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SUMMARY OF FEDERAL LABOR AND EMPLOYMENT LAW RECORD RETENTION REQUIREMENTS

I. AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967 ("ADEA")

A. Employers must retain for **three (3) years** records containing:

- # the name;
- # address;
- # date of birth;
- # occupation;
- # rate of pay; and
- # compensation earned each week for every employee.

29 CFR § 1627.3(a).

B. Employers must keep for **one (1) year** personnel or employment records made in the regular course of business which are related to job applications, resumes, promotion, demotion, discharge, transfer, layoff, recall, selection for training, job orders submitted to employment agencies or labor organizations, employment tests, results of physical examinations, and job advertisements. 29 CFR § 1627.3(b)(1). Employers must keep applications submitted by seasonal and temporary workers for the same amount of time as other applications.

C. Employers must retain employee benefit plans, including pension plans, insurance plans and written merit or seniority systems, for the duration of the plan and for at least **one (1) year** after termination of the plan. 29 CFR § 1627.3(b)(2).

D. Employers must retain records regarding enforcement actions under the ADEA until final disposition of the action. 29 CFR § 1627.3(b)(4).

II. TITLE VII OF THE CIVIL RIGHTS ACT ("CRA") and THE AMERICANS WITH DISABILITIES ACT ("ADA")

A. Personnel or Employment Records

Personnel or employment records made or kept by an employer must be retained for **one (1) year** after the date the record was made or for **one (1) year** after the date the action was taken, whichever is later. 29 CFR § 1602.14. Employers must keep applications submitted by seasonal and temporary workers for the same amount of time as other applications.

Records which must be retained under this provision include, but are not limited to, requests for reasonable accommodation, application forms submitted by applicants and other records having to do with hiring, promotion, demotion, transfer, lay-off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship. 29 CFR § 1602.14.

B. Involuntarily Terminated Employees

The personnel records of an involuntarily terminated employee must be kept for **one (1) year** after the date of termination. 29 CFR § 1602.14.

C. Pending Charges

Personnel records relevant to a pending charge must be kept until final disposition of the charges. Final disposition is reached when the statutory period to file a lawsuit in federal district court has expired or when litigation is terminated. 29 CFR § 1602.14.

Records which must be retained under this provision include, but are not limited to, personnel records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person, as well as applications or test papers completed by an unsuccessful applicant and by all other candidates for the same position as that for which the aggrieved person applied and was rejected. 29 CFR § 1602.14.

D. EEO-1 Report

Employers with 100 or more employees must file the EEO-1 report on or before **September 30** of every year. 29 CFR § 1602.7. These employers must retain a copy of their most recent EEO-1 report in their files at all times. 29 CFR § 1602.7.

E. Apprenticeship Programs

Employers must retain either a chronological list of all applicants for apprenticeship programs or the actual application forms for **two (2) years** after an application is received. In either case, the records must reflect:

- # the name;
- # address;
- # date of application; and
- # the sex or minority status of all applicants.

29 CFR §§ 1602.20(b), 1602.20(c), 1602.21(a).

Employers who are required to file the EEO-2 must keep all records relating to apprenticeship applications, including test and interview results and requests for reasonable accommodation, for **two (2) years** after the date of the making of the record. 29 CFR §§ 1602.20(a), 1602.21(b). Records made solely for the purpose of filing an EEO-2 report must be kept for **one (1) year**. 29 CFR § 1602.21(a).

Personnel records relevant to a pending charge must be kept until final disposition of the charges. Final disposition is reached when the statutory period to file a lawsuit in federal district court has expired or when litigation is terminated. 29 CFR § 1602.21(b).

Records which must be retained under this provision include applications and forms or test papers completed by unsuccessful applicants and by all other candidates for the same position as that for which the charging party applied and was rejected. 29 CFR § 1602.21(b).

III. UNIFORM GUIDELINES ON EMPLOYEE SELECTION PROCEDURES ("UGESP")

A. Employers With Fewer Than 100 Employees¹

1. Employers with fewer than 100 employees should maintain records showing on an annual basis:
 - a. the number of persons hired, promoted and terminated for each job, by sex, color, religion and, where appropriate, by race and national origin;
 - b. the number of applicants for hire and promotion by sex and, where appropriate, by race and national origin; and
 - c. the selection procedures utilized (either standardized or not standardized).

