

# FEDERAL RECORDKEEPING REQUIREMENTS



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It is easy for employers to be overwhelmed by the various recordkeeping and retention requirements mandated by federal law. In many instances, employers also have to contend with additional requirements set forth by state law. The following chart is a summary of the recordkeeping and retention requirements set forth under federal law. Because many of the same records are required to be maintained under several different federal statutes, this chart sorts the information by record type, rather than by statute. While some of the requirements will apply to most employers, there are some that only apply to federal contractors.

Note that the chart reflects the minimum duration a particular record must be retained under federal law. When developing or amending your organization's recordkeeping and retention procedures, consult with legal counsel.

Brokers and their clients who are registered to receive ThinkHR services may contact the HR Hotline at **877-225-1101** with questions.

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Type of Records	Description of Records	Duration	Statutory Authority
Affirmative Action Records +	<p>Federal contractors or subcontractors with fewer than 150 employees or a contract of less than \$150,000 must keep the following:</p> <ul style="list-style-type: none"> <li>• Job descriptions.</li> <li>• Job postings and advertisements.</li> <li>• Records of job offers.</li> <li>• Applications and résumés.</li> <li>• Interview notes.</li> <li>• Tests and test results.</li> <li>• Written employment policies and procedures.</li> <li>• Personnel files.</li> </ul>	1 year from the date of the making of the personnel record or personnel action, whichever occurs later.	<p>Executive Order 112461<sup>1</sup></p> <p>Rehabilitation Act<sup>2</sup></p> <p>Vietnam Era Veterans' Readjustment Act (VEVRAA)<sup>3</sup></p>

+ These requirements only apply to federal supply and service contractors and subcontractors that employ 50 or more persons and have a contract of \$50,000 or more.

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Type of Records	Description of Records	Duration	Statutory Authority
Affirmative Action Records +	<p><b>Important.</b> For any record contractors maintain, they must be able to identify the gender, race, and ethnicity of each employee and where possible, the gender, race, and ethnicity of each applicant or Internet applicant, whichever is applicable to the particular position</p> <hr/> <p>Federal contractors or subcontractors with 150 or more employees or that have a contract of \$150,000 or more must keep the same records described above.</p> <hr/> <p>Written affirmative action plans (AAP) including supporting documentation, analyses, related records or raw data, and tests given to employees including documents on their use and validation studies.</p>	<hr/> <p>2 years from the date of the making of the personnel record or personnel action, whichever occurs later.</p> <hr/> <p>2 years</p>	
Apprentice Programs	A chronological list of names and addresses of all applicants, dates of application, sex, and minority group identification, test scores, and any other records pertaining to applicants.	2 years from date application received or period of successful applicant's apprenticeship, whichever is longer.	Title VII of the Civil Rights Act <sup>4</sup>
Benefits Records	<b>Data.</b> All data used to support summary plan descriptions and other records supporting plans or reports, including vouchers, worksheets, receipts and applicable resolutions.	Generally 6 years from filing (or date the record would have been filed but for exemption or simplified reporting requirement). For detailed guidance on ERISA covered benefits, go <a href="#">here</a> .	<p>Employee Retirement Income Security Act (ERISA)<sup>5</sup></p> <p>Consolidated Omnibus Budget Reconciliation Act (COBRA)<sup>6</sup></p> <p>Age Discrimination in Employment Act (ADEA)<sup>7</sup></p>

