

A hand wearing an orange sleeve is holding an orange file folder. In the background, there is a row of several blue file folders. The scene is set against a light blue background.

What's in Your Employee Files?

U.S. Retention Advice for Personnel and Employee Training Records

Personnel and training records of active employees are consulted regularly when questions, concerns, issues, or problems arise about an employee's work history, qualifications, or job status, when there is a need to determine compliance with regulatory requirements, and when needed for many other purposes. This article provides guidance about the legal and regulatory requirements for these records.

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This excerpt from the just-published *U.S. Record Retention Requirements: A Guide to 100 Commonly Encountered Record Series* includes two of the 17 record series found under the Human Resources function: personnel records and employee training records. The book's 100 records series are divided among 14 functional areas.

Each entry begins with a description that defines the record series, explains its business purpose, and lists examples of the types of records that are included. Some record series contain personally identifiable information, business plans, proprietary product information, financial data, or other sensitive or confidential information that may affect retention decisions. The description notes these issues, where applicable. Subsequent sections for each record series discuss the legal considerations, business needs, and archival requirements that determine how long the series should be kept.

The author assumes that readers will look up the entries for individual record series when they are developing retention schedules or addressing questions or concerns about specific retention requirements. The book [like this excerpt] is an aid to – and not a substitute for – record retention research, analysis of recordkeeping requirements, and professional judgment. It is intended as a starting point and reference resource for the development of retention guidance that is reasonable and defensible in relation to an organization's legal and regulatory environment, that is responsive to local operational needs and stakeholder interests, and that is compatible with an organization's commitment to archival preservation of recorded information of enduring value.

Personnel Records Retention Guidance

This record series contains personally identifiable information and job-related information about an organization's employees. Official personnel records may be centralized in a Human Resources department or maintained by individual business units. Information copies may be dispersed throughout an organization. Unit heads or other managers may keep personnel records for employees under their supervision.

Often described as personnel files, these records may be stored in paper or electronic folders. Contents may include, but are not necessarily limited to, an employee's original job application, resumes, work-related and personal contact information, job title and description of duties, compensation information, employment contracts and agreements, correspondence, performance evaluations, records related to promotion or demotion, training and education records, copies of professional certifications, letters of commendation, reprimands and disciplinary notices, accommodation requests, and termination records. Selected employee information may be maintained in a Human Resources Information System (HRIS) or another personnel database rather than in

individual documents. This record series does not include payroll records.

Legal Considerations

Author's Note: The Legal Considerations section identifies U.S. laws and regulations that specify retention requirements for the record series as well as the need to retain records that may be relevant for legal proceedings or tax audits. Readers are cautioned that different recordkeeping requirements may apply in other countries where they do business. Federal requirements that apply to all or most organizations are identified, but citations to sector-specific laws and regulations are illustrative rather than comprehensive. Such requirements are contained in thousands of federal and state regulations, so the examples are limited to selected industries in selected jurisdictions.

The Legal Considerations section also identifies statutes of limitations that apply to specific types of legal proceedings for which a given record series may be relevant. Organizations are not required to retain records for the limitation period, but it is often considered prudent to do so.

As specified in 29 C.F.R. § 1602.14, any personnel record made or kept by an employer must be retained for a period of 1 year from the date of the making of the record or the personnel action involved. In the case of involuntary termination of employment, the terminated employee's personnel records must be retained for 1 year from the date of termination or until final disposition of any charge or action related to employment discrimination. Additional retention requirements are specified in multiple federal and state laws and regulations. These requirements apply to selected personnel records:

According to 29 C.F.R. § 1627.3(a), employers must keep records of each employee's name, address, date of birth, occupation, rate of pay, and weekly compensation for 3 years.

According to 29 C.F.R. § 1627.3(b)(1), employers must retain the following employee information for 1 year from the date of the personnel action to which the records relate: records related to promotion, demotion, transfer, selection for training, recall, or discharge of an employee; records for aptitude or other employment tests associated with personnel actions; and the results of any physical examination that is used by the employer for a personnel action, although such examination results may be kept in a separate medical records file.

According to 29 C.F.R. § 1602.31, political jurisdictions (state and local governments) must retain employee records related to promotion, demotion, transfer, layoff or termination, compensation, and selection for training or apprenticeship for 2 years from the date the record was created or the date of the personnel action to which the record pertains, whichever is later. Records related to involuntary termination of an employee must be kept for

2 years from the date of termination. 29 C.F.R. § 1602.40 specifies the same retention requirements for records maintained by public elementary and secondary school systems or districts.

According to 41 C.F.R. § 60-741.80, federal government contractors must retain personnel records for 2 years from the date the record was created or the date of the personnel action to which the record pertains, whichever is later. Records and reports pertaining to affirmative action programs must be retained for 3 years.