29 CFR § 1607.15(A)(1).

2. These records should be maintained for each race or national-origin group constituting more than two (2%) percent of the labor force in the relevant labor area. 29 CFR § 1607.15(A)(1).
3. It is not necessary to maintain records by race and/or national origin if one race or national-origin group in the relevant labor area constitutes more than ninety-eight (98%) percent of the labor force in the area. 29 CFR § 1607.15(A)(1).
4. The regulations do not specify how long these records must be retained.

B Employers With 100 Employees or More

1. These employers should maintain records or other information showing, for each job, whether the total selection process has had an adverse impact on any of the groups for which records are required. 29 CFR § 1607.15(A)(2).

¹ The italicized title to 29 CFR § 1607.15(A)(1) differs from the text of the regulation with respect to the number of employees required to use the simplified recordkeeping guidelines. The title states that the simplified guidelines apply to employers with "less than 100 employees," while the text of the regulation says that it applies to employers with "one hundred or fewer employees." Since the EEO-1 requirements apply to employers with 100 employees or more, the safest course of action is to assume that employers with exactly 100 employees may not take advantage of the simplified guidelines.

2. Adverse-impact determinations should be made at least annually for covered groups which constitute at least two (2%) percent of the labor force in the relevant area or two (2%) percent of the applicable labor force. 29 CFR § 1607.15(A)(2).
3. The regulations do not specify how long these records must be retained.

C. Adverse Impact

Where it is determined that a selection process has had an adverse impact, the employer should maintain records or other information showing which components have an adverse impact for as long as the adverse impact continues and for **two (2) years** after it has been eliminated. 29 CFR § 1607.15(A)(2),(3).

IV. FAIR LABOR STANDARDS ACT ("FLSA") and EQUAL PAY ACT ("EPA")

FLSA

- A. Employers must keep and maintain for **three (3) years** all payroll records, certificates, collective bargaining agreements, plans, trusts, employment contracts, notices, and sales and purchase records. 29 CFR § 516.5.
1. With respect to employees who are subject to the minimum-wage requirements or the minimum-wage and overtime requirements, payroll records retained for **three (3) years** must include:
 - # the employee's name;
 - # employee number; (if such is used in place of name on any time, work or payroll records);
 - # home address, (including zip code);
 - # date of birth (if under 19);
 - # sex;
 - # occupation in which employed;
 - # time of day and day of week on which the employee's workweek begins;
 - # regular hourly rate of pay for any workweek in which overtime compensation is due;
 - # explanation of basis of pay;
 - # amount and nature of each payment excluded from the regular rate of pay by FLSA Section 7(e);
 - # hours worked each workday and total hours worked each workweek;
 - # total daily or weekly straight-time earnings or wages due, exclusive of overtime premium;
 - # total premium pay for overtime hours, (this excludes straight time earnings for overtime hours);

- # total additions to or deductions from wages paid each pay period, including employee purchase orders or wage assignments, the dates, amounts, and nature of items which make up the total additions and deductions in individual employee records;
- # total wages paid each pay period; and
- # date of payment and the pay period covered by payment.

29 CFR §§ 516.2, 516.5.

2. With respect to employees who are exempt from both the minimum-wage and overtime requirements under FLSA §§ 13(a)(1), (3), (5), (8), (10), 12 or 13(d), payroll records retained for **three (3) years** need only include:

- # the employee's name;
- # home address;
- # date of birth (if under 19);
- # sex;
- # occupation;
- # time of day and day of week on which the employee's workweek begins;²
- # total wages paid each pay period;³ and
- # date of payment and pay period covered by payment;⁴
- # basis on which wages are paid in sufficient detail to permit calculation for each pay period of the employee's total remuneration for employment including fringe benefits and perquisites (this may be shown as the dollar amount of earnings per month, per week, per month plus commissions, etc. with appropriate addenda such as "plus hospitalization and insurance plan A," "benefit package B," "2 weeks paid vacation," etc.).⁵

29 CFR §§ 516.3; 516.11.

3. With respect to employees who are exempt from overtime only, per §§ 13(b)(1), (2), (3), (5), (9), (10), (15), (16), (17), (20), (21), (24), (27), or (28), payroll records retained for **three (3) years** must contain all information required for nonexempt employees, except

² These entries are required only for employees who are exempt under § 13(a)(1) as executive, administrative, professional, and outside sales employees from the minimum wage and overtime requirements.