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Type of Records	Description of Records	Duration	Statutory Authority
Benefits Records	<p><b>Employee/Beneficiary Records.</b> Records concerning employee benefits that are sufficient to determine the benefits due or which may become due.</p> <p><b>COBRA Records.</b> Copies of COBRA notices, acknowledgments that COBRA notices were received, documents relating to any instance in which COBRA is not offered due to gross misconduct, and COBRA-related correspondence.</p>	<p>Specifically, retirement plan records (like 401(k)s) should be kept indefinitely, as long as they may be relevant to a determination of benefit entitlements.</p> <p>COBRA is part of ERISA; therefore ERISA requirements still apply. COBRA records are critical for cases where a person has filed a claim that COBRA was not processed correctly. COBRA regulations are enforced by the IRS Reference Links - <a href="#">IRS Code §§4980B(b)2 and 4980B(c)4(a)</a> and <a href="#">ERISA §502(c)(7)</a></p>	
Business Records	<p><b>Sales and Purchase Records.</b> Records showing total dollar volume of sales or business and total volume of goods purchased or received.</p> <p><b>Order, Shipping, and Billing Records.</b> Records of customer orders or invoices, incoming or outgoing shipping or delivery records, bills of lading and billings to customers (not individual sales slips or cash register tapes) kept in the ordinary course of business.</p>	<p>3 years</p> <hr/> <p>2 years</p>	<p><a href="#">Fair Labor Standards Act (FLSA)</a><sup>8</sup></p> <p><a href="#">Internal Revenue Service Publication 583: Starting a Business and Keeping Records</a></p>
Drug Testing Records	Employers covered under the Department of Transportation's drug and alcohol testing regulations must maintain records pertaining to: test results, testing process administration, return-to-duty process administration, employee training and supervisor training.	<p>Depending on the particular industry and record, employers may need to retain the record from 1 to 5 years.</p> <p>For additional information, please consult the Office of Drug &amp; Alcohol Policy &amp; Compliance guidance <a href="#">Employer Record Keeping Requirements For Drug &amp; Alcohol Testing Information</a>.</p>	<a href="#">Omnibus Transportation Employee Testing Act</a> <sup>9</sup>

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Type of Records	Description of Records	Duration	Statutory Authority
Family and Medical Leave Act Records	<p>Employers who have FMLA-eligible employees must maintain the following:</p> <ul style="list-style-type: none"> <li>• Basic payroll and identifying employee data;</li> <li>• Dates FMLA leave is taken by FMLA-eligible employees (leave must be designated in records as FMLA leave), including the hours of the leave, if FMLA leave is taken in increments of less than one full day;</li> <li>• Copies of employee notices of leave provided to the employer under the FMLA, if in writing, and copies of all eligibility notices given to employees as required under the FMLA (copies may be maintained in employee personnel files);</li> <li>• Any documents (including written and electronic records) describing employee benefits or employer policies and practices regarding the taking of paid and unpaid leave;</li> <li>• Premium payments of employee benefits;</li> <li>• Records of any dispute between the employer and an eligible employee regarding designation of leave as FMLA leave, including any written statement from the employer or employee of the reasons for designation and for the disagreement;</li> <li>• Records and documents relating to medical certifications or recertification.</li> </ul>	3 years from the date the leave ended.	<p>Family and Medical Leave Act (FMLA)<sup>10</sup></p> <p>Department of Labor FMLA Guide</p>

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Type of Records	Description of Records	Duration	Statutory Authority
Federal Contractors and Subcontractors, Federal Service Contracts	<p>For each employee working on a service contract, records showing:</p> <ul style="list-style-type: none"> <li>• Name, address, and social security number;</li> <li>• Work classification, wage rates, and fringe benefits provided (or cash equivalent payments in lieu of fringe benefits);</li> <li>• Total daily and weekly compensation;</li> <li>• Number of daily and weekly hours worked;</li> <li>• Any deductions, rebates, or refunds from compensation; and</li> <li>• Any list of a predecessor contractor's employees which had been furnished showing employee's length of service information.</li> </ul>	3 years from completion of the work.	<a href="#">McNamara-O'Hara Service Contract Act (SCA)</a> <sup>11</sup>
Government Reports	<ul style="list-style-type: none"> <li>• EEO-1 Reports</li> <li>• Vets-100 Reports</li> </ul>	1 year	<a href="#">E.O. 11246</a> <sup>1</sup>
Immigration	Employment Eligibility Verification Form I-9	3 years after date of hire or 1 year from termination of employment, whichever is later.	<a href="#">Immigration Reform and Control Act (IRCA)</a> <sup>12</sup>
Income Tax Withholding	Records relating to FICA and FUTA income tax withholdings.	4 years from date tax is due or paid. (See details in <a href="#">IRS Publication 583</a> )	<a href="#">Federal Insurance Contributions Act (FICA)</a> <sup>13</sup>  <a href="#">Federal Unemployment Tax Act (FUTA)</a> <sup>14</sup>

