

FEDERAL RECORD RETENTION REQUIREMENTS

Type of Record	Period	Notes	Source of Law
Notices of Job Opportunities	1 year	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.	41 C.F.R. § 60-741.80
Application Materials	1 year	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. As of February 6, 2006, new 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; Guide, page 338.
I-9 Forms	3 years	For unhired applicants, 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; Guide, page 324.
Employment Testing	1 year	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.	41 C.F.R. § 60-741.80
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 year	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.	41 C.F.R. § 60-741.80

Type of Record	Period	Notes	Source of Law
Personnel Decisions/Policies <ul style="list-style-type: none"> • General • If possibly relevant to a pay differentiation between sexes • Federal contractors or subcontractors 	1 year 2 years 2 years	Records related to hiring, promotion, demotion, transfer, and selection for training, layoff, recall, discharge, or termination, including merit and seniority systems. 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. 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.	29 C.F.R. § 1602.14 (Title VII, ADA) 29 C.F.R. § 1627.3(b)(1)(ii) (ADEA) 29 C.F.R. § 1620.32 (Equal Pay Act) 41 C.F.R. § 60-741.80
Payroll and Compensation <ul style="list-style-type: none"> • Basic Payroll Records • Supplemental Payroll Records 	3 years 2 years	Employers must maintain payroll records with name, address, D.O.B. (if under 19), wages, hours, sex, occupation, and other terms/practices of employment. 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. §§ 516..2.5 (FLSA) 29 C.F.R. 1627.3(a) (ADEA); Guide, pages 124-126. 29 C.F.R. § 516.6 (FLSA); Guide pages 124-126.
EEO Recording/Reporting <ul style="list-style-type: none"> • 100 or more Ees: EEO-1 • Apprenticeships: EEO-2 <ul style="list-style-type: none"> • Chronological Apps Records • Others used only for EEO-2 • Higher Education: EEO-6 	Most recent. Most recent. 2 years 1 year 3 years	<u>Note:</u> If employer maintains post-employment records of race/ethnicity for purposes of filling out EEO-1, they should be kept separately from the basic file used for personnel decisions. 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 yrs or period of successful applicant’s apprenticeship, whichever is longer. 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.	29 C.F.R. §§ 1602.7, .13 (Title VII) 29 C.F.R. § 1602.15 (Title VII) 29 C.F.R. § 1602.20, .21 (Title VII) 29 C.F.R. § 1602.21 (Title VII) 29 C.F.R. § 1602.50 (Title VII)

Type of Record	Period	Notes	Source of Law
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
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)
Benefits-Related Records	6 years	From date of filings or from date filing would be due but for an exemption or simplification. Includes written plan documents, summary plan documents, annual reports, modifications to the plan, and other documents related to the benefit plan including vouchers, worksheets, receipts, and applicable resolutions.	29 U.S.C. §§ 1027, 1021 (ERISA)
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)

Type of Record	Period	Notes	Source of Law
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; Guide, page 334.

* 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 deemed to be current as of July 2009. It is offered by Proskauer Rose 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@proskauer.com. ©2009 Proskauer Rose LLP. All rights reserved.