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;

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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.