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# Employment Records

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Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

The University of Tennessee  
County Technical Assistance Service  
226 Anne Dallas Dudley Boulevard, Suite 400  
Nashville, Tennessee 37219  
615.532.3555 phone  
615.532.3699 fax  
[www.ctas.tennessee.edu](http://www.ctas.tennessee.edu)

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# Employment Records

Reference Number: CTAS-2063

**Employment Records.** Included in this schedule are all those records that an office may keep related to employment. This schedule applies to all county offices, except where a specific exception is listed in the retention schedule for that office. To a certain extent, the records kept by county offices vary from county to county in either the format of record kept, the name given to the record or the frequency of its occurrence. There are many different listings in this schedule that contain the same information. Generally, the information does not have to be kept in those separate formats, it simply has to be present somewhere in the records of the office. The fact that a certain record is listed in this schedule does not necessarily indicate that you should have it in your office. It may be a format for record-keeping that was never utilized in your county, or you may keep the record under a different name. If you have records in your office that are not listed in this schedule by name, check the descriptions of the records to see if we may have called it by a different term. If you still cannot locate any entry relative to the record, contact us at the County Technical Assistance Service for guidance in determining the proper disposition of the record and so that we can make note of that record’s existence to include it in future revisions of this manual. Most of the legal requirements for employment record retention come from federal laws and regulations which are cited under the legal authority for the individual record.

**DO NOT PANIC !** If you read through this schedule and it appears that there are far more records required than you have, that may not be the case. The presentation of this retention schedule is somewhat different than the other schedules in this manual. The records series listed in this schedule are arranged to a certain degree according to the laws that require the record. When accessing a personnel file, you may look at the same information for a number of different purposes. For that reason, this listing is organized more on the basis of the purpose for keeping the information in a file than on a description of the file itself. Many of the listings in this schedule will be satisfied by a single record in your office. For example, there are several listings for payroll records. There are payroll records kept for Age Discrimination Act purposes, payroll records for FLSA purposes, payroll records for Title VII purposes, etc. You do not have to keep separate payroll records for these different purposes. Keep one set of records for the longest period required by any of those acts.

## Retention Schedule for Employment Records—All Offices

| Description of Record   | Retention Period  | Legal Authority/<br>Rationale   |
|---|---|---|
| <b>16-001 Advertisements Regarding Job Openings, Promotions, Training Programs or Overtime Work</b>   | Retain five years.  | 28 U.S.C. § 1658; <i>Jones v. R.R. Donnelley &amp; Sons Co.</i> , 124 S.Ct. 1836(May 3, 2004).                            |
| <b>16-002 Age Records</b>   | Retain three years  | Fair Labor Standards Act 29 CFR 516; Age Discrimination in Employment Act 29 CFR 1627.3.                                  |
| <b>16-003 Americans with Disability Act—Employer Records</b>  | Retain two years.   | Same retention requirements as the Civil Rights Act of 1964 as Amended, Title VII of the Civil Rights Act 29 CFR 1602.31. |
| <b>16-004 Applications, resumes or other replies to job advertisements, including temporary positions</b>   | Retain five years from date record was made or human resources action is taken, whichever is later. | 28 U.S.C. § 1658; <i>Jones v. R.R. Donnelley &amp; Sons Co.</i> , 124 S.Ct. 1836(May 3, 2004).                            |
| <b>16-005 Bloodborne Pathogens/Infectious Material Standard</b> —Protects employees who may be occupationally exposed to blood or other infectious materials. | See below for individual items.   | Occupational Safety and Health Act; 29 CFR 1910.1020 and 1910.1030.   |
| <ul style="list-style-type: none"> <li>Written exposure control plan.</li> </ul>  | Not specified—keep current and available to workers.  |   |

