COMPLIMENTS OF CALIFORNIA RESTAURANT ASSOCIATION

CRA INDUSTRY INSIGHT: RETENTION PERIOD REQUIREMENTS FOR PRESERVATION OF RECORDS

Below is a summary of the record-retention requirements for sales and use tax, federal and state income tax, federal and state employment tax, and federal and state requirements for various other employment related records.

Record-keeping policies must be guided by the rule of reason and not by the statutes of limitations alone. Moreover, any external investigation by a governmental agency or a litigation or threat thereof requires an employer to "freeze" all records that may in any way be associated with the investigation or litigation. The following are general guidelines that refer to the minimum record preservation times required by law.

Reminder: ***CRA Members receive 15 minutes of free legal advice per month****. To set up a call with one of our legal partners, please call 800.765.4842 ext. 2743 or email helpline@calrest.org.*

SALES AND USE TAX RECORDS MINIMUM RETENTION PERIOD: FOUR (4) YEARS

State, County, and City

If you hold a California seller's permit, you are required to maintain business records to verify that you have properly paid tax. All records pertaining to transactions involving sales or use tax liability must be preserved for a period of no less than four years unless you have written authorization to destroy them sooner. In addition, if you are being audited, all records for the period being audited until the audit is completed or the case is resolved, should be retained.

Be mindful that if you have a point-of-sale system that overwrites data after a period of time that is less than four (4) years, you should transfer and maintain all data that would have been overwritten or otherwise removed from the system.

Keep all records required to determine your correct sales and use tax liability. These records usually include:

- The normal books of account that show your business income and expenses.
- All bills, receipts, invoices, job orders, purchase orders, contracts, cash register tapes or other documents of original entry supporting the entries in the books of account.
- All schedules or working papers used in preparation of your sales and use tax returns.

The documents you keep should be able to show the following:

- Gross receipts from all business income, whether considered taxable or nontaxable, including sales (alcoholic beverages, soft drinks, food, etc.), leases, service charges and labor income;
- All deductions claimed in filing your sales and use tax returns with supporting documentation;

- Total purchase price, including receipts, for all items you purchase for resale, lease or your own use.

NOTE: Failure to maintain accurate records may be considered evidence of negligence or intent to evade the tax and may result in penalties.

There may be additional requirements based on your city and county as well. For further information regarding maintaining sales and use tax records, see Regulation 1698 in Article 18 of The Business Taxes Guide and Property Law Guide, which can be accessed through the California Department of Tax and Fee Administration website.

INCOME TAX RECORDS—MINIMUM RETENTION PERIOD: SIX TO SEVEN YEARS

Federal and State

The Internal Revenue Service (IRS) generally recommends taxpayers keep their returns and any supporting documentation for three years after the date of filing. However, the IRS can go back further in certain situations. The IRS can go back six years if you've under-reported income by at least 25 percent. The IRS can go back seven years if you claim a loss for bad debt or worthless securities.

If you do not file a tax return or you file a fraudulent tax return, you should keep records indefinitely. Additionally, if the IRS determines that you owe more taxes, the IRS has at least ten years to begin collection proceedings to collect the unpaid debt. This clock starts to run once the IRS notifies you of any additional tax amount owed.

The Franchise Tax Board (FTB) generally recommends taxpayers keep their returns and any supporting documentation for four years after the due date or the date of filing if filed after April 15. Like the IRS, the FTB has a longer statute period in certain situations. The FTB recommends twelve years from the date of filing for abusive tax avoidance transactions. And, the FTB has an indefinite statute for returns not filed.

You will want to keep the documents that support the income, deduction or credit reported on the tax return. These documents may include cash register tapes, sales slips, paid bills, invoices, receipts, deposit slips, employee pay records, canceled checks, and any other documents which support the entries in your accounting books and reported on your tax return.

Also, if you are found to owe more taxes to one agency, you should notify the other agency that the tax amount has changed. For further information, visit irs.gov for federal information or ftb.ca.gov for California income tax information.

