

## RECORD RETENTION - HOW LONG IS LONG ENOUGH?

Even with advances in technology and the ability to store documents in electronic form, administrators often ask how long they are required to store various records. The following will provide some guidance and outline the minimum legal requirements that apply to various employment and personnel records.

**NOTE:** The intentional or negligent loss or destruction of evidence, including records in any form, which impairs a litigant's ability to prove or defend a claim, could lead to court ordered sanctions and unfavorable litigation results. If a lawsuit has been filed or is likely to be filed, consult with your solicitor before destroying any records or documents.

### ↗ One Year

The following records must be retained for a minimum of one year under the Age Discrimination In Employment Act (ADEA), the Americans With Disabilities Act (ADA), and Title VII of the Civil Rights Act of 1964, as follows:

- job applications (including temporary employment)
- personnel records relating to promotion, demotion, transfer, selection for training, lay-off, recall, or discharge
- job advertisements and postings
- copies of employee benefit plans, seniority system or merit system
- ADA requests for reasonable accommodation made by an employee

The one (1) year time period runs from the making of the record or the taking of the personnel action, whichever occurs last. Where a charge or lawsuit is filed under either ADA or Title VII, all relevant records must be kept until final disposition of the charge or lawsuit. This general rule should also be applied under ADEA. The Pennsylvania Human Relations Act (PHRA) does not contain a record retention requirement. Therefore, the requirements of these federal laws control.

### ↗ Two Years

It is recommended to retain the above records for a minimum of two years because potential lawsuits under Section 1983 of the Civil Rights Act and other statutes, as well as negligence actions, may be brought up to two (2) years after an injury has occurred.

### ↗ Three Years

- The ADEA, the Equal Pay Act and the Fair Labor Standards Act (FLSA) require a three (3) year retention period for payroll records showing the employee's name, address, date of birth, occupation, rates of pay and weekly compensation.
- The Family and Medical Leave Act (FMLA), requires a three year retention period for records that contain information such as:
  - basic employee data (the same as ADEA payroll data);
  - dates of leave taken by eligible employees;
  - hours of leave for intermittent leave;

- copies of employee notices and documents describing employee benefits or policies and practices regarding paid and unpaid leave;
- records of premium payments of employee benefits;
- and records of any dispute regarding the designation of leave.

- Polygraph test results and the reasons for administering the test must be maintained for a three (3) year period under the Federal Employee Polygraph Protection Act.
- Under the Immigration Reform and Control Act (“IRCA”) the information contained in the INS Form I-9 (Employee Eligibility Verification Form) must be maintained for a period of three (3) years after the date of hire, or one (1) year after the date of termination of employment, whichever is later.

#### ↗ Four Years

- Four year retention from the date the tax is due or paid is required under the Federal Insurance Contribution Act (FICA) for records that contain the following:
  - employee’s name, address and Social Security number
  - the date, amount of FICA paid and period of services paid for
  - amount of pay taxable as wages and reasons for any discrepancies

- amount of tax collected and date of collection.

- Section 766 of the Pennsylvania Unemployment Compensation Law, 43, P.S. §766(a), requires an employer to maintain employment records for a period of four (4) years after contributions relating to the employee have been paid.

#### ↗ Five Years

- The Federal Occupational Safety and Health Act (OSHA) requires a retention of five (5) years for any record which constitutes a log of occupational injuries and illnesses. Any medical records of an employee related to occupational injury and illness, or record of exposure to toxic substances must be maintained for the period of the employee’s job tenure, plus an additional thirty (30) years.
- The Pennsylvania Worker and Community Right-To-Know Act also addresses the retention of health and exposure records and requires Pennsylvania employers to keep records in compliance with the OSHA regulations.

This opinion is limited to the types of records indicated above and does not address other records maintained by a District such as student records, financial records, or records required by federal or state law such as No Child Left Behind or the Individuals with Disabilities Education Act (IDEA) for compliance reporting. If you have questions or remain in doubt regarding the retention period for any records, please contact one of our school attorneys. For more education news, log onto [www.mbm-law.net](http://www.mbm-law.net).