**Retention Schedule for Employment Records—All Offices**

| Description of Record   | Retention Period   | Legal Authority/<br>Rationale   |
|---|--|---|
| <ul style="list-style-type: none"> <li>Medical records.</li> </ul>  | Term of employment+30yrs.  |   |
| <ul style="list-style-type: none"> <li>Training records.</li> </ul>   | Three years.   |   |
| <ul style="list-style-type: none"> <li>Employee exposure records.</li> </ul>  | Retain 30 years.   |   |
| <p><b>16-006 Citizenship or Authorization to Work—</b> Immigration and Naturalization Services Form I-9 (employment eligibility verification form) for all employees hired after November 6, 1986.</p>  | <p>Three years from date of hire or one year after separation, whichever is later.<br/>(Minimum of three years.)</p> | <p>Immigration Reform Control Act 8 CFR 274A.2.</p>   |
| <p><b>16-007 Contracts, Employment—</b>Contracts between city and employees or independent contractors.</p>   | <p>Retain seven years after termination of employment or contract.</p>   | <p>Based on statute of limitations for breach of contract plus one year.<br/>T.C.A. § 28-3-109.<br/>28 U.S.C. § 1658; <i>Jones v. R.R. Donnelley &amp; Sons Co.</i>, 124 S.Ct. 1836(May 3, 2004).</p> |
| <p><b>16-008 Demotion records</b></p>   | Five years.  |   |
| <p><b>16-009 Discrimination or Enforcement Charges—</b>Personnel records relevant to charge of discrimination or enforcement against employer, including records relating to charging party and to all other employees holding positions similar or sought after, such as application forms or performance documentation.</p> | <p>Until final disposition of charge or action.</p>  | <p>Age Discrimination in Employment Act 29 CFR 1627.3(b)(3).<br/>Title VI of the Civil Rights Act 29 CFR 1602.31.<br/>Executive Order 11246.</p>  |
| <p><b>16-010 Drug Testing Records—</b>(As required by United States Department of Transportation).</p>  | <p>See below for the different types of records.</p>   |   |
| <p><u>Category One Records</u></p>  | Five years.  |   |
| <p>Breath alcohol test with results of .02 or higher; positive controlled substance tests; documentation of refusals to test; calibration documentation; evaluation and referrals; copy of calendar year summary—</p>   |  | <p>Omnibus Transportation Employee Testing Act of 1991; Federal Highway Administration Department of Transportation Motor Carrier Safety Regulations</p>  |
| <p><u>Category Two Records</u></p>  | Two Years.   | 49 CFR 382.401.   |
| <p>Information on the alcohol and controlled substances collection process—</p>   |  |   |
| <p><u>Category Three Records</u></p>  | One Year.  |   |
| <p>Negative and canceled controlled test results; alcohol test results of less</p>  |  |   |

**Retention Schedule for Employment Records—All Offices**

| Description of Record  | Retention Period   | Legal Authority/<br>Rationale   |
|--|--|---|
| <p>than .02 concentration—<br/><u>Category Four Records</u><br/>Information on education and training.</p>   | <p>Two years after the individual receiving training ceases to perform those functions.</p>  | <p>29 CFR 1602.31.</p>  |
| <p><b>16-011 EEOC Information</b>—Records kept by local governments. Any political subdivision with 15 or more employees must keep records and information which are necessary for the completion of Report EEO-4 (Local Government Information Reports) regardless of whether or not the jurisdiction is required to file a report.</p>             | <p>Retain two years from the date of the making of the record or the personnel action involved, whichever occurs later.</p>                                      | <p>Age Discrimination in Employment Act 29 CFR 1627.3; Fair Labor Standards Act 29 CFR 516.5 Retention period of 70 years is due to retirement concerns and is based on approximate lifespan of employee. May destroy earlier if employee and any potential claimants are deceased.</p> |
| <p><b>16-012 Employee Earnings Records</b>—Record of annual earning for employees. The portion of the record that needs to be kept for the life of the employee needs only to be a statement of annual earnings as a backup for retirement or social security purposes.</p>  | <p>Keep office record for three years. After this time, microfilm or archive record and keep for 70 years.</p>   | <p>Title VII of the Civil Rights Act (29 CFR 1602.32).</p>  |
| <p><b>16-013 Employer Information Report</b>—For political jurisdictions with 100 or more employees, and other jurisdictions with 15 or more employees from whom the Commission requests an EEO-4 report, a copy EEO-4 Form (Employer Information Report) must be kept.</p>  | <p>Retain a copy of the most recent version of the report must at the central office for three years.</p>  | <p>Internal Revenue Code (26 CFR 31.6001-1).</p>  |
| <p><b>16-014 Employment Tax Records</b><br/><b>16-015 Family and Medical Leave Act (FMLA) Records</b>—Employer Records Regarding Leave Under FMLA for all employees. For more information regarding what records must be kept, see 29 CFR 825.500 or the CTAS publication <i>The Family and Medical Leave Act—A Guide for Local Governments</i>.</p> | <p>Four years after due date<br/>Three years.</p>  | <p>Family and Medical Leave Act 29 CFR 825.500.</p>   |
| <p><b>16-016 Garnishment Documents</b><br/><b>16-017 Group Health Insurance Coverage After Certain Qualifying Events</b>—Employers need records showing covered employees and their spouses and dependents:</p>  | <p>Federal garnishment laws are enforced under the FLSA. Keep for three year period.</p>   | <p>Fair Labor Standards Act 29 CFR 516.5.</p>   |
| <ul style="list-style-type: none"> <li>• Have received written notice of continuing group health insurance and COBRA rights</li> <li>• Whether the employee, spouse, and dependents elected or rejected coverage.</li> </ul>   | <p>Retain seven years.</p>   | <p>Internal Revenue Code 26 CFR 54.4980B.</p>   |
| <p><b>16-018 Hazard Communications (Hazardous Materials Exposure Records)</b>—Records of any personal or environmental monitoring of exposure to hazardous materials. Records of “significant adverse reactions” to health or the</p>  | <p>Thirty years for records of significant adverse reactions to employee’s health; five years for all other allegations, including environmental charges; 30</p> | <p>40 CFR 717.15.</p>   |