Records related to involuntary termination of an employee must be kept for 2 years from the date of termination, according to 29 C.F.R. § 1602.31.

According to 29 C.F.R. § 516.5, individual employment contracts or written memoranda summarizing the terms of employment must be retained for 3 years.

Although most state laws and regulations mirror federal requirements, some mandate longer retention periods – in most cases, 2 to 5 years – for personnel records. For example, according to M.G.L. c. 149, § 52C, Massachusetts employers with 20 or more employees must retain a complete personnel file “without deletions or expungement” from the date of employment to 3 years after termination of employment. According to WAC § 296-126-50, every employer in Washington State must retain a record of each employee’s name, address, occupation, dates of employment, wage rate, amount paid each pay period, and hours worked for at least 3 years. According to AS § 23.10.1000 and I.C. § 45-610(1), the same retention period applies to personnel information maintained by employers in Alaska and Idaho, respectively. According to NMAC § 11.3.400.401(F), employers in New Mexico must keep accurate employment records for 4 years in addition to the current year. Ga. Comp. R. & Regs. § 300-2-6-.01 specifies a 4-year retention period for certain personnel information maintained by employers in Georgia. According to S.C. Code Regs. § 47-19, employers in South Carolina must retain personnel record for 5 years.

Personnel records may be relevant for legal proceedings related to wrongful termination. In cases in which a wrongful termination complaint is based on a discrimination claim, the statutes of limitations range from 90 days to 6 years from the date of the alleged discrimination, depending on the locality. For wrongful termination actions based on a breach of a written employment contract, statutes of limitations range from 3 to 10 years, depending on the state in which the litigation is initiated. (In Kentucky, the limitation period is 15 years for contracts executed before July 15, 2014.) Some states have a shorter limitation period for oral contracts.

Business Need

Author’s note: The Business Need section discusses

the importance of the record series for an organization’s operations, business processes, activities, initiatives, or objectives. It is a well-established records management principle that the business value of records varies inversely with the age of the records. The discussion provides examples of the usefulness of a given record series throughout its life cycle.

Personnel records of active employees are consulted regularly whenever questions, concerns, issues, or problems arise about an employee’s work history, qualifi-

cations, job status, or other employment matters. Personnel files of former employees may be consulted to fulfill requests for verification of employment, which some organizations will do for a limited period following termination, or when a terminated employee is considered for rehiring, in which case it is useful to have information about prior performance and problems. Some states have laws that allow former employees to view or request copies of all or selected documents from their own personnel files, but such laws do not require retention of personnel records for that purpose.

Archival Value

Author’s note: The Archival Value section identifies record series that should be evaluated for permanent preservation, either because they document an organization’s history and accomplishments or because they may be useful to historians, economists, statisticians, scientists, public policy analysts, business management specialists, or others doing scholarly research.

Personnel records may have scholarly value for historians, genealogists, biographers, labor economists, sociologists, statisticians, or others, but research use of such records raises significant data protection and personal privacy issues. Some archival agencies make personnel files available to researchers 100 years or a similarly long period after termination of employment. Otherwise, a researcher must provide written permission or proof of death of the subject of the file.

Benchmarking Consensus

Author’s note: The entry for each record series includes a benchmarking consensus of prevailing retention practices based on retention schedules issued by archival agencies in 20 states of different sizes in different regions of the country: Arizona, Colorado, Florida, Georgia, Indiana, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, and Washington. These schedules, which are publicly available on the issuing agencies’ websites, specify reten-



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tion periods for state and local government records. Some of the schedules mandate retention periods, while others specify minimum retention requirements.

This record series is listed in all 20 retention schedules in the benchmark set. Retention periods range from 5 to 75 years following termination of employment. In 11 schedules the retention period is 7 years or less after termination, and in 4 schedules the retention period is 50 years or more. Some schedules specify a shorter retention period for routine items. Only 1 schedule requires transfer of personnel schedules to an archival agency for historical appraisal when the specified retention elapses,

Although most state laws and regulations mirror federal requirements, some mandate longer retention periods...for personnel records.

but 2 retention schedules specify permanent retention for summary information about employees – the kind of information now contained in personnel databases and, in the past, on index cards.

Summary

Author's note: The entry for each record series closes with a summary of legal, business, and archival retention criteria supplemented by the benchmarking consensus. The summary does not present a definitive retention recommendation for the record series, but it does suggest factors that should be considered when retention decisions are made.

Termination of employment is typically the trigger event for retention action related to personnel records. For legal compliance, the minimum acceptable retention period for basic personnel information is 3 years following termination of employment, but that retention period is shorter than the statute of limitations for employment-related litigation in some states and it is unlikely to satisfy the operational requirements of most organizations.

