



West Virginia Division of Personnel

**SUPERVISOR'S GUIDE
TO
HUMAN RESOURCES RECORD
KEEPING REQUIREMENTS**

**Employee Relations Section
June 2013**

DISCLAIMER

This booklet is intended to be used as a reference and procedural guide to human resources record keeping requirements. The general information it contains should not be construed to supersede any law, rule, or policy. In the case of any inconsistencies, the statutory and regulatory provisions shall prevail.

This booklet is written with the understanding that the West Virginia Division of Personnel is not engaged in rendering legal services. If legal advice or assistance is required, the services of an attorney should be sought. Supervisors should also refer to policies, rules and regulations as well as consult with the human resources office within his or her respective agency.

For technical assistance concerning specific situations, employees and employers may contact the Division of Personnel's Employee Relations Section at (304) 558-3950, extension 57209.

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I. INTRODUCTION

A. Introduction

Employers are required by law to keep certain personnel-related records for specific periods of time. This guide is designed to assist state agencies in finding the most up-to-date retention requirements. Each section briefly describes the relevant federal or state statute and provides web links to acquire the necessary retention information. The West Virginia Division of Personnel currently retains copies of certain personnel transactions regarding employees in the classified and classified-exempt service. Employers, however, have the responsibility to comply with federal or State records maintenance and retention requirements.

Generally, in addition to knowing what records to maintain and for how long, employers may wish to create a master list of personnel-related records maintained. Where there is no legal obligation to retain records, employers may keep information in active or inactive files and for arbitrarily specified periods or indefinitely. Employers should:

- Establish a schedule for reviewing, removing, and storing records whose legally mandated retention period has expired. However, agency employment records are sometimes the only record of a person's employment, i.e. federal special works programs, pre-1961, temporary or exempt employment. Former employees may need written verification of previous dates and type of employment for retirement calculation purposes. Destruction of such records could jeopardize a person's eligibility for benefits.
- Remind managers to avoid writing derogatory notes on agency documents. This information can become a part of the permanent record and may be used in litigation.
- Retain documents that are relevant to anticipated, current, or future litigation. When it is first realized that an employee may file legal action, the employer should immediately contact the agency's attorney to seek guidance and advice concerning records retention as it relates to the employee. Any regularly scheduled destruction of documents should be halted pending advice from legal counsel.
- Consult with legal counsel prior to removing and disposing of any records relating to a discrimination case or some other legal action, or if agency personnel are uncertain of any requirements. This includes documents in both paper and electronic form as any records pertaining to active litigation should not be destroyed. "Electronically Stored Information (ESI) is information created, manipulated, communicated, stored, and best utilized in digital form, requiring the use of computer hardware and software. ESI can be found in e-mails, voice-mails, instant messages, text messages, documents, spreadsheets, databases, file fragments, metadata, and digital images. It can be stored in various types of electronic media including hard-drives, thumb-drives, computers, handheld devices, backup tapes, optical discs, and off-site data centers".

The federal Rules of Civil Procedure (FRCP) was revised in December 2006 to address numerous “e-discovery” issues. “E-Discovery” is defined as the “identification, retrieval, preservation, review, and production of ESI in regulatory, criminal, and civil discovery”. The rules require relevant electronic evidence to be identified, preserved, and disclosed at the beginning of litigation; therefore employers need to preserve any electronically stored information as soon as a legal matter is reasonably foreseeable. At that point, employers must discontinue data destruction and backup tape recycling, and not destroy relevant hardware unless an exact replica of the file is made. Passwords, decryption procedures, network access codes, identification names, manuals, tutorials, written instructions, and decompression or reconstruction software, must also be preserved. In addition to pertinent information, employers must maintain the tools needed to access, review, and reconstruct necessary access, view, and/or reconstruct all requested or potentially relevant electronic data. Consultation with an attorney is recommended to ensure compliance to these rules.