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Type of Records	Description of Records	Duration	Statutory Authority
Internet Applications	<p>Any and all expressions of interest through the Internet or related technologies as to which the employer or government contractor considered the individual for a particular position, except for searches of external résumé data bases.</p> <ul style="list-style-type: none"> <li>• If the contractor is using an internal résumé database the contractor must maintain a record of each résumé added to the database, the date added, the position for which each search of the database was made, and for each such search, the search criteria and the date of the search.</li> <li>• If the contractor is using an external résumé database, the contractor must maintain must maintain a record of the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used, the date of the search, and the resumes of any job seekers who met the basic qualifications for the particular position who are considered by the contractor.</li> </ul>	<p>One year after the record is created or the personnel action described is taken, whichever is later.</p> <p><b>Two years for:</b></p> <ul style="list-style-type: none"> <li>• Government contractors or subcontractors with 150 or more employees; or</li> <li>• A government contract of \$150,000 or more.</li> </ul>	E.O. 11246 <sup>1</sup>

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Type of Records	Description of Records	Duration	Statutory Authority
Minor Employees	<p>Certificates of age for all minors that include the following information:</p> <ul style="list-style-type: none"> <li>• Name and address;</li> <li>• Place and date of birth;</li> <li>• Sex;</li> <li>• Signature;</li> <li>• Name and address of minor's parents;</li> <li>• Name and address of employer;</li> <li>• Industry of employer;</li> <li>• Occupation of minor;</li> <li>• Signature of issuing officer; and</li> <li>• Date and place of issuance.</li> </ul>	3 years from termination of employment.	FLSA <sup>8</sup>
Miscellaneous Documents (Agreements, Contracts, Certificates, Benefits)	Written records relating to employee benefits plans, collective bargaining agreements, seniority and/or merit systems, plans, trusts, individual employment contracts, written FLSA agreements, certificates authorizing payment at less than minimum wage	3 years from end of plan or system.	FLSA <sup>8</sup> The Equal Pay Act (EPA) <sup>15</sup>

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Type of Records	Description of Records	Duration	Statutory Authority
OSHA Records	<p>The following OSHA Records:</p> <ul style="list-style-type: none"> <li>• OSHA Form 101, Supplementary Record of Occupational Injuries and Illnesses (Replaced by Form 301)</li> <li>• OSHA Form 200, Log and Summary for Occupational Injuries and Illnesses (Replaced by Forms 300 and 300A)</li> <li>• <a href="#">OSHA Form 300, Log of Work-Related Injury and Illnesses</a></li> <li>• <a href="#">OSHA Form 300A, Summary of Work-Related Injuries and Illnesses</a></li> </ul> <hr/> <ul style="list-style-type: none"> <li>• <a href="#">OSHA Form 301, Injury and Illness Incident Report</a></li> </ul> <ul style="list-style-type: none"> <li>• Employee medical records, or analyses thereof, pertaining to employees exposed to toxic substances or harmful physical agents</li> </ul> <hr/> <ul style="list-style-type: none"> <li>• Employee exposure records, or analyses thereof, pertaining to employees exposed to toxic substances or harmful physical agents (includes records of any personal or area monitoring of occupational exposure to hazardous materials)</li> </ul>	<p>One year after the record is created or the personnel action described is taken, whichever is later.</p> <p><b>Two years for:</b></p> <ul style="list-style-type: none"> <li>• Government contractors or subcontractors with 150 or more employees; or</li> <li>• A government contract of \$150,000 or more.</li> </ul> <hr/> <p>Duration of employment, plus 30 years.</p> <hr/> <p>Duration of employment, plus 30 years For more information see:</p> <ul style="list-style-type: none"> <li>• <a href="#">OSHA Injury and Illness Recordkeeping and Reporting Requirements.</a></li> <li>• <a href="#">OSHA Recordkeeping Advisor.</a></li> <li>• <a href="#">OSHA Recordkeeping Handbook.</a></li> </ul>	<p><a href="#">Occupational Safety and Health Act (OSH Act)</a><sup>16</sup></p> <p><a href="#">Walsh-Healy Public Contracts Act (PCA)</a><sup>17</sup></p>

