

Is Your Company Keeping Records as Legally Required?

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A client just asked me in the course of moving offices what employee files the company needs to retain. What I've unearthed indicates that this is complicated. (Be sure to check with a lawyer to confirm that these requirements are in effect at the time the company is deciding this issue. Never rely on the internet for legal advice ... I have stories.) Here are some requirements:

IRS regulations dictate that companies retain all employee files reflecting payments for at least **four years** after the employment tax came due or was paid, whichever is later.

The Department of Labor requires employers to retain 14 different types of documents! The Department of Labor regulations requires companies to retain all payroll records and collective bargaining agreements for **three years**. All-time cards and piece work tickets, wage rate tables, work and time schedules, and records of additions to or deductions from wages must be kept for **two years**. Form I-9s for every employee must be retained for **three years** after the employee was hired or **one year** after termination, whichever is later.

Employers must retain employment applications and related documents, records regarding transfers, demotions, layoffs, selection for apprenticeships or training, and requests for accommodations under state or federal law (such as for disabilities) for at least **one year** from the date of making the record or the action reflected in the document. In the case of terminated employees, the records must be kept for **one-year** post-termination. Where a charge of discrimination has been filed under Title VII, the ADA, or GINA, or where the EEOC or the Attorney General has sued the employer under those laws, the employer must retain all records related to the charge or action until **final disposition** of the charge or action. The date of final disposition is 91 days of the complaining employee's receipt of a Right to Sue Notice from the EEOC or the date on which the litigation ends.

Keep benefits records such as plan documents, 401(k) forms, COBRA documentation, benefits election forms, plan termination records, and other such documentation for **six years** following the employee's termination.

There are more requirements if the company has had any workers employed by immigration visa or the company has been a federal contractor ... I won't go there today. Good luck organizing your documents! Ask me about document retention policies and why a company should or should not retain documents for longer than legally required.