both a practicing Employment Law Attorney and Human Resource Professional with almost 40 years of hands-on experience. Scott uses his unique background to help organizations get where they want to go, which includes coaching and training managers and employees in his own unique, practical, entertaining and humorous style.

That is why Scott has been described as “The Comedian Trainer.”

[Scott Trains Managers & Employees ON-SITE in over 50 topics](#) ... all of which can be customized **FOR YOU!**

LET SCOTT DESIGN A PROGRAM FOR YOU!

Scott combines the areas of law and human resources to help organizations in “Solving Employee Problems **BEFORE** They Happen.” Scott’s goal is **NOT** to win lawsuits. Instead, Scott’s goal is to **PREVENT THEM** while improving **EMPLOYEE MORALE**.

Scott’s book, **“Solve Employee Problems Before They Start: Resolving Conflict in the Real World”** is #1 for New Releases on Amazon for Conflict Resolution books!

Scott’s **“Employment Law Videos”** on the ADA, FMLA, FLSA and Harassment, **“The Human Resource Professional’s Complete Guide To Federal Employment And Labor Law”** & Scott’s **“Do It Yourself HR Department”** are favorites for anyone wanting to learn Employment Law and run an HR Department.

Scott has been named one of Business First’s 20 People To Know In HR, CEO Magazine’s 2008 Human Resources “Superstar,” a Nationally Certified Emotional Intelligence Instructor and a SHRM National Diversity Conference Presenter in 2003, 2006, 2007, 2008 and 2012.

Scott has also received the Human Resource Association of Central Ohio’s Linda Kerns Award for Outstanding Creativity in the Field of HR Management and the Ohio State Human Resource Council’s David Prize for Creativity in HR Management.

Scott’s academic background and awards include Capital University College of Law (Class Valedictorian (1st out of 233) and Summa Cum Laude), Master of Labor & Human Resources and B.A. in Organizational Communication from The Ohio State University.

For more information on Scott, just go to www.scottwarrick.com & www.scottwarrickemploymentlaw.com.



The image shows an Amazon banner for the book "Solve Employee Problems Before They Start" by Scott Warrick. On the left is the book cover, which features a blue background with a yellow border and the title in white and yellow text. Below the cover, the text reads: "Solve Employee Problems Before They Start... Scott Warrick Paperback \$27.99 Release Date: June 21, 2019". To the right of the cover, the text says: "Amazon Hot New Releases: Our Best-Selling New Releases." Below this is a badge that says "#1 New Release" above the Amazon logo. Further down, it states: "Scott Warrick's New Book By SHRM Is Ranked As The #1 New Release in Business Conflict Resolution & Mediation".