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Type of Records	Description of Records	Duration	Statutory Authority
Payroll Records	<p>For each employee, records that contain the following:</p> <ul style="list-style-type: none"> <li>• Employee's full name and social security number.</li> <li>• Address, including zip code.</li> <li>• Birth date, if younger than 19.</li> <li>• Sex and occupation.</li> <li>• Time and day of week when employee's workweek begins.</li> <li>• Hours worked each day.</li> <li>• Total hours worked each workweek.</li> <li>• Basis on which employee's wages are paid (hourly, weekly rate, piecework)</li> <li>• Regular hourly pay rate.</li> <li>• Total daily or weekly straight-time earnings.</li> <li>• Total overtime earnings for the workweek.</li> <li>• All additions to or deductions from the employee's wages.</li> <li>• Total wages paid each pay period.</li> <li>• Date of payment and the pay period covered by the payment.</li> </ul>	<p>3 years from termination of employment or completion of the contract.</p> <p>For more information see: <a href="#">Recordkeeping Requirements Under the FLSA.</a></p>	<p><a href="#">ADEA</a><sup>7</sup></p> <p><a href="#">Davis-Bacon and Related Acts (DBRA)</a><sup>18</sup></p> <p><a href="#">EPA</a><sup>15</sup></p> <p><a href="#">FLSA</a><sup>8</sup></p> <p><a href="#">FMLA</a><sup>10</sup></p> <p><a href="#">PCA</a><sup>17</sup></p> <p><a href="#">SCA</a><sup>11</sup></p> <p><a href="#">State Specific Wage and Hour Laws</a></p>

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Personnel Records	<p>Records including:</p> <ul style="list-style-type: none"> <li>• Job applications.</li> <li>• Résumés.</li> <li>• Job advertisements.</li> <li>• Job descriptions.</li> <li>• Interview records.</li> <li>• Information related to hiring, promotion, demotion, transfer, lay-off, or termination.</li> <li>• Payroll records including rates of pay or other terms of compensation.</li> <li>• Employment handbooks.</li> <li>• Notice of and criteria for selection for training or apprenticeship programs.</li> <li>• Training records.</li> <li>• Employee evaluations.</li> <li>• Requests for reasonable accommodation.</li> <li>• Summaries of applicants' qualifications.</li> <li>• Lists of job criteria, identification of minority and female applicants, opportunities for overtime</li> <li>• Information related to incentive plans, merit systems, and seniority systems.</li> </ul> <p>Employers with 100 or more employees: Copy of EEO-1, Employer Information Report.</p>	<p>1 year from the date of the personnel action.</p> <p>If enforcement action is brought against an employer, records must be kept until the final disposition of action.</p> <p>Copy of the most recent report filed for each reporting unit must be retained at each such unit or at company or divisional headquarters.</p>	<p>ADEA<sup>7</sup></p> <p>Americans with Disabilities Act (ADA)<sup>19</sup></p> <p>Title VII<sup>4</sup></p> <p>DBRA<sup>18</sup></p> <p>E.O. 11246<sup>1</sup></p> <p>Rehabilitation Act <sup>2</sup></p> <p>SCA<sup>11</sup></p> <p>VEVRAA<sup>3</sup></p> <p>PCA<sup>17</sup></p>

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Polygraph Tests	A copy of the statement concerning the activity or incident under investigation and basis for testing particular employee, all opinions, reports, charts, written questions, lists, or other records relating to the test furnished by the examiner, records identifying the loss or injury and the access of the examinee to the loss or injury, identity of persons examined, copy of the written statement of time and place of examination and the examinee's right to consult counsel, notice to examiner of persons to be examined, and a record of the number of exams conducted each day as well as duration of examinations.	3 years from the date of exam (or from date the exam is requested if no exam is conducted).	Employee Polygraph Protection Act (EPPA) <sup>20</sup>
Polygraph Tests Records of Self-Identifying Veterans and Individuals with Disabilities	Government contractors must keep a separate file on applicants and employees that self-identify as disabled veterans or Vietnam-Era veterans, or individuals with disabilities	2 years	Rehabilitation Act <sup>2</sup> VEVRAA <sup>3</sup>
Records Relating to Charge, Complaint, Enforcement Action, or Compliance Review	Personnel or employment records relating to aggrieved person and to all other employees holding positions similar to that held by aggrieved person, including application forms and test papers completed by aggrieved person and all other persons applying for same position as aggrieved person.	Until final disposition of the charge, complaint, review or action.	Title VII <sup>4</sup> ADEA <sup>7</sup> Americans with Disabilities Act Amendments Act of 2008 (ADAAA) <sup>21</sup> Rehabilitation Act <sup>2</sup> E.O. 11246 <sup>1</sup> VEVRAA <sup>3</sup>

