

## To Shred or Not To Shred: What Records Must Be Maintained by Employers

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Employers are legally required to maintain certain personnel records for a definite period of time. Failure to do so can result in fines and other legal issues. The guidance below can help employers determine when to safely shred documents.

### New Jersey's Wage and Hour Law and Wage Payment Law's Record Keeping Requirements

New Jersey employers are required to maintain the following records for each employee for a period of at least six years:

- The name of the employee;
- The address of the employee;
- The birth date of the employee if the employee is younger than 18;
- The total hours worked by the employee each day and each workweek;
- The earning of the employee (including the regular hourly rate, deductions, and the basis on which wages are paid);
- For an employee that receives gratuities, the total gratuities received by the employee during the payroll week;
- For an employee that receives gratuities, daily or weekly reports completed by the employee that contain: the employee's name; the employee's address; the employee's social security number; the name and address of the employer; the calendar day or week covered by the report; and the total amount of gratuities received; and
- Employers who provide their employees with food or lodging as a cash substitute have additional record keeping requirements.

### The Fair Labor Standards Act Record Keeping Requirements

- Payroll records must be kept for at least three years pursuant to the Fair Labor Standards Act.
- Records that explain the basis for paying employees of different sexes different wages—such as wage rate, performance evaluations, merit systems, seniority systems, and collective bargaining agreements—must be retained for at least two years.

### The EEOC's Personnel and Employment Record Keeping Requirements

- The EEOC requires personnel and employment records to be kept for at least one year after an employee is terminated. However, if a charge of discrimination or civil action is filed, the records should be retained at least until the final disposition of the charge or action.
- Personnel and employment records include requests for reasonable accommodation, job applications, and records related to hiring, promotion, transfer, lay-off, termination, rates of pay, compensation, tenure, and selection for training or apprenticeship.

### The Family and Medical Leave Act ("FMLA") Record Keeping Requirements

- Covered employers must maintain the following records for at least three years:
  - Payroll records;
  - The dates an employee takes FMLA leave (including time records and requests for leave);
  - All FMLA notices and medical certifications;
  - All documents related to policies regarding paid and unpaid leave;
  - Employee benefit premium payments; and
  - All documents related to any disputes between the employer and employee regarding the designation of FMLA leave.

#### I-9 Forms

- An employer must retain a terminated employee's I-9 for either three years after the employee was hired or one year after the employee was terminated, whichever is later.

#### **Attorney**

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