³ Same as Footnote 2 above.

⁴ Same as Footnote 2 above.

⁵ Same as Footnote 2 above.

regular hourly rate of pay and total overtime premium pay by workweek; and in addition, the basis on which wages are paid. 29 CFR § 516.12.

4. In addition, there are a number of special recordkeeping requirements in connection with overtime exemptions for local delivery employees, certain seamen, employees employed in certain tobacco, cotton, sugar cane, or sugar beet, employees under certain CBAs who are partially exempt per §§ 7(b)(1) or 7(b)(2), concession employees in National Park System, employees of hospitals and residential care facilities paid for overtime on the basis of a 14-day work period pursuant to FLSA § 7(j), employees under § 7(f) “Belo” contracts, employees paid for overtime on the basis of “applicable” rates provided in FLSA §§ 7(g)(1) and 7(g)(2), employees paid for overtime at premium rates computed on a “basic” rate per § 7(g)(3).
5. In addition there are special recordkeeping requirements for tipped employees, employees employed in agriculture, industrial homeworkers, learners, apprentices, messengers, students and disabled workers.

B. Employers must keep for **two (2) years** all basic employment and earnings records, including:

- # basic time and earnings sheets on which are entered daily starting and stopping times of individual employees;
- # wage-rate tables;
- # orders, shipping and billing records (customers' bills, etc.);
- # job evaluations, merit systems, seniority systems, or other matters which describe or explain the basis for any wage differentials for employees of the opposite sex in the same establishment; and
- # records of deductions from or additions to pay.

29 CFR § 516.6.

C. Employers must keep for **three (3) years** records described in A.1 above and segregate on pay records and certificates relating to the employment of employees compensated at a subminimum-wage rate under the special provisions for apprentices, messengers, students, learners, and handicapped workers. 29 CFR § 516.30.

EPA (§ 6(d) of the FLSA)

A. Employers subject to the EPA are required to maintain and preserve all records required by the FLSA regulations at 29 CFR Part 516 as discussed above for three years (although certain limited records need only be retained for 2 years).

- B. Every employer subject to the equal pay provisions of the EPA shall preserve for at least **two (2) years**, any records which he makes in the regular course of his business operation which relate to the payment of wages, wage rates, job evaluations, job descriptions, merit systems, seniority systems, collective bargaining agreements, description of practices or other matters which describe or explain the basis for payment of any wage differential to employees of the opposite sex in the same establishment, and which may be pertinent to a determination whether such differential is based on a factor other than sex.

V. FAMILY AND MEDICAL LEAVE ACT OF 1993 ("FMLA")

- A. The FMLA provides that covered employers shall make, keep, and preserve records pertaining to their obligations under the Act in accordance with the record keeping requirements of Section 11(c) of the Fair Labor Standards Act ("FLSA") and in accordance with the FMLA regulations. 29 CFR § 825.500(a).
- B. No particular order or form of records is required. Employers must keep the record specified by these regulations for no less than **three (3) years** and make them available for inspection, copying, and transcription by representatives by the Department of Labor upon request. 29 CFR § 825.500(b).
- C. Covered employers who have eligible employees must maintain records that disclose the following:
 1. Basic payroll and identifying employee data; rate or basis of pay and terms of compensation; daily and weekly hours worked per pay period; additions to or deductions from wages; and total compensation paid.
 2. Dates FMLA leave is taken by FMLA eligible employees. Such leave must be designated in the employer records as FMLA leave and may not include leave required under State law or an employer plan which is not also covered by FMLA.
 3. If FMLA leave is taken by eligible employees in increments of less than one full day, the hours of the leave.
 4. Copies of employee notices of leave furnished to the employer under FMLA, if in writing, and copies of all general and specific written notices given to employees as required under FMLA and the regulations. (See 29 CFR § 825.301(c)). Copies may be maintained in employee personnel files.
 5. Any documents (including written and electronic records) describing employer benefits or employer policies and practices regarding taking paid and unpaid leave.

