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Employers: Timelines for Keeping Payroll Records

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You already know about the need to create and maintain payroll records, but you may be wondering how long you have to keep them and for what purpose.

The answers depend on the amount of time required by the appropriate statute, which can often lead to confusion and mistakes by the uninformed. Here are some general guidelines that can help you sort out your responsibilities. This is valuable information even if maintenance of your payroll system has been delegated.

What Are Considered Payroll Records?

In general terms, payroll records refer to the documents kept for the time that your employees work for your company and the wages they are paid. This can reflect amounts paid for overtime (time-and-a-half paid to non-exempt full-time employees for work of more than 40 hours a week). Under the Fair Labor Standards Act (FLSA,) the records should include the following information:

- Employee's full name and Social Security Number,
- Address, including zip code,
- Birth date, if younger than age 19,
- Sex and occupation,
- The time and day of the week when employee's workweek begins,
- Hours worked each day and total hours worked each workweek,
- Basis on which employee's wages are paid,
- Regular hourly pay rate,
- Total daily or weekly straight-time earnings,
- Total overtime earnings for the workweek,
- All additions to or deductions from the employee's wages,
- Total wages paid each pay period, and
- Date of payment and the pay period it covers.

In some cases, the length of time to keep payroll records is discretionary, but there are two key federal statutes that require records to be kept for a definitive period: the aforementioned FLSA and the Age Discrimination in Employment Act (ADEA). These records may be required for inspection by the Equal Employment Opportunity Commission (EEOC).

1. FLSA. Generally, the FLSA is the federal law that applies to work performed by employees for most employers, although there are certain exceptions. The FLSA requires employers to pay employees a minimum hourly wage of at least \$7.25 under current standards. Note that many states and municipalities impose minimum wage requirements that are higher than the federal standard.

Under the FLSA overtime rules, an employer must pay an employee one-and-a-half times the employee's regular hourly rate for all hours worked over 40 in any workweek, unless the employee falls in the exempt category, such as salaried executives. Detailed and accurate time records are required for all non-exempt employees. Other restrictions may apply, such as rules regarding labor by children.

It's important for employers to determine if each worker is an employee and, whether he or she is exempt or non-exempt. For instance, misclassifying an employee as an independent contractor can lead to penalties, as does classifying a worker as being exempt when he or she should be treated as a non-exempt worker. Typically, if an employer lacks the proper records, its exposure to claims is increased.

2. ADEA. The ADEA specifically forbids age discrimination against people who are age 40 or older. Although it doesn't protect workers under age 40, some states offer comparable protections for these younger workers. It isn't illegal for an employer to favor an older worker over a younger one, even if both workers are age 40 or older, but discrimination may still occur when the victim and the person causing the discrimination are both over age 40.

Specifically, the law prohibits discrimination in any aspect of employment, including, among other things:

- Hiring
- Firing
- Pay
- Job Assignments
- Promotions
- Layoffs
- Training
- Benefits

It's also illegal to harass a person because of his or her age. Such harassment can include offensive or derogatory remarks about the age of an individual. The law doesn't prohibit simple teasing, offhand comments or isolated incidents that aren't very serious. However, harassment is actionable when it's so frequent or severe that it creates a hostile or offensive work environment or it results in an adverse employment decision (for example, the victim is fired or demoted).

The person harassing may be the victim's supervisor, a supervisor in another area, a co-worker or an outside person, such as a client or customer.

For both the FLSA and the ADEA, most payroll records must be kept for three years, but the FLSA allows employers to discard some supplementary payroll records, including wage tables, after two years.

Records on which wage computations are based — such as time cards and piece work tickets, wage rate tables, work and time schedules and records of additions to or deductions from wages — may be kept for only two years.

These records must be open for inspection by DOL representatives, who may ask the employer to make extensions, computations or transcriptions. The records may be kept at the place of employment or in a central records office.

Form and Function

According to the EEOC, time clocks aren't required to keep track of employee hours under the FLSA, nor do payroll records have to be kept in any particular format. Similarly, the ADEA doesn't mandate one format as long as the records are available when the EEOC requests them. However, under the FLSA, microfilm or punched tape shouldn't be used unless the employer has the equipment to make these formats easily readable.

The key function of maintaining employee payroll records under the FLSA is to protect an employee's rights to fair pay, including the right of covered, nonexempt workers to the minimum wage and overtime pay. The records may also be used to ensure an employer isn't violating child labor laws.

The records that must be kept for the ADEA serve a different purpose. They are intended to ensure that an employee who is discriminated against due to age can identify and locate the information needed to prove or disprove a claim.

Consult the Pros

Under both the FLSA and the ADEA, payroll records should generally be kept for three years following the date of an employee's termination. However, other statutes may come into play, including various state laws. Please contact us for professional assistance in this area.

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