FEDERAL AND STATE EMPLOYMENT TAX RECORDS— MINIMUM RETENTION PERIOD: FOUR YEARS

Federal law requires employment tax records be kept for a minimum of four years after the fourth quarter of the year. Generally, employment tax records to be kept include:

- Your employer identification number
- Amounts and dates of all wage, annuity, and pension payments
- Amounts of tips reported
- The fair market value of in-kind wages paid
- Names, addresses, social security numbers, and occupations of employees and recipients
- Any employee copies of Form W-2 that were returned to you as undeliverable
- Dates of employment
- Periods for which employees and recipients were paid while absent due to sickness or injury and the amount and weekly rate of payments you or third-party payers made to them
- Copies of employees' and recipients' income tax withholding allowance certificates (Forms W-4, W-4P, W-4S, and W-4V)
- Amounts of wages subject to withholding
- Agreements with employees to withhold additional tax
- Actual taxes withheld and dates withheld
- Reason for any difference between total tax payments and actual tax payments
- Dates and amounts of tax deposits you made
- Copies of returns filed
- Records of allocated tips
- Records of fringe benefits provided, including substantiation.

Federal employment tax includes:

Federal Unemployment Tax Act (FUTA):

These records must include basic employee information including name, address, social security number, gender, date of birth, occupation and job classification. Additionally, the records should indicate the total remuneration, including amounts withheld for any reason, paid to employees during this calendar year; the amount of such remuneration constituting wages subject to tax; the amount of contributions paid into each state unemployment fund;

and the extent to which the employer is liable for the tax. If the total remuneration paid and the amount subject to the tax is not equal, the reason must be made a matter of record. In addition, the records must show the dates, in each calendar quarter, on which each employee performed services not in the course of the employer's trade or business and the amount of cash remuneration paid at any time or such services performed.

Federal Insurance Contributions Act (FICA):

An employer must keep records that reflect the following information with respect to each employee: the name, address and account number of the employer; the total amount and date of each payment of remuneration and the period of services covered; daily and weekly hours; straight time and overtime hours and pay; annuity and pension payments; fringe benefits paid; tips; deductions and additions; the amount of each payment of remuneration that constitutes wages subject to tax; the amount of employee tax collected with respect to such payment, and, if collected at a time other than the time the payment was made, the date collected; if the total remuneration payment and the taxable amount of that payment are not equal, the reason; the details of each adjustment or settlement of taxes under the Act; and a copy of each statement furnished in explanation of any omission or error in a return or schedule required by regulation.

Social Security and Medicare Tax:

An employer must keep all records for each employee that reflects the employee's name, address and social security number, the total amount of wages subject to tax, the amount of employee tax collected each pay period, explanation between total pay and taxable pay, details of adjustments or settlement of taxes, records of tips received by employees including statements of tips provided by employees and all employer filing records.

For California, payroll records should also be kept for at least four years. If you believe that you are not a subject employer or that you have exempt employees, California requires you to maintain records of payments made to people who provide services to your business for at least eight years in case of an employment tax audit. Your records must provide a true and accurate account of all workers (employed, no longer employed, on a leave of absence, and independent contractors) and all payments made. Records must include the following information for each worker:

- Worker's full name (first name, middle initial, and last name)
- Worker's social Security number
- Date hired, rehired, or returned to work after a temporary layoff

- Last date services were performed
- Place of work
- Monies paid, including dates and amounts of payment and pay period covered
- Cash or cash value of in-kind wages (such as meals, lodging, bonuses, gifts, and prizes) showing the nature of the payment, the period that the services were performed, and the type of special payment made
- The amounts withheld from employee wages
- Disbursement records showing payments to workers
- Other information necessary to determine payments to workers

State employment taxes include:

State Unemployment Taxes (SUI):

California Unemployment Insurance Regulation 1085 requires that employers keep records for each employee showing:

- The period covered by the payroll
- For each employee: his or her name, Social Security Number, the date on which he or she was hired, rehired or returned to work after temporary layoff and the date when his or her name was removed from the payroll; the place of his or her work, which shall be shown in accordance with such forms and instructions as the department may approve
- The wages paid to each employee for each payroll period, showing separately money, wages, cash value of all other remuneration received from the employer and special payments in cash or kind for services other than those rendered exclusively in given pay periods such as annual bonuses, prizes, etc., including the nature of such payments and the period during which the services were performed for which such special payments were made
- Other information as necessary to enable the employing unit to determine the employee's total wages in each week.

