

Excessive “Streamlining” Can be Hazardous to an Employer’s Health

QUESTION: Our filing cabinets are bursting at the seams with paperwork related to our employees. We’re so afraid of throwing anything away that we’ve kept every scrap of paper that’s come across my desk – for the last ten years!

It’s driving us crazy, so at our last management meeting we made a New Year’s resolution for 2007: clean out the personnel files and organize and streamline this mess. Our resident HR expert tells us that we are required by law to keep personnel files and other employee documents even after they leave our employ, but how long do we have to do that? We need to know what we have to save. Like, for example, are we allowed to trash all these I-9 Forms?

ANSWER: These are very understandable concerns, and it’s always good to streamline and organize your files. However, don’t get so caught up in the New Year frenzy that you end up throwing out records that you might desperately need a year or two down the road. Below, we will summarize both the “required” and “advisable” periods of time for which to keep employment records.

Records Relating to Hiring Decisions Federal law requires employers to keep applications and resumes of applicants not selected for employment for at least one year from the date of the hiring decision.

Payroll Records Oregon law requires employers to retain payroll records, including individual time cards, for a minimum of two years. The federal Fair Labor Standards Act (FLSA) requires employers to retain payroll records for three years.

Family and Medical Leave Act (FMLA) and other Federal Retention Requirements Employers who are covered by FMLA must retain records of employee leaves for a minimum of three years. Although no records are specifically listed, FMLA records to keep would include documents related to dates family leave is taken, hours of leave taken, copies of employee notices furnished to employer and employer’s notices to employee, records of premium payments of employee benefits, and copies of medical certifications.

Federal law also requires employers to maintain records that document compliance with rules that prohibit unlawful employment practices, like civil rights and disability laws. These records must be retained for one year from the date the record is made or the personnel action is taken.

I-9 Forms As for the I-9 Forms that are flooding your file cabinets, the law requires employers to retain those for three years from the date of employment, or one year from the date of termination from employment, whichever is later.

I-9 forms are best filed together and stored separately from individual employee personnel records. This is because the Immigration and Naturalization Service (INS) routinely conducts audits of the forms and - if stored together but separate from other employment records - the employer can locate them quickly without conducting a full review of employee files to produce the forms.

Personnel Records in General In addition to the above requirements, Oregon law requires that employers retain personnel records for 60 days after employment ends. “Personnel records” include all records related to the hiring decision, promotion or demotion decisions, determinations to provide raises or pay cuts, performance evaluations, disciplinary notices or warnings, and records related to other discipline or termination decisions.

Oregon law also states that if a former employee requests a copy of his or her personnel file within the 60 day period, the employer must furnish a copy. If the employee requests a copy more than 60 days after employment ends, the employer must furnish a copy if the employer still has records. Whether the person requesting the file is a current employee or a former employee, the employer may charge a reasonable fee reflecting the actual costs of providing a copy of the file.

Recommendations for Record Retention Most Oregon experts suggest that regardless of the above timelines, it is safest to keep all payroll and personnel records for seven years. This is because in some instances, employees have up to six years to file certain employment-related lawsuits. And although it is admittedly a pain to keep figuring out where to store those old records, it is much more painful to try and refute an employee’s claim without your own records to back you up.

For more information on this and other important issues affecting Oregon employers, including seminars conducted by our Technical Assistance Unit, please visit our website at www.oregon.gov/boli/ta. You can also call us at 971-673-0824.