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Records Relating to Employment Tests, Employment Opportunities	<p>Records relating to:</p> <ul style="list-style-type: none"> <li>• Job orders submitted by the employer to an employment agency or labor organization for recruitment of personnel for job openings;</li> <li>• Test papers completed by applicants or candidates for any position which disclose the results of any employer-administered aptitude or other employment test considered by the employer in connection with any personnel action;</li> <li>• The results of any physical examination where such examination is considered by the employer in connection with any personnel action;</li> <li>• Any advertisements or notices to the public or to employees relating to job openings, promotions, training programs, or opportunities for overtime work.</li> </ul>	<p>One year after the record is created or the personnel action described is taken, whichever is later.</p> <p>Two years for:</p> <ul style="list-style-type: none"> <li>• Government contractors or subcontractors with 150 or more employees; or</li> <li>• A government contract of \$150,000 or more.</li> </ul>	<p>ADEA<sup>7</sup></p> <p>Rehabilitation Act <sup>2</sup></p> <p>VEVRAA<sup>3</sup></p> <p>E.O. 11246<sup>1</sup></p>
Time Cards and Schedules	Records on which wage computations are based (time cards and piece work tickets, wage rate tables, work and time schedules).	Two years from termination of employment.	FMLA <sup>10</sup> FLSA <sup>8</sup>
Wage Differentials	Records explaining/supporting any wage differentials (including job descriptions, job evaluations, merit, incentive, and seniority systems, etc.)	Two years from the date the record was made.	EPA <sup>15</sup>

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- <sup>1</sup> E.O. 11246 generally applies to employers who are government contractors with an annual contract of \$10,000 or more. However, the recordkeeping requirements of E.O. 11246 are applicable to government contractors with more than 50 employees and a single government contract in excess of \$50,000.
- <sup>2</sup> The Rehabilitation Act applies to employers with federal contracts in excess of \$10,000.
- <sup>3</sup> VEVRAA applies to employers with federal contracts of \$100,000 or more.
- <sup>4</sup> Title VII applies to employers with 15 or more employees.
- <sup>5</sup> ERISA covers retirement, health, and other welfare benefit plans such as life, disability and apprenticeship plans.
- <sup>6</sup> COBRA generally applies to all private-sector group health plans maintained by employers that have at least 20 employees on more than 50 percent of its typical business days in the previous calendar year.
- <sup>7</sup> The ADEA generally applies to employees with 20 or more employees.
- <sup>8</sup> The FLSA generally applies to employers with 2 or more employees handling goods that have moved in commerce.
- <sup>9</sup> The Omnibus Transportation Employee Testing Act applies to employers covered under Department of Transportation drug and alcohol testing regulations, including employers engaged in the following industries: airlines, motor carrier, railroad, transit, pipelines, and maritime transportation.
- <sup>10</sup> The FMLA applies to employers with 50 or more employees in 20 or more workweeks in the current or preceding calendar year.
- <sup>11</sup> The SCA applies to employers with federal government contracts greater than \$2,500 that involve the use of service employees.
- <sup>12</sup> IRCA generally applies to all employers.
- <sup>13</sup> FICA generally applies to all employers.
- <sup>14</sup> FUTA generally applies to all employers.
- <sup>15</sup> The EPA generally applies to all employers.
- <sup>16</sup> The Occupational Safety and Health Administration's (OSHA) recordkeeping requirements for Forms 300 and 301 apply to employers of 11 or more employees (with certain exceptions). The recordkeeping requirements regarding medical records and employee exposure records apply to all employers.
- <sup>17</sup> The PCA applies to contractors with contracts in excess of \$10,000 for the manufacturing or furnishing of materials, supplies, articles, or equipment to the U.S. government or the District of Columbia.
- <sup>18</sup> The DBRA applies to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works.
- <sup>19</sup> The ADA applies to employers with 15 or more employees.
- <sup>20</sup> The EPPA applies to most private employers.
- <sup>21</sup> The ADAAA applies to employers with 15 or more employees.

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