

# Employee-Related Records— Can I Ever Throw This Stuff Out?

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**A**s a practice grows, it often finds itself with file cabinets full of employee-related records, and the owner wonders what documents, if any, can be disposed of to free up space. When determining what records can be discarded, it is important to remember that there are state and federal require-

ments for the retention of employee-related records. While it is not possible to review all of the various state and federal record retention requirements, this chart, designed for ease of future reference, outlines certain federal requirements that physical therapy private practices deal with on a regular basis (see table).

## Retention Period / Federal Law and Examples of Records to be Retained

### Six years

**Employee Retirement Income Security Act (ERISA)** records as follows: copies of annual return/report (Form 5500 series) and reports related thereto; claim files; pension and medical claim checks; contractor report forms; employer reporting and remittance forms; reciprocity transfer requests and transmittals; eligibility reports; and employee pension benefit record plans as follows: eligibility record cards, individual census data, employee work history, contractor report forms, employer reporting and remittance forms, and reciprocity requests and transmittals.

To the extent that ERISA records contain information relevant to a determination of an individual's benefit entitlements under a pension plan, these records may have to be retained beyond the six-year period.

**Consolidated Omnibus Reconciliation Act (COBRA)** records, including but not limited to notifications (and proof of mailing); election and claim forms; any letters rejecting coverage and postmarked envelopes; and any other related documents.

### Three years

**Age Discrimination in Employment Act (ADEA)** payroll records or other records for each employee, showing name, address, date of birth, occupation, rate of pay, and compensation earned each week.

**Family and Medical Leave Act (FMLA)** records as follows:

1. Basic payroll and identifying employee data, including name, address, and occupation; rate or basis of pay and terms of compensation; daily and weekly hours worked per pay period; additions to or deductions from wages; and total compensation paid;
2. Dates FMLA leave is taken by FMLA-eligible employees. Leave must be designated in records as FMLA leave. If eligible employees take FMLA in increments of less than one full day, the hours of the leave;
3. Copies of employee notices of leave, furnished to the employer under FMLA, if in writing, and copies of all general and specific written notices given to employees as required under FMLA and the regulations. Copies may be maintained in employee personnel files;
4. Any documents (including written and electronic records) describing employee benefits or the employer's policies and practices regarding the taking of paid and unpaid leave;
5. Premium payments of employee benefits; and
6. Records of any dispute between the employer and an eligible employee regarding designation of leave as FMLA leave, including any written statement from either the employer or employee of the reasons for the designation and for the disagreement.

**Fair Labor Standard Act (FLSA)/Equal Pay Act (EPA)** records as follows:

1. From the date of last entry, all payroll or other records containing employee information and data;
2. From the last effective date, all written collective bargaining agreements, plans, trusts, employment contracts, certificates, notices, etc; and
3. Sales and purchase records. A record of (a) total dollar volume of sales or business, and (b) total volume of goods purchased or received during such periods (weekly, quarterly, etc.), in such form as the employer maintains records in the ordinary course of business.

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## Retention Period / Federal Law and Examples of Records to be Retained

### Two years

**Rehabilitation Act** records from the date of the making of the record or the personnel action involved, whichever occurs later, as follows:

1. Any personnel or employment record made or kept by the employer, including but not limited to requests for reasonable accommodations; the results of any physical examinations; job advertisements and postings; applications and resumes; tests and test results; interview notes; any other records related to hiring, assignment, promotion, demotion, transfer, layoff, or termination; rates of pay or other terms of compensation; and selection for training or apprenticeship.
2. In the case of involuntary termination of an employee, the personnel records of the individual terminated shall be kept for a period of two years from the date of termination.
3. Where the employer has received notice that a complaint of discrimination has been filed, that a compliance review has been initiated, or that an enforcement action has been commenced, the employer must preserve all personnel records relevant to the complaint, compliance review, or action until final disposition of the complaint, compliance review, or action.

### FLSA/EPA records as follows:

1. Basic employment and earnings records: From the date of last entry, all basic time and earning cards or sheets on which are entered the daily starting and stopping times of individual employees, or of separate workforces, or the amounts of work accomplished by individual employees on a daily, weekly, or pay period basis (for example, units produced) when those amounts determine in whole or in part the pay period earnings or wages of those employees;
2. Wage rate tables: From their last effective date, all tables or schedules of the employer that provide the piece rates or other rates used in computing straight-time earnings, wages, or salary, or overtime pay computation;
3. Order, shipping, and billing records: From the date of last entry, the originals or true copies of all customer orders or invoices received, incoming or outgoing, shipping or delivery records, as well as all bills of lading and all billings to customers (not including individual sales slips, cash register tapes, or the like) which the employer retains or makes in the usual course of business operations; and
4. Records of additions to or deductions from wages paid: All records used by the employer in determining the original cost, operating and maintenance costs, and depreciation and interest charges, if such costs and charges are involved in the additions to or deductions from wages paid.

### One year

**Title VII of the Civil Rights Act (Title VII)** and **Americans with Disabilities Act (ADA)** records from the date of the making of the record or the personnel action involved, whichever occurs later, as follows:

1. Any personnel or employment record made or kept by the employer, including but not limited to requests for reasonable accommodations; application forms; any other records related to hiring, promotion, demotion, transfer, layoff, or termination; rates of pay or other terms of compensation; and selection for training or apprenticeship.
2. In the case of involuntary termination of an employee, the personnel records of the individual terminated shall be kept for a period of one year from the date of termination.
3. Where a charge of discrimination has been filed under Title VII or the ADA, the employer must maintain all personnel records relevant to the charge until the final disposition of the charge or action.

### ADEA records as follows:

1. Job applications, resumes, or any other form of employment inquiry that is submitted in response to an employer's advertisement or other notice of existing or anticipated job openings, including records pertaining to the failure or refusal to hire any individual;
2. Promotion, demotion, transfer, selection for training, layoff, recall, or discharge of any employee;
3. Job orders submitted to an employment agency or labor organization for recruitment of personnel for job openings;
4. Test papers completed by applicants or candidates for any position that disclose the results of any employer-administered aptitude or other employment test;
5. Results of any physical examination;
6. Any advertisements or notices to the public or to employees relating to job openings, promotions, training programs, or opportunities for overtime work; and
7. Any employee benefit plans, such as pension and insurance plans, as well as copies of any seniority systems and merit systems that are in writing, for the full period the plan or system is in effect, and for at least one year after its termination.

If an age discrimination claim is filed, the employer must maintain all documents related to that claim until the final disposition of the claim.

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