Based on the benchmarking consensus, the minimum advisable retention period is 5 to 7 years following termination of employment. That is a reasonable period to accommodate requests for verification of employment and to ensure that useful information about former employees is available for rehiring decisions. Longer retention periods may be necessary where personnel records are needed to verify years of service for pension benefits, but payroll records may satisfy those requirements. Permanent preservation for scholarly research may be limited to personnel files of selected employees – top officials or notable employees, for example – and/or summary information rather than complete documentation, but the benchmarking consensus suggests that permanent preservation of personnel records is not common. It is an unlikely retention practice in for-profit entities, where historical archives are not widely encountered.

Employee Training Records Retention Guidance

This record series documents employment-related instruction. Examples of training records include course descriptions, syllabi, manuals, worksheets, handouts, training films, and other training materials; records related to dates, times, instructors, and attendees of specific training courses; and attendance records, test scores, certificates of completion, and other training records for individual employees. Training records of individual employees may be integrated into personnel files or maintained separately.

Depending on the circumstances, this record series may contain personally identifiable information about an organization's employees.

Legal Considerations

29 C.F.R. § 1602.14 establishes a minimum retention period of 1 year from the date of creation or the personnel action involved for records related to selection of employees for training. The minimum retention period is 2 years for records of state and local government employees as specified in 29 C.F.R. § 1602.31, for records of employees of public elementary and secondary school systems or districts as specified in 29 C.F.R. § 1602.40, and for records of employees of federal government contractors as specified in 41 C.F.R. § 60-741.80. Additional retention requirements apply to employee training records in specific situations. For example:

According to 49 C.F.R. § 655.71, organizations regulated by the U.S. Department of Transportation must retain employee training records related to drug and alcohol testing for 2 years. This retention requirement applies to training materials, the names of employees attending training on prohibited drug use and alcohol misuse, the dates and times of such training, documentation of training provided to supervisors regarding the need for drug and alcohol testing, and certification that any training conducted complies with regulatory requirements.

According to 49 C.F.R. § 380.511, motor carriers must retain training records for entry-level drivers for 1 year after termination of employment.

According to 49 C.F.R. § 172.704, training records for employees involved with transportation of hazardous materials must be retained for 90 days following termination of employment.

According to Occupational Safety and Health Administration (OSHA) guidelines specified in 29 C.F.R. § 1920.120, Appendix E, an organization should retain records for training related to hazardous waste operations

for 5 years from the date that an individual received the training. The information to be retained includes the dates of training, the names of attendees, the names of participants who successfully completed the training, and the number of training certificates issued.

According to 10 C.F.R. § 36.81, licensed operators of irradiation facilities must retain employee training records for 3 years after termination of employment.

According to 16 C.F.R. § 1107.26, manufacturers of children's products must retain training materials and employee training records related to undue influence procedures for 5 years.

According to 21 C.F.R. § 111.14, manufacturers of dietary supplements must retain training documentation, including the date of training, the type of training, and the names of the persons trained. As specified in 21 C.F.R. § 111.605, these records must be kept for 1 year past the shelf life date of the product to which training applies or 2 years beyond the distribution date for dietary supplements without shelf life dating.

Some archival agencies make personnel files available to researchers 100 years or a similarly long period after termination of employment.

21 C.F.R. § 117.315 establishes a 2-year retention period for records related to manufacturing of human food products, but the types of records that must be kept are not listed.

According to 21 C.F.R. § 820.25, manufacturers of medical devices must document employee training, which must include an awareness of device defects that may result from improper performance of specific jobs. As specified in 21 C.F.R. § 820.180, records related to medical devices must be retained for the expected life of the device but not less than 2 years after a device is released for commercial distribution.

Employee training records may be relevant for legal proceedings related to employment discrimination. The statutes of limitations for discrimination complaints range from 90 days to 6 years, depending on the locality. Employee training records and training materials may also be relevant for civil actions that involve personal injury or property damage in which an employer is alleged to have negligently enabled an employee to perform particular tasks or engage in particular acts without appropriate training.

For actions in which property damage is involved, the statutes of limitations for initiation of civil proceedings based on such negligent training claims range from 1 year to 10 years, depending on the state, but the limitation period is 3 years or less in 31 states.

The statute of limitations for personal injury litigation is 3 years or less in most states, although it is 4 years in Florida, the fourth most populous state, and 3 other states. In 2 states (Maine and North Dakota), the limita-

tion period is 6 years. The limitation period for injuries involving minor children does not start until the injured party reaches the age of majority.

Business Need

Training materials will be consulted when questions or issues arise about training programs or content or when training courses are reviewed or revised. Training records of individual employees will be consulted when questions or concerns arise about an employee's qualifications and training history in the context of performance reviews, to identify employees who are trained to perform particular tasks, to determine compliance with regulatory requirements, or for other reasons.

