

## HR Record Retention – Critical and Complicated

Whether you have one employee or many in your office, part of your responsibility as an employer is personnel record keeping. Rules and regulations abound about what to keep and how long to keep information. While there is no one law that states clearly what you should and should not keep, there is an “alphabet soup” of regulations that require retention. To make matters more complicated, in many cases there are both state and federal regulations – and they may not be the same. Here are a few guidelines to keep in mind.

1. Check with an employment law attorney who practices in your state if you have questions. Good record keeping is critical to protecting your organization from legal tangles and an attorney can help you establish “best practices.”
2. All records should be stored in a secured place, in a locked file cabinet.
3. Be aware that keeping everything is not a good practice. You need to keep records that comply with regulations and may get rid of other information that is no longer required.
4. Realize that you **CANNOT** destroy **any** records after you have been contacted and told that someone is bringing legal action against your organization or after an action is brought.
5. A few of the federal “alphabet soup” regulations to know about include:
  - The Americans with Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA) and the Fair Labor Standards Act (FLSA) all expect you to keep any job advertisements and postings for one year.
  - The ADA, the Rehabilitation Act, Title VII of the Civil Rights Act, and the ADEA require employers to keep all job applications and resumes on file for one year. In addition, the ADEA requires you to retain paperwork for people over 40 for at least two-years. Since it is illegal to ask an applicant’s age, consider keeping all applications and resumes for at least two years. If you hire the person, keep these documents in the personnel file for at least two years after the employee no longer works for you.
  - The ADA, the ADEA, and Title VII all require that you keep all records related to promotion, demotion, transfers, discipline and terminations for the duration of employments and then for one additional year.
  - The FLSA and the Equal Pay Act require you to keep basic employment and earnings records for two years and payroll records for three years although it is a good idea to keep both of these for four years in case of an audit.
  - Information relating to tax withholdings must be kept for four years according to the Federal Insurance Contribution Act (FICA).
  - Under the Immigration Reform and Control Act of 1986 (IRCA), I-9 forms must be retained for three years after employment begins or one year following termination – whichever is later. I-9s should be kept in a separate file.
  - OSHA requires that information pertaining to job-related illness and injury be kept on file for five years following the end of employment. This and any information related to medical conditions, leaves, or special accommodations must be kept in separate files.

Finally, remember that these are federal guidelines; the state in which your business is located may require you to keep records longer.

Administration Matters May 2011

<http://www.elca.org/Who-We-Are/Our-Three-Expressions>