- Verify current State and federal record maintenance and retention requirements prior to permanent destruction of any paper or electronic records. 148 C.S.R. 12-3(q) defines ‘Retention Period’ as “a period of time during which records must be held before they may be legally disposed. The retention period is usually stated in terms of months or years, but sometimes is contingent upon the occurrence of an event; e.g., employee termination and contract expiration. The retention period includes the life span of each record from creation to final disposition”.
- Maintain the confidentiality of records which contain Personally Identifiable Information (PII). PII is information that can be used to uniquely identify, contact (or impersonate), or locate a single person, or can be used with other sources to uniquely identify a single individual. Such information includes, but is not limited to: home and cellular telephone numbers, personal email addresses, home and mailing addresses, social security numbers, credit and debit card numbers, and driver license numbers. Each agency may have specific requirements on handling personally identifiable information. If you have questions, contact your agency’s Privacy Officer and/or visit the State of West Virginia’s Privacy Office webpage at the <http://www.privacy.wv.gov>.
- Forward the employment records/files of State employees to the receiving State agency when an agency is consolidated or absorbed by another State agency. NOTE: If an individual employee is voluntarily transferring to or otherwise accepting employment with another State agency, the employee’s agency files are retained by the former employer. However, the agency is obligated to provide the employing agency with a complete and accurate copy of the personnel file.
- Destroy records carefully. Any records containing confidential information should be shredded or incinerated. Employees entrust to their employer highly personal information concerning themselves. This trust should not be jeopardized by an employer improperly disposing of such information.

B. Record Keeping Methods

Several basic systems to maintain human resource records are:

- Manual (paper); Microfilm; Microfiche
- Integrated Payroll/Human Resource System
- Stand-alone Human Resource Information Systems (HRIS)
- Any combination of the above

Agencies that back-up or archive files on media must remember to consider such media when decisions are made to destroy specific records. Likewise, the decision to retain required documents in such stored format should be carefully organized to ensure that relevant information can be readily accessed, if needed.

If an employer fails to retain relevant records in compliance with applicable State and federal laws, the following may result: (1) the employer could face civil penalties for destroying records before the end of the required period; (2) if sued by an employee for discrimination, records for the defense against the claim will not be available; and (3) if sued by an employee for discrimination, a court may presume intentional destruction and that discrimination has occurred since the records have been destroyed. It is vitally important that legal counsel be consulted in the development of a strategic plan and practices regarding the retention and destruction of official agency records.

C. Maintaining Separate Files

All employee records should be kept in locked cabinets in a secure area. Certain employee records, such as medical records and history, including those related to any Americans with Disabilities Act, as Amended (ADAAA), Family and Medical Leave Act (FMLA), Rehabilitation Act (Rehab Act), or Workers' Compensation (WC) work-related injury and/or illness claims, including documents and records regarding Employee Assistance Programs (EAP), should be maintained in files in locations separate from employees' personnel files. Medical records and history for an employee's family members should also be kept separate from employees' personnel files. Additionally, immigration records, including I-9 Forms, must be kept on file and it is advisable to keep the forms in a separate file to facilitate government audits. Records related to U.S. Department of Transportation (DOT) required drug or alcohol testing must also be kept confidential and in separate files.

Job applicant files should be maintained in a filing system separate from employee personnel files. Individuals designated by the United States Equal Employment Opportunity Commission (EEOC) as job applicants include persons who apply for positions via the Internet if the employer has sought to fill a particular position and the person has indicated an interest in that position by following the employer's standard procedures for applying for a job. This definition applies to employer websites, online job listings, and Internet resume banks and job boards. [EEOC Press Release, Recordkeeping Guidance Clarifies Definition of "Job Applicant" for

Internet and Related Technologies, March 3, 2004. A notice also appeared in the March 4, 2004 Federal Register.]

Background check information, garnishment orders, and consumer reports on job applicants and employees should also be kept separate from their application or personnel files. In most cases, employers must keep these records for two years. A good general rule of thumb is that anything that cannot legally be the basis for a personnel decision should be maintained in a separate location from the employee's personnel file.

All types of employee files should be confidential, with access or disclosure limited to designated persons on a need-to-know basis, or as required by law.