6. Premium payments of employee benefits.
7. Records of any dispute between the employer and eligible employees regarding designation of FMLA leave, including any written statement from the employer or employee of the reasons for the designation and for the disagreement.

29 CFR § 825.500(c)

- D.** Covered employers with no eligible employees must maintain the records set forth in Paragraph (C)(1) above. 29 CFR § 825.500(d).
- E.** Covered employers in a joint employment situation must keep all the records required by Paragraph (C) with respect to any primary employees, and must keep the records required by Paragraph (C)(1) above with respect to any secondary employees. 29 CFR § 825.500(e).
- F.** If FMLA-eligible employees are not subject to FLSA's record keeping regulations for purposes of minimum wage or overtime compliance (i.e., not covered by or exempt from FLSA), an employer need not keep a record of actual hours worked (as otherwise required under FLSA, 29 CFR § 516.2(a)(7)), provided that:
 1. Eligibility for FMLA leave is presumed for any employee who has been employed for at least 12 months; and,
 2. With respect to employees who take FMLA leave intermittently or on a reduced leave schedule, the employer and employee agree on the employee's normal schedule or average hours worked each week and reduce their agreement to a written record maintained in accordance with Paragraph (B) above.

29 CFR § 825.500(f)

- G.** Records and documents relating to medical certifications, recertifications or medical histories of employees or employees' family members, created for purposes of FMLA, shall be maintained as confidential medical records in separate files/records from the usual personnel files, and if the ADA is also applicable, such records shall be maintained in conformance with ADA confidentiality requirements (see 29 CFR § 1630.14(c)(1)), except that:
 1. Supervisors and managers may be informed regarding necessary restriction on the work or duties of an employee and necessary accommodations;
 2. First aid and safety personnel may be informed (when appropriate) if the employee's physical or medical condition might require emergency treatment; and

3. Government officials investigating compliance with FMLA (or other pertinent law) shall be provided relevant information upon request.

29 CFR § 825.500(g)

VI. OCCUPATIONAL SAFETY AND HEALTH ACT ("OSH Act")

- A. Since January 1, 2002, a company that had ten(10) employees at all times during the last calendar year does not need to keep OSHA injury and illness records unless OSHA or DOL's Bureau of Labor Statistics informs it in writing that it must keep records per §1904.41 or §1904.42. However, as required by §1904.39 all employers covered by the OSH Act must report to OSHA any workplace incident that results in a fatality or the hospitalization of three (3) or more employees. See VI. D below.

The OSHA 300A Summary of Work-Related Injuries and Illnesses must be completed at year's end and posted no later than February 1 for three (3) months, instead of the previous one (1) month requirement. Employers must review the Summary for accuracy before posting it and a company executive must verify the form's accuracy.

The following industries were previously exempt from OSHA's record keeping requirements, but must begin keeping a record of work-related injuries and illnesses as of January 1, 2002.

- # Auto and Home Supply Stores
- # Boat Dealers
- # Recreational Vehicle Dealers
- # Home Furniture and Furnishings Stores
- # Household Appliance Stores
- # Used Merchandise Stores
- # Nonstore Retailers
- # Fuel Dealers
- # Real Estate Operators and Lessors
- # Subdividers and Developers
- # Laundry, Cleaning and Garment Service
- # Services to Buildings
- # Miscellaneous Equipment Rental/Leasing
- # Personnel
- # Job Training and Related Services
- # Residential Care
- # Botanical and Zoological Gardens

The following industries were formerly required to comply with OSHA's recordkeeping requirements, but are exempt after January 1, 2002.