Training records of former employees may be consulted when a terminated employee is considered for rehiring, in which case it is useful to have information about the employee's training history. Some states have laws that allow former employees to view or request copies of all or selected documents, including training records, from their

own personnel files, but such laws do not require retention of personnel records for that purpose.

Archival Value

Employee training materials have been cited as primary sources in books, journal articles, and other publications by educators, human resources specialists, company historians, business consultants, and other researchers. Training records of individual employees have not been cited in scholarly studies. Such records contain personally identifiable information that must be considered when evaluating their archival value.

Benchmarking Consensus

Training materials are listed in 14 of the 20 retention schedules in the benchmark set. Retention periods range from 1 year to 5 years after the materials are superseded, obsolete, or no longer needed. Training records for individual employees are listed in 15 of the 20 retention schedules in the benchmark set. In 9 schedules, training records for individual employees are included in personnel files. In 3 schedules, training records for individual employees are retained for 5 years after termination of employment. In 2 schedules, the retention period for training records of individual employees is 5 years after completion of training. In 1 schedule, the retention period is 3 years after completion of training.

Summary

For training materials, a retention period of 6 years after they are superseded or no longer utilized will ensure

their availability for litigation based on negligence allegations in most states. Training records for individual employees need to be kept long enough to satisfy regulatory requirements and for use in legal proceedings. A minimum retention period of 5 to 7 years following termination of employment is consistent with retention practices

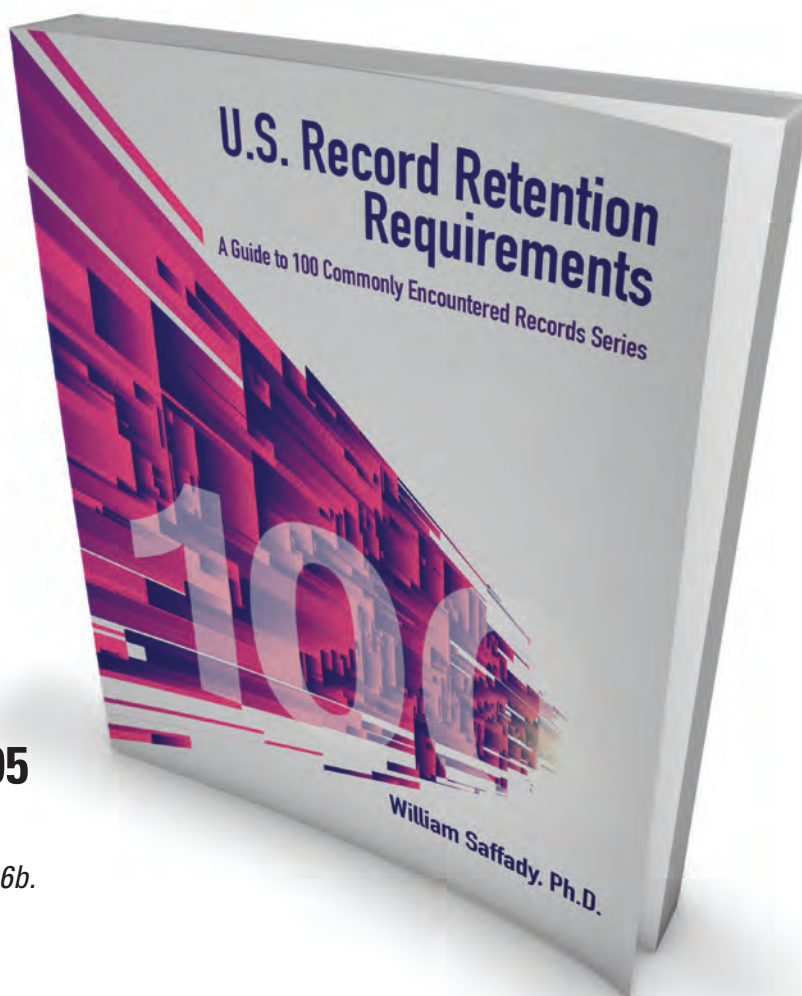
for personnel files. In some organizations, training records may be integrated into personnel files. Permanent preservation should be considered for training materials with noteworthy content of potential research value. Training records of individual employees do not merit permanent preservation. **E**



About the Author: William Saffady, Ph.D., is a records and information management consultant based in New York City, providing analytical services and training to corporations, government agencies, and other organizations. He is author of dozens of books and many articles on electronic records retention, digital document management, storage and preservation of recorded information, and related topics. His recent books published by ARMA International include *Information Governance Concepts Requirements, Technologies; Legal Requirements for Electronic Records Retention in Asia* (and similar books for Western and Eastern Europe); *E-Mail Retention and Archiving: Issues and Guidance for Compliance and Discovery*; and *Records and Information Management: Fundamentals of Professional Practice, 3rd edition*. He can be contacted at wsaffady@aol.com.



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