Confidential Records

Certain employee records should be maintained in files in secure locations, separate from employees' personnel files, to protect employees' privacy rights, and to insulate employers from liability. These records must also be kept confidential, with restricted access or limited disclosure, and then only to designated persons on a need-to-know basis, or as required by law. These documents include, but are not limited to, the following:

- Background check information and consumer reports
- Discrimination claims and/or reports, including investigative materials
- Employee grievance and any records regarding lawsuits
- Equal employment opportunity documents
- Family court documents or orders
- Fitness for duty exam results
- Functional capacity assessments
- Garnishment orders
- Immigration forms
- Investigative reports concerning alleged misconduct
- Medical records and medical history of employees regarding ADA, FMLA, Rehabilitation, or work-related injury and/or illness claims and reports, and referrals concerning employees' participation in Employee Assistance programs.
- Medical records and medical history of family members of employees
- Medical results from required examinations, e.g. drug and alcohol testing, psychological testing, and agility examinations
- Supervisor's administrative file

D. Record Disposal

The Fair and Accurate Credit Transactions Act of 2003, (FACTA), 15 U.S.C. 1681, is the federal law designed to minimize the risk of identity theft and consumer fraud by mandating the proper destruction of consumer information, i.e. sensitive financial and personal information, including background-check information of applicants and employees. The Federal Trade Commission of the United States (FTC) developed the Disposal Rule in November 2004 to further implement the public policy set forth in FACTA. The Disposal Rule applies to businesses that utilize consumer information; however, it affects every person and business in the United States. This Rule, effective June 1, 2005, states that "any person who maintains or otherwise possesses consumer information for a business purpose" is required to appropriately dispose of discarded consumer information. It applies to every employer with one or more employees and to any documents, whether paper, electronic or other format, that contain consumer information received from a consumer reporting agency. If the employer conducts credit checks, background checks or maintains any type of consumer report from a consumer reporting agency regarding employees, the employer must comply with this Rule. Personal information includes, but is not limited to, telephone numbers, addresses, social security numbers, driver's license numbers, physical addresses, and e-mail addresses. The rule does not apply to information that does not identify individuals, such as aggregate information.

The FTC does not mandate any specific type of disposal method, but states that reasonable measures must be taken to protect against unauthorized access to or use of the information. Shredding, pulverizing, or burning paper records, so that consumer information is unreadable can be appropriate disposal methods, according to the FTC. Disposal can be by personal shredding (preferably via cross cutting shredder) or by paying a vendor to do it for you, at the employer's discretion. Access to storage bins containing material to be shredded at a later time should be limited via a physical locking mechanism. A determining factor as to the appropriate entity to perform this service would be the volume of records requiring disposal. Information stored electronically, such as on computer discs or hard drives, shall be overwritten or erased clean, using appropriate methods or software, and according to State Office of Technology policies.

Every business, (regardless of size or number of employees) that obtains a consumer report or information derived from a consumer report is covered by FACTA. This includes government agencies which obtain consumer reports for employment screening or clearance purposes. Effective June 1, 2006, FACTA requires all employers to destroy personal information derived from a consumer report before disposing of it. Violations could result in substantial federal and State fines. In addition to these penalties, employees or identity theft victims could file a private or class-action lawsuit against the employer and/or persons in their official capacities. More information concerning the disposal of consumer report information and records may be found by viewing Title 16, Chapter 1, Subchapter F, Subpart § 682, of the Code of Federal Registers.

The Sarbanes-Oxley Act of 2002, commonly known as SOX, requires public companies to retain all records that could possibly be subpoenaed in future civil or criminal litigation in whistle-

blower cases. This means employers must retain employee records until all pertinent statutes of limitations have expired on various federal and State employment laws. It is always advisable to contact your legal counsel for guidance. A good rule of thumb regarding former employees' personnel files is to keep such records from four to seven years after the individuals separate from employment, unless a longer period is required by law. Employers, however, may wish to maintain certain records, e.g., service credit, in the event that upon retirement age, a former employee may need some written verification of previous employment.