- # Hardware Stores
- # Meat and Fish Markets
- # Candy, Nut and Confectionary Stores
- # Dairy Product Stores
- # Retail Bakeries
- # Miscellaneous Food Stores
- # Reupholstery and Furniture Repair
- # Dance Studios, Schools and Halls
- # Producers, Orchestras, and Entertainers
- # Bowling Centers
- # Offices and Clinics of Medical Doctors
- # Offices and Clinics of Dentists
- # Offices of Osteopathic Physicians
- # Offices of Other Health Practitioners
- # Medical and Dental Laboratories
- # Health and Allied Services

Employers must record every illness and injury that is "work-related." An illness or injury that is work-related otherwise meets the general recording criteria if it results in:

- # death
- # days away from work
- # restricted work or transfer to another job (e.g. light duty)
- # medical treatment beyond first aid
- # loss of consciousness.

A case also meets the general recording criteria if it involves a significant injury or illness diagnosed by a physician or other licensed health care professional, even if it does not result in any of these events. This is a new requirement. The first step in determining whether an event is recordable under the standard is therefore understanding OSHA's definition of "work-related." A significant degree of aggravation is now required before a preexisting injury or illness becomes work-related. The new standard states that an injury or illness is work-related if an event or exposure in the work environment either caused or contributed to the resulting condition or *significantly aggravated* pre-existing injury or illness.

- B.** Employers must preserve employee medical records and all recorded information or records indicative of employee exposure to toxic materials or harmful physical agents.

1. Employee medical records must be maintained for each employee's **duration of employment, plus 30 years**, except the following:

1910.1020(d)(i)(A):

- a. health insurance claims records maintained separately from the employer's medical program and its records (29 CFR § 1910.1020(d)(i)(A));
- b. first-aid records (not including medical histories) of one-time treatment and subsequent observation of minor scratches, cuts, burns or splinters which do not involve medical treatment, loss of consciousness, restriction of work or motion or transfer to another job if made on-site by a non-physician and if maintained separately from the employer's medical program and its records (29 CFR § 1910.1020(d)(i)(B)); but
- c. the medical records of employees who have worked less than **one (1) year** need not be retained beyond the term of employment if they are provided to the employee upon the termination of employment (29 CFR § 1910.1020(d)(i)(C)).

2. Employee exposure records shall be maintained and preserved for at least **30 years**, except that:

- a. background data for environmental monitoring or measuring, such as lab reports and worksheets, need only be retained for **one (1) year** so long as the sampling results, the collective methodology, a description of the mathematical and analytical methods, and a summary of other background data are retained for **30 years** (29 CFR § 1910.1020(d)(ii)(A));
- b. material-safety-data sheet records need not be retained for any specified period as long as some record of the identity of the substance or agent, where it was used and when it was used is retained for at least **30 years** (29 CFR § 1910.1020(d)(ii)(B)); but
- c. biological monitoring results designated as exposure records by specific OSHA standards shall be preserved and maintained as required by the specific standard (29 CFR § 1910.1020(d)(ii)(C)).

3. Analyses using exposure or medical records shall be preserved and maintained for at least **30 years**. 29 CFR § 1910.1020(d)(iii).

- C. Records concerning measurement of employee noise exposure must be kept for **two (2) years**. 29 CFR § 1910.95(m)(3)(i). Audiometric test results of individual employees must be kept for the duration of the affected employee's employment. 29 CFR § 1910.95(m)(3)(ii).

- D.** Employers must orally report, within **eight (8) hours** after the death of any employee or the inpatient hospitalization of three (3) or more employees as a result of a work-related incident, the fatality/multiple hospitalization by telephone or in person to the OSHA area office nearest the site of the incident, or to OSHA's toll-free central telephone number (1-800-321-OSHA). 29 CFR § 1904.39(a).
1. This requirement applies to each such fatality or hospitalization of three or more employees which occurs within **thirty (30) days** of an incident. 29 CFR § 1904.8(b).
 2. If the employer does not learn of a reportable incident at the time it occurs, the employer shall make the report within **eight (8) hours** of the time the incident is reported to any agent or employee of the employer. 29 CFR § 1904.39(b)(6).
 3. Each report shall contain: establishment name, location and time of incident, number of fatalities or hospitalized employees, names of injured employees, contact person, phone number, and a brief description of the incident. 29 CFR § 1904.39(b)(2).
- E.** Employers subject to the hazard-communication standards must maintain a written hazard-communication program, must list chemicals present at the facility, must label chemical containers, and must maintain and make accessible material safety data sheets. 29 CFR § 1910.1200(b).

