

Employee Records Retention



Presented by: Heffernan Consulting



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- The information presented is general in nature and is intended to present an overview of employment practices. The written and verbal contents of the presentation are not intended to constitute consulting and/or advice and no client relationship is established between the presenter and attendees.



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- National Certification through the Human Resources Certification Institute (HRCI) as a Senior Professional in Human Resources (SPHR) since 2002
- HR consultant since 2006
- 20+ years in HR management
- Former President of National Human Resources Association (NHRA) – San Diego Chapter



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Today's Objectives

- Laws requiring retention
- Categories of records
- What is in each category
- Retention timelines



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The News

- **Zales Delaware Inc.** agreed to pay \$1.8 million to settle allegations employees were shorted on wages by the company's time-rounding policy. The current class of about 2,500 Zales employees allege that Zales shaves minutes off timecards, denying employees pay and overtime compensation in violation of California labor laws. The class action also pursued claims that Zales instituted an unlawful meal and rest break policy. Tapia first filed suit in July 2013.
-CA



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The News *cont.*

- **La Fiesta Fresh Mexican Grill and Cantina (VA)** alleged sexual harassment. At the time, no sexual harassment policy or employee complaint procedures were in effect. They must pay \$25,000, implement new policies, conduct training for employees and management, post an anti-discrimination notice at the workplace, and report compliance to the EEOC for a 3-yr period.
- **A Philadelphia commercial printer (PA)** agreed to pay a \$31,350 civil penalty and \$273,892 in back wages and liquidated damages to a group of temporary workers to resolve a U.S. DOL investigation that found it shorted workers wages in violation of the FLSA. Some claims went back to at least November 2013.



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The News *cont.*

- **Oil States Energy Services (PA)** “willfully and recklessly” failed to pay overtime wages to the operators. The jury awarded each of the plaintiffs tens of thousands of dollars in compensation and the judge doubled the award.

“Oil States argued paying crane operators a salary and a job bonus, instead of hourly with overtime, conformed to industry standard practice and thus shows good faith. ... Oil States offered no evidence it independently researched whether the industry standard salary and job pay plan for crane operators complied with the act,” the judge wrote. The judge also found that Oil States did not act in good faith by determining that the employees were exempt under the highly compensated exemption.



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The News *cont.*

- **The University of Denver** to pay \$2.66 million and furnish other relief to settle a pay discrimination lawsuit for paying a class of female full professors at the Sturm College of Law lower salaries than it paid to their male counterparts. Despite formally recognizing the significant pay disparity in a 2013 memo, the university declined to take corrective action by adjusting salaries of female full professors.

Remember: Employees keep records, too.



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Reasons for Record Retention

EEOC

ERISA

OSHA

GINA

FEHA

FLSA

Unemployment Codes

Title VII

CA Fair Pay Act

ADA

ADEA

State Labor Codes

NLRA

Immigration Reform



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What's in Your Files?

- You should have 4 places for various information on current employees
 - Employee general file
 - Employee medical file
 - Employee legal file
 - I-9 file



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Recruitment & Hiring

- Job applications
- Resumes
- Job inquiries sent to you
- Recommendation letters
- Help wanted ads
- Testing results
- Opportunities for training, promotion, or OT
- Job openings sent to agencies or labor unions
- Salary info (pay rates, market factors, job classifications)
- Offer letters
- Terms and conditions of employment



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Background Checks

- Credit reports, criminal background checks, or other investigations of employees or applicants
- State law may prohibit an employer from making job decisions based on an employee's credit or arrest record
- If managers have access to these materials and use them to take action against an employee, your company might face legal liability



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Recruitment & Hiring Retention

- 3 Years if you didn't hire that person
- 3 Years after termination if hired
 - Or for the duration of any claim or litigation involving hiring practices
- You are not required to keep unsolicited resumes



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Overlaps

- If a record is listed in more than one category
 - Keep it for the longest period



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Basic Personnel Files

- Disciplinary notices
- Promotions and demotions
- Performance evaluations
- Discharge, layoff, transfer and recall files
- Training records
- Testing files
- Job classifications
- Terms and conditions of employment



3 Years after termination



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Payroll Records

- Name, employee number, address, age, sex, occupation
- Individual wage records
- Time and day work week begins
- Regularly hourly rate
- Hours worked (daily/weekly)
- Weekly OT earnings
- Daily/weekly straight time earnings
- Deductions
- Wages pay each pay period
- Payment dates and periods
- Piece rates
- Unemployment insurance records

| Earnings Information | Current | YTD |
|-----------------------|-----------------|-----------------|
| Hourly Gross | 4,389.30 | |
| Overtime | 0.00 | |
| 15 min | 0.00 | |
| 15 min | 0.00 | |
| EARNINGS TOTAL | 4,389.30 | 5,277.20 |
| Health Insurance | 151.14 | 418.18 |
| Other Deductions | 3,978.12 | 4,859.02 |

| Statutory & Other Deductions | Current | Year to Date |
|------------------------------|---------------|---------------|
| Federal Withholding | 311.17 | 311.17 |
| State Withholding | 0.00 | 0.00 |
| FICA - Social Security | 135.98 | 135.98 |
| FICA - Medicare | 62.67 | 62.67 |
| State Disability Insurance | 0.00 | 0.00 |
| Health Insurance | 151.14 | 418.18 |
| Other Deductions | 0.00 | 0.00 |
| Total Deductions | 660.89 | 928.93 |

4 Years



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Employee Wage Records

- Wages
- Wage rates
- Time cards
- Individual employees' hours and days
- Employment agreements/contracts
- Piece rates
- Records explaining wage differentials between sexes and between departments for same level of job
- Wage rate calculation for straight time and OT
- Shift schedules
- Itemized wage statements (pay stubs)



3+ Years



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Employee Benefits Data

- Benefit elections
- Beneficiary designations
- Eligibility determinations
- COBRA notices
- Summary plan descriptions



6+ Years

- Records required to determine retirement benefits (401K and similar plan)

Indefinitely



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Insurance Applications

- ADA
 - Medical records and information must be kept in a file that's separate from the employee's regular personnel file
 - Kept confidential
- Consider the information on:
 - Health insurance applications
 - Workers compensation insurance claims/updates



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FMLA

- Leave policies and benefits
- Dates and hours of leave used
- Records relating to any dispute regarding designation of leave
- Employee benefits relating to the leave



= 3 Years



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Legal Claims/Investigations



- Workplace investigations (of a harassment complaint or theft incident, for example) kept in separate confidential files or sealed envelopes... not legally required, but strongly recommended
- Personnel and payroll records about complaining parties
- Personnel and payroll records about all other employees holding or applying for similar positions

Until disposition of case



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Miscellaneous Records

- I-9 Forms
 - Check that you used the current version at the time of hire
 - Keep separate in case you're audited

Later of 3 years from hire or 1 year after term
- Child labor certificates/notices **3 Years**
- Union and employee contracts **3 Years**
- Affirmative Action programs/documents **5 Years**



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Recommendations

- If a record is listed in more than one category
 - Keep it for the longest period
- Digitize most records for ease of storage
 - Keep hard copies of records where the employee's actual signature may be legally important (e.g., contracts)
- Create retention policies so employees know not to "clean house" with emails and files
- Attorneys recommend keeping the files for the life of the company!



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**Thank
You** *Mahalo*
Kiitos
Tack *Toda*
Grazie **Thanks**
Obrigado
Takk **Merci**
Gracias



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