For further information, visit [irs.gov](irs.gov) for federal information or [edd.ca.gov](edd.ca.gov) for California tax information.

PERSONNEL RECORDS

Fair Labor Standards Act and Equal Pay Act: Three Years, Two Years

Firms with sales of $500,000 or more, companies engaged in interstate commerce and public agency employees are subject to the provisions of the Fair Labor Standards Act (FLSA). Those with 15 or more employees are subject to the provisions of the California Equal Pay Act of 1963. The FLSA requires that the following records be kept for three years from the date of the last entry:

- Payroll records, including employee's name, home address, date of birth if younger than 19, gender and occupation, hours worked each weekday and workweek and straight-time earnings and overtime earnings
- Regular rate of pay and its calculation
- Inclusions and exclusions from wages, such as bonuses, withheld taxes, etc.
- Date of payment and the period covered
- Plans, trusts, and collective bargaining agreements
- Employee notices
- Sales and purchase records
- Employment contracts.

The FLSA requires that the following records listed below be kept for two years from the date of the last data entry:

- Basic employment and earnings records, timecards and piecework records;
- Wage rate tables;
- Records of additions to or deductions from wages;
- Unemployment compensation contributions;
- Order, shipping and billing records;
- Work schedules

Federal regulations also contain record-keeping requirements applicable to special employee classifications, such as apprentices, learners and commission employees.

The Equal Pay Act states that employers shall maintain records or the wages and wage rates, job classifications, and other terms and conditions of employment for employees, and shall keep them on file for two years.

For further information visit the U.S. Department of Labor website.

Age Discrimination in Employment Act of 1967: Three Years

The Age Discrimination in Employment Act (ADEA) requires that employers of 20 or more workers keep for three years the following: time cards, payroll and other records for each of their employees that contain the employee's name, address, date of birth, age, sex, occupation, rate of pay, hours worked each day and compensation earned each week, including straight-time earnings, weekly overtime earnings, deductions from or additions to wages, date of payment and the period covered by the payment.

Additionally, each employer is required to keep any employee benefit plan, such as pension and insurance plans, as well as any written seniority or merit system for the full period the plan or system is in effect and for at least one year after its termination.

The employer must also retain for at least one year all other personnel or employment records regarding hiring, promoting or discharging employees; job descriptions; occupational qualifications; collective bargaining agreements; insurance plans; hiring and promotion policies and practices; seniority and merit systems; job orders; job advertisements and internal job postings; job applications, such as test papers, physical examinations, advertisements; and other matters pertinent to determining whether an action, limitation or classification is based on a factor other than age.

Finally, under the Employee Retirement Income Security Act (ERISA), the employer is required to retain pension and welfare plan information for six years. For further information visit the U.S. Equal Employment Opportunity Commission (EEOC) website. For ERISA information, visit the U.S. Department of Labor website.

Civil Rights Act of 1964 (Title VII), Federal Discrimination Law: One Year

Employers of 15 or more workers are subject to the provisions of the Civil Rights Act of 1964 (Title VII) and are required to "make and keep such records relevant to the determination of whether unlawful employment practices have been or are being committed."

To comply with this general record retention requirement, any personnel or employment records, including forms submitted by applicants and other records having to do with hiring, promotion, demotion, transfer, layoff, or termination, as well as rates of pay or other terms of compensation, selection, job descriptions, retirement, pension and insurance plans, union agreements and contracts, seniority and merit system descriptions and training, should be retained.

When a person has filed a lawsuit against an employer, the employer is required to keep all relevant records regarding that individual that may either prove or disprove discrimination until the lawsuit has reached a final disposition.

For further information visit the U.S. Equal Employment Opportunity Commission (EEOC) website.

Immigration Reform and Control Act of 1986: Three Years

Under the Immigration Reform and Control Act of 1986 (IRCA), all employers are required to keep completed I-9 forms on file for every employee hired after November 6, 1986. These records must be retained for at least three years from the date of hire, or one year after termination, whichever is greater.

I-9 Forms and supporting documents should be kept in a location separate from the employee's personnel file and be made available for USCIS inspection within three days of a request for lawful inspection. You face civil penalties for violating these record-keeping requirements, ranging from $110 to $1,100 for each infraction.

For further information visit the U.S. Equal Employment Opportunity Commission (EEOC) website.