Additionally, W. Va. Code §5A-8-17. Disposal of records, states:

Except as provided in section seven-a, article one, chapter fifty-seven of this code, no record shall be destroyed or otherwise disposed of by any agency of the state, unless it is determined by the administrator and the director of the section of archives and history of the division of culture and history that the record has no further administrative, legal, fiscal, research, or historical value. In the event the administrator is of the opinion that the record has no further administrative, legal, fiscal, research, or historical value, the administrator shall, prior thereto, give written notice of the administrator's intention to direct the destruction or other disposal of the record to the director. Upon the written request of the director, given to the administrator within ten days of receipt of said notice, the administrator shall direct the retention of the record for a period of thirty days. In the event the director fails to retrieve the original document from the administrator, or the administrator's designee, within the thirty day period, the administrator may direct the destruction or other disposal of the original without further notice to the director.

(See, Discussion following the listing for the *West Virginia Public Records Management and Preservation Act*)

II. Statutory Retention Schedules

A. General Information

Records retention requirements are typically dictated by federal or State statutes; however, there are some situations where no time period is proscribed. Does this mean these records should be kept permanently? Not necessarily. Several other states have acted on the presumption that private businesses ought to retain records for three years. These states relied upon the guidelines of the Uniform Preservation of Private Business Records Act (UPPBRA), which sets a three-year time limit for records without a statute-specific retention period. It may be argued, however, that since this Act relates to 'private' businesses (not governmental employers), this three-year retention period should, at best, be viewed only as a rule of thumb for guidance in setting a records retention policy.

To ensure that relevant records are retained, legal advice should be sought for specific guidance or situations.

When there is a charge of employment discrimination, or if legal action has been instituted, records should be kept until final disposition of the charge. This means that the information should be kept until: (1) the date of expiration of the statutory period within which legal action may be taken against the employer by the employee, the EEOC, the Attorney General, or the W. Va. Human Rights Commission; or (2) the date on which any litigation is finally or conclusively resolved. The employer should always wait until his or her legal counsel provides official notification of final disposition of the case, or the employee's time to sue or appeal has elapsed. All information regarding legal action or claims against the employer should be kept in a secure, separate location and accessed only by those with a legitimate need to know.

B. Federal Laws

Age Discrimination in Employment Act of 1967

29 U.S.C. § 621, et seq., 29 C.F.R. § 1627.3

Website: <http://www.eeoc.gov/>

Primary purpose is to protect job applicants and employees who are at least 40 years of age from discrimination on the basis of age in hiring, promotion, discharge, compensation, terms, conditions, or privileges of employment.

Other Links:

General Contact Information:

<http://www.eeoc.gov/contact/index.cfm>

EEOC Legal Basis for Requirements:

<http://www.eeoc.gov/employers/eeo1survey/legalbasis.cfm>

EEOC Letters on Record Keeping:

http://www.eeoc.gov/eeoc/foia/letters/2011/record_keeping_opinion.html

http://www.eeoc.gov/eeoc/foia/letters/2006/titlevii_ada_adea_recordkeeping.html

Americans With Disabilities Act of 1990, effective 1992

42 U.S.C. § 12101, et seq., 29 C.F.R. Parts 1602 and 1630, 14(d)

<http://www.ada.gov/>

Primary purposes are to require equal employment opportunity and reasonable accommodation for employees with disabilities, and to prohibit discrimination in all aspects of employment against qualified individuals with disabilities. A qualified individual with a disability is defined as “an individual with a disability who meets the skill, education, experience, and other job-related requirements of a position held or desired, and who, with or without a reasonable accommodation, can perform the essential functions of the job”.