VII. EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 ("ERISA")

All persons required by ERISA to file reports, certifications, or descriptions, and all persons who would be required to file such documents but for an exemption or simplified recordkeeping requirement, must maintain records sufficiently detailed to provide the necessary information and data from which these required documents may be verified and explained. Such records must include vouchers, worksheets, receipts and applicable resolutions, and must be retained for **six (6) years** after the documents to which they relate are filed or would have been filed except for an exemption or simplified reporting requirement. 29 U.S.C. § 1027.⁶

VIII. IMMIGRATION REFORM AND CONTROL ACT OF 1986 ("IRCA")

- B.** The IRCA requires U.S. employers to verify the identity and employment eligibility of new-hires by inspecting documents and completing INSURANCE Form I-9.

⁶ IRS Regulations require employers to keep records pertaining to all fringe benefits for at least **four (4) years** after the due date of the tax return period to which the records relate, or the date the tax is paid, whichever is later. 26 CFR § 31.6001-1(e)(2).

- C. As of November 21, 1991, employers must complete section one of the I-9 form before a new-hire commences work. 8 CFR § 274a.2(b)(i)(A). Section two of the I-9 must be completed by the end of the third day of employment. 8 CFR § 274a.2(b)(ii)(B). Employers must complete both sections one and two of the I-9 form for employees who will be employed for less than three (3) days before such employees commence work. 8 CFR § 274a.2(b)(iii).
- D. Employers must retain all required I-9 forms for **three (3) years** after they are completed or for **one (1) year** after employment ends, whichever is later. 8 CFR § 274a.2(b)(viii)(B)(2)(i)(A). A Form I-9 must be completed retroactively for all hires between November 6, 1986 and June 1, 1987 who were still on the payroll on June 1, 1987. 8 CFR § 274a.2(a).

IX. EMPLOYEE POLYGRAPH PROTECTION ACT OF 1988 ("EPPA")

- A. When an employer requests a polygraph examination, it must retain for **three (3) years** a copy of a written statement setting forth the time and place of the examination and the examinee's right to consult with counsel. 29 CFR § 801.30(a)(3).
- B. The employer must retain for **three (3) years** the requisite written notification of persons to be examined which was submitted to the polygraph examiner. 29 CFR § 801.30(a)(4).
- C. The employer must retain for **three (3) years** all opinions, reports, or other records furnished by the examiner to the employer relating to polygraph examinations. 29 CFR § 801.30(a)(5).
- E. When a polygraph is requested in connection with an ongoing investigation involving economic loss or injury, the employer must retain for **three (3) years** a copy of the statement setting forth the specific incident or activity under investigation and the basis for testing that particular employee. 29 CFR § 801.30(a)(1).
- F. When a polygraph is requested in connection with an ongoing investigation of criminal or other misconduct involving, or potentially involving, loss or injury resulting from the manufacture, distribution or dispensing of a controlled substance, the employer must retain for **three (3) years** records specifically identifying the loss or injury in question and the nature of the employee's access to the person or property that is the subject of the investigation. 29 CFR § 801.30(a)(2).

X. REQUIREMENTS APPLICABLE ONLY TO FEDERAL GOVERNMENT CONTRACTORS/RECIPIENTS OF FEDERAL FINANCIAL ASSISTANCE

A. Section 503 of the Rehabilitation Act of 1973

1. Employers with 150 or more employees and a single federal contract or subcontract of \$150,000 or higher must keep all personnel and employment records for **two (2) years** from

the date of the making of the record or the personnel action involved. In the case of involuntary termination from such an employer, the personnel records of the terminated employee must be kept for **two (2) years from the date of the termination**. 41 CFR § 60-741.80(a).