Americans with Disabilities Act: One Year

Under the Americans with Disabilities Act (ADA), employers are required to keep job applications, resumes and other job inquiries sent to the employer; all payroll records, including individual employee wage records; and employee files, including disciplinary notices, promotions, demotions, discharge, training, tests, physicals, transfer, layoff and recall, job evaluations or any other personnel records for a period of one year after making the record or taking the action described (whichever occurs later). If a charge of discrimination is filed or the Equal Employment Opportunity Commission brings an action, an employer must save all personnel records related to the charge until it is resolved.

For further information visit the U.S. Equal Employment Opportunity Commission (EEOC) website.

Family and Medical Leave Act: Three Years

The Family Medical Leave Act (FMLA) and the California Family Rights Act (CFRA) contain similar provisions as to which employers are covered:

FMLA:

Private employers are covered by the FMLA if they have employed 50 or more employees within 75 miles of the workplace of the employee requesting FMLA leave for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year.

CFRA:

An employer who directly employs 5 or more persons to perform services for a salary or wage is covered under the CFRA. The employees countable for the 5-employee threshold can be located anywhere in the U.S. or any territory or possession of the U.S. This means that an employer with only one employee in California can be a covered employer!

Unlike the FMLA, the CFRA has no specific recordkeeping provision. However, the general recordkeeping requirements under the Fair Employment and Housing Act (FEHA) apply, including the requirement that employment records be kept for a period of at least two years (see below for FEHA recordkeeping requirements).

According to the FMLA, all employers should keep the following records for at least three years:

- Name, address and occupation
- Rate of pay, terms of compensation, daily and weekly hours worked per pay period and additions to and deductions from wages and total compensation paid
- Dates of leave taken by eligible employees (the leave must be designated as FMLA leave)
- For FMLA leave taken for less than one day, the hours of leave taken
- Copies of employee notices and documents describing employee benefits or policies and practices regarding paid and unpaid leave (copies may be kept in personnel file)
- Records of premium payments for employee benefits
- Records of any dispute regarding the designation of leave
- Any employee handbooks and/or policies on employee leaves and benefits
- Records and documents relating to medical certifications, re-certifications and medical histories of employees or their family members. Where the ADA applies, the records must be maintained in conformance with ADA confidentiality requirements.
- Such documents must be maintained as confidential medical records (i.e., kept in files separate from the employer's ordinary personnel files).
    - Exceptions: The confidential medical records (above) may be disclosed to the following persons: Supervisors and managers regarding necessary restrictions on work and necessary accommodations:
- First aid and safety personnel (e.g., where physical condition might require emergency medical treatment); and
- Government officials who are investigating compliance with FMLA or other laws on request.
- Employee pay and benefits plan
- Records of employee disputes.

For further information visit the U.S. Department of Labor website for FMLA and The California Department of Fair Employment and Housing website for CFRA.

Occupational Safety and Health Act: Five Years to 30 Years

The Occupational Safety and Health Act (OSHA) applies to any employer with at least 10 employees and requires an employer to keep a log of occupational deaths, injuries and illnesses (other than minor injuries requiring only first aid treatment) and a supplemental record of deaths, injuries and illnesses for at least five years. Additionally, an employer must maintain medical records and records of exposure to potentially toxic substances or harmful physical agents for each employee for at least 30 years after the employee has resigned or been terminated.

Employers in a specified low hazard retail, service, finance, insurance or real estate industry are generally exempt from maintaining OSHA injury and illness records. However, even otherwise exempt employers must maintain illness and injury records if requested to do so by OSHA or the Bureau of Labor Statistics. Moreover, workplace incidents resulting in a fatality or hospitalization of three or more employees must be reported to OSHA regardless of the size of the employer or number of persons employed.

Employers are required to maintain the following or equivalent forms:

- "Log of Work–Related Injuries and Illnesses" (OSHA Form 300);
- "Incident Report" for each recordable injury or illness (OSHA Form 301); and
- annual summary of such injuries (OSHA Form 300–A).

OSHA also requires employers to post a complete summary of all injuries and illnesses each year. For further information visit osha.gov.

California Employee Personnel Records: Four (4) Years

Employers must maintain a copy of each employee's personnel records for at least three years after termination of employment, but since wage and hour violations contain a four-year statute of limitations, the employer should retain the employee's personnel records for at least four years after the employee leaves their employment.