**Retention Schedule for Employment Records—All Offices**

| Description of Record  | Retention Period  | Legal Authority/<br>Rationale   |
|--|---|---|
| <p>environment that may indicate “long-lasting or irreversible damage,” “partial or complete impairment of bodily functions,” “impairment of normal activities which is experienced each time an individual is exposed.” Records must contain original allegation; abstract of allegation including name and address of site that received allegation, date allegation received, implicated substance, description of alleged health effects, results of any self-initiated investigation of allegation and copies of any other required reports relating to allegation.</p> | <p>years for employee health-related allegations arising from any employment related exposure.</p>    |   |
| <b>16-019 Hiring Records</b>   | <p>Retain five years from date records are made or personnel action is taken, whichever is later.</p> | <p>28 U.S.C. § 1658; <i>Jones v. R.R. Donnelley &amp; Sons Co.</i>, 124 S.Ct. 1836(May 3, 2004).</p>  |
| <b>16-020 Insurance/Retirement Plans</b>   | <p>Keep while plan or system is in effect, plus one year after termination of the plan.</p>           | <p>Age Discrimination in Employment Act<br/>29 CFR 1627.3(b)(2).</p>  |
| <ul style="list-style-type: none"> <li>Benefit plan descriptions</li> <li>Supporting documentation for all required plan descriptions and any reports required to be filed under ERISA including vouchers, worksheets, receipts, and applicable resolutions.</li> </ul>  | <p>Retain not less than six years after filing date of documents.</p>                                 | <p>Employee Retirement Income Security Act 29 CFR 2520.101-1 through 2520.104(b)-30).</p>   |
| <b>16-021 Layoff Selection</b>   | <p>Retain five years from date record made or personnel action taken.</p>                             | <p>28 U.S.C. § 1658; <i>Jones v. R.R. Donnelley &amp; Sons Co.</i>, 124 S.Ct.1836 (May 3, 2004).</p>  |
| <b>16-022 Material Safety Data Sheets (MSDS)</b>   | <p>No specific time—must be maintained in a current fashion.</p>                                      | <p>Occupational Safety and Health Act 29 CFR 1910.1020(d)(1)(ii)(B).</p>  |
| <ul style="list-style-type: none"> <li>Employers must have MSDS on file for each hazardous chemical they use and ensure copies are readily accessible to employees in their work area.</li> <li>Employer must keep records of chemicals used, where they were used, when they were used and for how long.</li> </ul>   | <p>Retain 30 years.</p>   | <p>Occupational Safety and Health Act 29 CFR 1910.1020(d)(1)(ii)(B).</p>  |
| <b>16-023 Military Leave Records</b>   | <p>Retain seven years.</p>  | <p>Uniform Services Employment and Re-Employment Rights Act 5 CFR 1208</p>  |
| <b>16-024 Occupational Injuries and Illness Records</b>  | <p>Retain five years following the end of the year to which records relate.</p>                       | <p>Note: retention period not specified by regulations. The service limit on the time an employee may spend in active duty and still be eligible for re-employment can be up to five years.</p> |
| <ul style="list-style-type: none"> <li><i>Log and Summary of Work Related Injuries and Illnesses—OSHA Form 300.</i></li> </ul>   |   | <p>Occupational Safety and Health Act 29 CFR 1904.</p>  |