2. Employers with less than 150 employees or with no single federal contract or subcontract of at least \$150,000 need only keep personnel records and employment records for **one (1) year** from the date of the making of the record or the personnel action involved. In the case of involuntary termination from such an employer, the personnel records of the terminated employee need only be kept for **one (1) year from the date of the termination**. 41 CFR § 60-741.80(a).
3. Records which must be retained under these provisions include, but are not limited to, records relating to requests for reasonable accommodation; the results of any physical examinations; job advertisements and postings; applications and resumes; tests and test results; interview notes; other records having to do with hiring, assignment, promotion, demotion, transfer, lay-off or termination, rates of pay or other terms of compensation; and selection for training or apprenticeship. 41 CFR § 60-741.80(a).
4. Upon receiving notice of a complaint, compliance review, or enforcement action, the employer-contractor/subcontractor must retain all relevant personnel records until final disposition of the complaint, compliance review or enforcement action. Records which must be retained in such situations include, but are not limited to, personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person, as well as applications or test papers completed by an unsuccessful applicant and by all other candidates for the same position as that for which the aggrieved person applied and was rejected. 41 CFR § 60-741.80(a).

B. Section 504 of the Rehabilitation Act of 1973

While each federal agency providing federal financial assistance issues separate regulations, generally employers must maintain a record of complaints and actions taken under Section 504. If the agency finds that an employer has violated Section 504, usually the employer must maintain records showing:

- # the interested persons consulted;
- # a description of the areas examined and problems identified; and
- # a description of modifications made and remedial steps taken.

See, e.g., Department of Labor regulations at 29 CFR §§ 32.6(c)(2) and 32.49(a), which require that such records be kept for **three (3) years**.

C. Vietnam Era Veterans' Readjustment Assistance Act of 1974 ("VEVRAA")

1. Employers with 150 or more employees and a single federal contract or subcontract of \$150,000 or higher must keep all personnel and employment records for **two (2) years** from the date of the making of the record or the personnel action involved. In the case of involuntary termination from such an employer, the personnel records of the terminated employee must be kept for **two (2) years from the date of the termination**. 41 CFR § 60-250.80(a).
2. Employers with less than 150 employees or with no single federal contract or subcontract of at least \$150,000 need only keep personnel records and employment records for **one (1) year** from the date of the making of the record or the personnel action involved. In the case of involuntary termination from such an employer, the personnel records of the terminated employee need only be kept for **one (1) year from the date of the termination**. 41 CFR § 60-250.80(a).
3. Records which must be retained under these provisions include, but are not limited to, records relating to requests for reasonable accommodation; the results of any physical examinations; job advertisements and postings; applications and resumes; tests and test results; interview notes; other records having to do with hiring, assignment, promotion, demotion, transfer, lay-off or termination, rates of pay or other terms of compensation; and selection for training or apprenticeship. 41 CFR § 60-250.80(a).
4. Upon receiving notice of a complaint, compliance review, or enforcement action, the employer-contractor/subcontractor must retain all relevant personnel records until final disposition of the complaint, compliance review or enforcement action. Records which must be retained in such situations include, but are not limited to, personnel or employment records relating to the aggrieved person, as well as applications or test papers completed by an unsuccessful applicant and by all other candidates for the same position as that for which the aggrieved person applied and was rejected. 41 CFR § 60-250.80(a).
5. Employers of 50 or more employees with a government contract or subcontract of \$50,000 or more must prepare and maintain an affirmative-action compliance program for each establishment. This program may be integrated into or kept separate from the employer's other affirmative action programs. The affirmative action program must be reviewed and updated annually. 41 CFR § 60-250-5.

D. Executive Order 11246

1. Each employer of 50 or more employees (who is a federal contractor or subcontractor) with a federal contract or subcontract of \$50,000 or more, with government bills of lading which

in any 12-month period total or reasonably can be expected to total \$50,000 or more; who serves as a depository of government funds in any amount; or is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes in any amount, must develop a written affirmative-action compliance program for each of its establishments. 41 CFR § 60-2.1.

2. Employers subject to the affirmative-action requirements must maintain supporting records (including being able to identify the gender, race, and ethnicity of each employee, and where possible, the gender, race, and ethnicity of each applicant) for **two (2) years** from the date of the making of the record or the personnel action involved. The period is **one (1) year** for contractors with less than 150 employees or who do not have a contract or subcontract of at least \$150,000. A contractor establishment required to develop a written AAP must maintain its current AAP and documentation of good faith effort and preserve its AAP good faith documentation for the immediately preceding AAP year unless it was not then covered by the written AAP requirement. 41 CFR 60-1.12.
3. The recordkeeping provisions of the Uniform Guidelines for Employee Selection Procedures (discussed above at III) apply to all employers covered by E.O. 11246. 41 CFR § 60-3.1.