Wages, Hours and Working Conditions: Four (4) Years

Every employer shall keep accurate information with respect to each employee, including:

- Full name, home address, occupation and social security number
- Birth date, if under 18 years, and designation as a minor
- Time records showing when the employee begins and ends each work period.
- Meal periods, split-shift intervals and total daily hours worked must also be recorded.

- Meal periods during which operations cease and authorized rest periods need not be recorded.
- Total wages paid each payroll period, including value of board, lodging or other compensation actually furnished to the employee
- Total hours worked in the payroll period and applicable rates of pay. This information shall be readily available to the employee upon reasonable request.
- Qualified benefit plans, trust records, employee notices and sales and purchasing records
- Wage rate calculation tables for straight time and overtime
- Records explaining wage differentials between sexes
- Employment contracts
- Records of additions to or deductions from wages, unemployment compensation contributions and wage rate tables.
- When a piece or incentive plan is in operation, piece rates or an explanation of the incentive plan formula must be provided to employees. An accurate production record shall be maintained by the employer.

All required records must be in English and in ink or other indelible form, properly dated, showing the month, day and year and should be kept on file by the employer for at least three years at the place of employment or at a central location within the state of California. Employees may file certain claims under the Business and Professions Code section 17200, which has a four-year statute of limitation. An employee's records should be available for inspection by the employee upon reasonable request.

California Equal Pay Act- Labor Code section 1197.5(e)- Three (3) Years

Under the amended Equal Pay Act, an employer must keep records of wages, wage rates, job classifications, and other terms and conditions of employment for a period of three years. (Labor Code section 1197.5(e).)

Additionally, starting January 1, 2023, an employer must keep records of a job title and wage rate history for each employee for the duration of the employment plus three years after the end of the employment. The records shall be open to inspection by the Labor Commissioner in order to determine if there is still a pattern of wage discrepancy.
(Labor Code section 432.3(c)(4).)

Fair Employment and Housing Act (Discrimination in Employment): Three Years (4 years for employee personnel records)

Employers of five or more workers must preserve any and all:

- Job applications, resumes and job inquiries sent to the employer
- Employment referral records and applicant identification records
- All payroll records, including individual employee wage records, name, employee number, address, age, sex, occupation, time and day the work week begins, regular hourly rate, hours worked each day and total weekly hours
- Daily or weekly straight-time earnings, deductions or additions to wages, wages paid each Day period, date of payment and period covered by payment
- Employee wage records
- ***Employee personnel files- 4 yrs.***
- Help-wanted ads
- Job descriptions
- Job opening notices for opportunities for training and promotion
- Records of overtime
- Retirement and pension plans
- Seniority and merit system descriptions.

In the event a complaint is filed against the employer, all records and files related to the action must be retained until the case is fully and finally concluded.

Workers' Compensation Benefits: Two Years to Five Years

In California, employers should retain the following documents for workplace injuries: date-stamped copy of claim forms, report of occupational injury or illness, letter of denial of benefits to employee, all reports to the Division of Workers' Compensation, records of benefits paid, estimate of future benefits, applications to the Workers' Compensation Appeals Board, Orders & Awards of Workers' Compensation Appeals Board, and all notices sent to the injured employee.

Employers should keep all of the above documents for at least five years after the date of injury, whether the claim is still active or closed. For all closed workers' compensation claims, the employer should keep the above documents for at least two years from the date the claim closed. For open claims, the employer should keep the listed records for five years from the date of injury or last date for benefit payment, whichever is later.

All claim files shall be maintained at least until the latest of the following dates:

- Five years from the date of injury
- One year from the date compensation was last provided

- All compensation due or which may be due has been paid
- If an audit has been conducted, until the findings of an audit of the file have become final.

Open and closed claim files may be maintained in whole or in part in an electronic or other non-paper storage medium.

Healthy Workplaces Healthy Families Act of 2014 and COVID-19 Supplemental Sick Pay: Three Years

The Healthy Workplaces, Healthy Families Act of 2014 is California's new sick leave law that took effect January 1, 2015. The law makes any employee who works in California for 30 or more days on or after January 1, 2015 eligible for paid sick leave. An employer must keep records documenting the hours worked and paid sick days accrued and used by an employee for at least three years.