**Retention Schedule for Employment Records—All Offices**

| Description of Record   | Retention Period   | Legal Authority/<br>Rationale  |
|---|--|--|
| <ul style="list-style-type: none"> <li>• <i>Summary of Work Related Injuries and Illnesses—OSHA Form 300A</i></li> <li>• <i>Injury and Illness Incident Report OSHA Form 301 (effective January 1, 2002)</i></li> </ul>   | <p>Retain five years following the end of the year to which records relate.</p> <p>Retain five years.</p>  |  |
| <p>These forms and reports provide details on each recordable injury and illness. These records are required whether or not there are injuries.</p>   |  |  |
| <p><b>16-025 Older Workers Benefit Protection Act—Employer Records</b>—Same employer record retention requirements as under the ADEA.</p>   | <p>Retain three years.</p> <p>Retaining waivers as a permanent record is recommended.</p>  | <p>Age Discrimination in Employment Act 29 CFR 1627.3, 29 CFR 1601.30</p> <p>Retaining waivers will assure that record is available for defense of litigation in discrimination actions.</p> |
| <p>Waivers of ADEA rights.</p>  |  |  |
| <p><b>16-026 Payroll Records—Additions or Deductions from Records Paid</b>—All records used by the employer in determining additions to or deductions from wages paid.</p>  | <p>Retain five years.</p>  | <p>28 U.S.C. § 1658; <i>Jones v. R.R. Donnelley &amp; Sons Co.</i> 124 S.Ct. 1836 (May 3, 2004).</p>   |
| <p><b>16-027 Payroll Records for Age Discrimination in Employment Act Purposes</b>—Payroll or other records containing each employee’s name, address, date of birth, occupation, rate of pay and compensation earned per week.</p>  | <p>Retain five years.</p>  | <p>28 U.S.C. § 1658; <i>Jones v. R.R. Donnelley &amp; Sons Co.</i> 124 S.Ct. 1836 (May 3, 2004).</p>   |
| <p><b>16-028 Payroll Records for FLSA-Exempt and Non-exempt Employees</b>— Basic time and wage records for employee: name in full of employee; identifying number or symbol, if such is used on payroll records; home address, including zip code; date of birth, if under 19 years of age; sex and occupation; time of day and day of week on which employee’s work week begins, if this varies between employees—otherwise a single notation for the entire establishment will suffice; total wages paid each pay period; dates of payment and pay period covered; hours worked; rate of pay; records of overtime and comp time hours worked and premiums paid; records of any additions to or deductions from wages.</p> | <p>Retain five years.</p>  | <p>28 U.S.C. § 1658; <i>Jones v. R.R. Donnelley &amp; Sons Co.</i> 124 S.Ct. 1836 (May 3, 2004).</p>   |
| <p><b>16-029 Payroll Records for Title VII Purposes</b>—Records regarding promotion, demotion, rates of pay or other terms of compensation.</p>   | <p>Retain five years.</p>  | <p>28 U.S.C. § 1658; <i>Jones v. R.R. Donnelley &amp; Sons Co.</i> 124 S.Ct. 1836 (May 3, 2004).</p>   |
| <p><b>16-030 Payroll Records—Records regarding basis for determining wage levels</b>—These are additional records, outside of the scope of those records which must be kept under the FLSA, which an employer may keep in the regular course of business</p>  | <p>Any such records which explain the basis for payment of any wage differential to employees of the opposite sex in the same establishment must be kept</p> | <p>Equal Pay Act<br/>29 CFR 1620.32</p>  |