E. Federal Construction, Supply and Service Contracts

1. Contract Work Hours and Safety Standards Act

Contractors and subcontractors covered by the Act must maintain payrolls and basic payroll records during the course of the work and must preserve them for a period of **three (3) years** from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. 29 CFR § 5.5(c).

2. Copeland Act

a. Contractors and subcontractors covered by the Act must prepare weekly statements of the wages paid each employee engaged on a covered public works project and must submit them on forms specified by the DOL to the government agency which has contracted for or financed the work. 29 CFR § 3.3(b).

b. Contractors and subcontractors must retain payroll records for **three (3) years** after the date of completion of the contract. These records must include:

- # the name;
- # classification;
- # rate;

- # deductions;
- # actual wages paid; and
- # daily and weekly hours worked for each employee working on the contract.

29 CFR § 3.4(b).

3. Davis-Bacon Act

- a. Contractors covered by the Act must maintain payrolls and basic records relating to contracts covered by the Davis-Bacon Act during the course of the work and must preserve them for a period of **three (3) years** after the contract expires for all laborers and mechanics working at the site. 29 CFR § 5.5(a)(3)(i).

- b. Records for each covered employee must contain:

- # the name;
- # address;
- # social security number;
- # correct classification;
- # hourly rates of wages paid, including rates of fringe-benefit contribution;
- # daily and weekly number of hours worked;
- # deductions made; and
- # actual wages paid.

29 CFR § 5.5(a)(3)(i).

- c. Contractors must submit weekly all payrolls for covered contract work to the appropriate federal agency if the agency is a party to the contract. If the agency is not a party, the contractor must submit the payrolls to the applicant, sponsor or owner for transmission to the appropriate agency. 29 CFR § 5.5(a)(3)(ii)(A).

4. Service Contract Act of 1965

- a. Contractors and subcontractors covered by the Act must make and maintain for **three (3) years** after completion of the work certain records for each employee. These records must include:

- # the name;
- # address;
- # social security number;
- # correct work classification(s);

- # rate or rates of monetary wages and fringe benefits provided;
- # rate or rates of fringe-benefit payments in lieu of actual benefits;
- # total daily compensation;
- # daily and weekly hours worked;
- # deductions, rebates and refunds; and
- # a list of all predecessor contractors' employees.

29 CFR §§ 4.6(g)(1), 4.185.

- b. Employers must keep a log, a supplementary record, and an annual summary of occupational illnesses and accidents. These records must be retained for **five (5) years** following the end of the year to which they relate. 29 CFR § 1904 (per 29 CFR 1925.3.)

G. Walsh-Healey Public Contracts Act

1. Employers must retain for **three (3) years** from the last date of entry:

- # the name;
- # address;
- # sex;
- # occupation;
- # date of birth for each employee under age 19;
- # information regarding certificates of age obtained; and
- # the wage and hours records for each covered employee, including rate, amount paid each pay period, hours worked each day and each week, and the period each employee was engaged on a government contract.

41 CFR § 50-201.501(a)-(d).

2. Employers must also retain basic employment and earning records, wage-rate tables, and work-time schedules for **two (2) years** from the last date of entry or last effective date, whichever is later. 41 CFR § 50-201.501(e)-(h).
3. In addition, employers must keep the records required by 29 CFR Part 1904 under the OSH Act.
4. Employers must maintain records of radiation exposure of all employees for whom personnel monitoring is required by 41 CFR § 50-204.23. No retention period is specified. 41 CFR § 50-204.32.

Numerous regulations, interpretations, and other authorities must be evaluated in applying these principles. This document is intended for general information purposes only and should not be construed as legal advice or as a legal opinion on any specific facts or circumstances, or as being a complete or all-inclusive explanation. You are urged to consult counsel concerning both your own situation and any specific legal questions you might have.