

# PERSONNEL NOTEBOOK

For Your Most Important Resource—The Human Resource

Prepared By:

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### KEEP THOSE PERSONNEL FILES But for how long?

Clutter could be described as useless items that take up needed space. But some of us feel that keeping everything forever is worth the space because it *might* someday be useful.

Most of us, however, would prefer to throw things out when they are no longer needed.

When it comes to personnel files most of us tend to follow those in the first group. We keep every scrap of paper forever.

Actually, we should clean out those files every now and then. But why aren't we doing this already? And how do we know just what to toss and what to keep?

The answer lies in the smorgasbord of federal laws that overlap and often seem to contradict each other.

The key to understanding those laws is first to understand that:

**A.** Each law has a stand-alone set of rules that will tell you what to keep and for how long. For example, if you are being investigated for a potential FMLA violation, you must produce records that go back three years. But if the investigation is for a potential violation of the Rehabilitation Act the records you must produce need only go back for one year.

However, if you have been charged with a violation of the Sarbanes-Oxley Act the legal records that are produced *from the case* must be kept indefinitely!

**B.** It is valuable to know the requirements for each of these laws, but as a general rule personnel files should be kept for three years after employment. (See item #5 FLSA)

#### Legal Requirements

Different laws cover different documents and apply to different employers. In many cases the law may not apply to you. For example, if you have less than 50 employees, you are not subject to the FMLA requirements. And if you have no government funded contracts you are not subject to The Walsh-Healey Act.

#### **1. Title VII Discrimination**

**A.** Covers discrimination on the basis of race, color, religion, national origin or sex.

Title VII records include resumes, applications, test scores, layoffs, promotions, demotions, transfers and compensation documents.

Keep for: Keep all such records for one year after employment.

**B. Discrimination Charges**

Includes all charges and records of charging employee and witnesses as well as the records of all employees in the same job types.

Keep For: One year after the charges are resolved. (Most Attorneys will advise keeping the records for seven years for usefulness in future cases.)

**C. Apprenticeship Records**

All personnel records and test scores.

Keep for: Duration of the Apprenticeship Program, but at least two years.

**2. Age Discrimination In Employment Act (ADEA)**

**A. Payroll records**

Keep For: Three years

**B. Employee Benefit Plans**

All records and list of participants

Keep For: One year longer than the plan

**C. Temporary Employment Positions**

Keep For: 90 days after employment

**3. Family and Medical Leave Act (FMLA)**

All related documents including leave requests, leave approvals, all work hours, wages, overtime and deductions of employees requesting FMLA and a copy of the leave policies.

Keep for: Three years

**4. Occupational Safety and Health Act (OSHA)**

**A. OSHA Form 200 and OSHA form 101**

Keep For: Five years

**B. Medical Exams**

Keep For: 30 days after employment

**C. Records used to monitor employee exposures to hazardous materials**

Keep For: Thirty (30) Years

**5. Fair Labor Standards Act (FLSA)**

Employee Identification and all payroll records including hours worked, pay rates, wages paid, time cards and work schedules.

Keep for: Although a few specific items call for a shorter time, keep all such records for three years.

**6. Equal Pay Act**

Hours worked, pay rates, total wages, deductions, collective bargaining agreements, time cards, time sheets, merit pay systems, seniority systems and the posted definition of your established workweek.

Keep for: Although a few specific items call for a shorter time, keep all such records for three years.

**7. Rehabilitation Act**

**A. Personnel files of all disabled employees and applicants**

Keep For: One year

**B. Records related to any legal actions**

Keep For: Until resolution of the action

**8. Employment Retirement Income Security Act (ERISA)**

**A.** All federal documents filed in support of retirement plan

Keep For: Six years after the filing dates

**B.** All employee records related to benefits

Keep For: Duration of plan participation

**9. Immigration Reform and Control Act (IRCA)**

I-9 Forms

Keep For: Three years from date of hire or one year after employment.

**10. Davis Bacon Act**

Payroll records of all employees working on federally funded construction projects

Keep For: Three years after completion of contract

**11 Walsh Healey Public Contracts Act**

**A.** Basic employment and wage records of all employees working for companies that provide products or services to the federal government.

Keep For: Two years after last transaction

**B.** Employee information such as address, phone number, employment dates

Keep For: Three years from last transaction

**12. Sarbanes-Oxley Act**

Protects employees in “Whistleblower” activities. All records relevant to legal actions.

Keep For: Indefinitely, after an investigation begins.

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**Have An Employment Question?**

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