**Retention Schedule for Employment Records—All Offices**

| Description of Record   | Retention Period   | Legal Authority/<br>Rationale  |
|---|--|--|
| operations which relate to the payment of wages, wage rates, job evaluations, job descriptions, merit systems, seniority systems, collective bargaining agreements, description of practices, etc.  | for two years.   |  |
| <b>16-031 Personnel Files</b> —File for each employee tracking pay, benefits, performance evaluations, personnel actions and employee’s hiring and termination.   | Retain for seven years after termination. Note: Retain medical records separately in confidential file for 30 years after termination including exposure records.  | Based on five year statute of limitations for personnel actions plus two years and OSHA; 20 CFR 1910.1020(d)(1). |
| <b>16-032 Personnel Policies</b> —Policies of the office regarding leave, benefits, procedures, etc. Certain policies are required by law under T.C.A. § 5-23-101, <i>et. seq.</i> Additional policies would be optional.   | Retain current copy of any effective policies of the office. For policies required under T.C.A. § 5-23-101, a copy of all policies is filed permanently with the county clerk, so it is not necessary to keep copies of policies that are no longer effective. For any optional policies that are no longer effective, kept seven years after the policy is terminated.. | T.C.A. § 5-23-101, <i>et. seq.</i> Statute of Limitations, T.C.A. § 28-3-109.                                    |
| <b>16-033 Physical/Medical Records</b> —Results of physical examinations considered in connection with personnel action.  | One year, but see next entry.  | Age discrimination in Employment Act 29 CFR 1627.3   |
| <b>16-034 Physical/Medical Records Under FMLA</b> —Records and documents including an FMLA leave request relating to medical certifications, re-certification or medical histories of employees, or employee’s family members. These records must be maintained in separate files/records and be treated as confidential medical records. | Three years.   | Family Medical Leave Act 29 CFR 825.500  |
| <b>16-035 Physical/Medical Records under OSHA</b> —Complete and accurate records of all medical examinations required by OSHA.  | Duration of employment, plus 30 years unless a specific OSHA standard provides a different time period.  | Occupational Safety and Health Act 29 CFR 1910.1020.   |
| <b>16-036 Promotion Records or Notices</b>  | Retain five years.   | 28 U.S.C. § 1658; <i>Jones v. R.R. Donnelley &amp; Sons Co.</i> 124 S.Ct. 1836 (May 3, 2004).                    |
| <b>16-037 Seniority or Merit Rating Systems</b>   | Retain five years.   | 28 U.S.C. § 1658; <i>Jones v. R.R. Donnelley &amp; Sons Co.</i> 124 S.Ct. 1836 (May 3, 2004).                    |
| <b>16-038 Termination Records</b>   | Retain five years.   | 28 U.S.C. § 1658; <i>Jones v. R.R. Donnelley &amp; Sons Co.</i> 124 S.Ct. 1836 (May 3, 2004).                    |
| <b>16-039 Transfer Records</b>  | Retain five years.   | 28 U.S.C. § 1658; <i>Jones v. R.R. Donnelley &amp; Sons Co.</i> 124 S.Ct. 1836 (May 3, 2004).                    |
| <b>16-040 Travel Authorizations</b>   | Retain five years after creation of record.  | Kept for audit purposes.   |



**Retention Schedule for Employment Records—All Offices**

| Description of Record  | Retention Period   | Legal Authority/<br>Rationale   |
|--|--|---|
| <b>16-041 W-2s and 941s</b> —Copies of standard IRS forms for annual wage and tax statements, W-2 and 941.   | Retain seven years.  | Keep in case of tax fraud investigation by the IRS.   |
| <b>16-042 W-4s</b> —Withholding allowance certificates   | Retain five years after superseded or upon separation of employee. | Keep for audit purposes.  |
| <b>16-043 Wage Rate Tables</b> —All tables or schedules (from their last effective date) of the employer which provide rates used in computing straight-time earnings, wages, or salary or overtime pay computation. | Three years.   | Fair Labor Standards Act<br>29 CFR 516.6 requires two year retention, but the Department of Labor can request records going back three years. |

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