Employers must also allow the Labor Commissioner access to these records. If an employer does not maintain adequate records pursuant to this act it will be presumed that the employee is entitled to the maximum number of hours accruable under this article, unless the employer can show otherwise by clear and convincing evidence.

For further information visit The California Department of Industrial Relations website.

Fair Chance Act ("Ban the Box"): Three Years

The Fair Chance Act went into effect on January 1, 2018 and is a California law that generally prohibits employers of more than 5 employees from inquiring into criminal backgrounds of applicants until after a conditional offer of employment is made. Employers cannot conduct any "direct or indirect" activity to gather criminal history from or about any applicant using any form of communication, including on application forms, interviews or Criminal History Reports. Employers must retain job applications and related information for three years.

For further information visit The California Department of Fair Employment and Housing website. Employers should also refer to local city or county ordinance for additional requirements that may be applicable.

Permanent Records

It is advisable for employers to permanently retain the following records:

- Employment applications
- Job offer letters

- Records of pay changes since date of hire
- Benefits or beneficiary designation or changes
- Benefit request forms
- Performance evaluations
- Policy receipts with employee's signature
- All employee training logs
- Leaves of absence taken
- Notice of union membership and dues deduction
- Education records
- Termination records and reasons therefor
- Exit interviews
- Arbitration, confidentiality, trade secret, invention, severance, and other agreements
- Awards to employees.

The following documents should be kept for at least five years:

- Records complimenting an employee's performance
- Disciplinary action
- Requests for transfer
- Records of leave of absence taken.

The following records should also be kept:

- Records regarding property issued to an employee (for the duration of the employment)
- Verification of an employee's references (three years)
- Verification of employment provided to subsequent prospective employers (three years following termination)
- Wage attachments/garnishment notices (six years)
- Notices of union membership, dues check-off (four years).

Enhanced Record-keeping Requirements Related to COVID-19

As a result of the COVID-19 pandemic, employers may be required to maintain records for longer periods of time than usual. Employers must maintain records documenting accrued and used COVID-19 Supplemental Paid Sick Leave for three years. Under OSHA, if an employee contracts COVID-19 at work, the employer must keep a record of that incident for five years.

This requirement kicks in if there is a confirmed, rather than suspected, case of COVID-19 and the case is work-related. Further, the case must fall under the recording requirements of Section 1906.7, meaning that the case must result in one of the following: death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, loss of consciousness, or significant injury or illness diagnosed by a doctor or other licensed healthcare professional.

To ensure workplace safety, many employers have taken precautions such as taking employees' temperatures or requiring them to fill out questionnaires regarding their health. However, these reports likely do not constitute medical records according to OSHA and thus do not have to maintained accordingly unless they were made by a physician, nurse, or healthcare professional, in which case they would have to be retained for the duration of the employee's employment plus thirty years. If employers are using medical professionals to take temperatures or perform any other evaluative work, it is important to separate those records from the employees' personnel file since those must be retained for a longer period of time.

While there may not be many other direct regulations in regard to record retention during the COVID-19 pandemic, employers should continue to follow pre-COVID-19 standards and make sure they are keeping meticulous records. If you do not have a recordkeeping policy in place, it is important to develop one. If there is one already in place, it should be reviewed to make sure all necessary documents are being retained for the proper amount of time.

SUMMARY

The records and documents discussed under the relevant laws are not intended to be an all-inclusive list of documents an employer should keep. If there are documents not listed here that may be relevant to an employee, the employer should retain those documents as necessary. Additionally, the wages, taxes, medical leave, etc. laws discussed above require that an employer keep identical documents for different time periods. Therefore, remember that even though one law may only require you to retain a document for one year, another law may require you to keep that same document for four years. Further, if there is any investigation by a government agency, you must keep all records related to that investigation until the investigation is complete.

The CRA advises employers to seek the assistance of legal counsel or an accountant before destroying any employee documents.

Note that government contractors are subject to additional record keeping requirements not covered in this Industry Insight. When record-keeping requirements overlap, the longest requirement prevails. Because most retention periods are four years or less, and because the longest statute of limitations in California is generally four years, employers may be advised to retain all records at least that long.