Other Links:

ADA Publications:

<http://www.ada.gov/publicat.htm>

ADA Information Line:

<http://www.ada.gov/infoline.htm>

Civil Rights Act of 1964, Title VII

42 U.S.C. § 2000e, et seq., 29 C.F.R. Parts 1600 - 99, particularly §§ 1602 and 1607

<http://www.eeoc.gov/laws/statutes/titlevii.cfm>

Primary purpose is to prohibit private employers, state and local governments, and educational institutions, and companies with 15 or more employees, from discriminating against their employees and job applicants on the basis of race, religion, color, sex, and national origin. Public employment agencies must abide by the law, which is enforced by a federal agency, the EEOC, which also has regulations regarding harassment.

Other Links:

Department of Justice on the Civil Rights Act of 1964:

<http://www.justice.gov/crt/about/cor/coord/titlevi.php>

Recordkeeping and Reporting Requirements Under Title VII, the ADA, and GINA.

EEOC Proposed Rule, June 2, 2011:

<https://www.federalregister.gov/articles/2011/06/02/2011-13629/recordkeeping-and-reporting-requirements-under-title-vii-the-ada-and-gina>

Driver's Privacy Protection Act of 1994

18 U.S.C. § 2721, et seq.

<http://www.accessreports.com/statutes/DPPA1.htm>

Primary purpose is to regulate how the Department of Motor Vehicles (DMV) releases and shares the information in DMV records. The DPPA regulates how DMV releases driver records and vehicle records and how recipients of DMV records can share information with another person.

NOTE: The U.S. DOT drug and alcohol testing regulations, as they relate to employees, impose a number of record-keeping requirements on covered employers. Under the general DOT procedural regulations, employers must keep certain records for five years, i.e., alcohol tests showing an alcohol concentration of 0.02 or higher; verified drug tests; documentation of refusals to take required tests; employee evaluations and referrals; and follow-up tests. Consult with legal counsel or the U.S. D.O.T. for retention time of records relating to that agency as time frames differ

Other Links:

U.S.Code – Driver's Privacy Protection Act:

<http://uscode.house.gov/download/pls/18C123.txt>

Employee Retirement Income Security Act of 1974 (ERISA)

29 U.S.C. § 1001, et seq., 29 C.F.R. Parts 2500 - 99

<http://www.dol.gov/compliance/laws/comp-erisa.htm>

Primary purpose is to govern qualified benefit plans including health and retirement plans. ERISA ensures employee benefits plans are created fairly, administered and maintained appropriately, and provided to retiring employees as promised by their employers.

Other Links:

USDOL Reporting and Disclosure Guide for Employee Benefit Plans:

<http://www.dol.gov/ebsa/pdf/rdguide.pdf>

Article (BKD, LLP CPA and Advisors):

<http://www.bkd.com/articles/2012/employee-benefit-plan-record-retention.htm>

Executive Order 11246 (1965, as amended)

41 C.F.R. Ch. 60

<http://www.dol.gov/compliance/laws/comp-eeo.htm#recordkeeping>

Primary purposes are to prohibit job discrimination on the basis of race, color, religion, sex, or national origin, and to require affirmative actions to ensure equality of opportunity in all aspects of employment. The Order was signed in 1964 and created Affirmative Action.

Other Links:

EO 11246 Fact Sheet:

<http://www.dol.gov/ofccp/regs/compliance/aa.htm>

Equal Pay Act of 1963, (EPA) (part of the Fair Labor Standards Act)

29 U.S.C. § 206

<http://www.eeoc.gov/>

Primary purpose is to amend the minimum wage portion of the Fair Labor Standards Act by forbidding employers from paying male and female employees different wages for equal work in jobs which require equal skill, effort, and responsibility, and are performed under similar working conditions in the same establishment.

Other Links:

EPA 29 U.S.C. § 206 Collection of Data:

<http://www.eeoc.gov/laws/statutes/epa.cfm>

Fair Credit Reporting Act (FCRA)

15 U.S.C. § 1681, et seq.

<http://www.ftc.gov/>

Primary purpose is to prohibit employers from using credit information found in investigative consumer reports, including those provided by a consumer reporting agency, against an employee or applicant, without having a legitimate business need or without notifying applicants and obtaining from them a written acknowledgment of the notification before requesting their credit reports.

Other Links:

July 28, 1998 Federal Trade Commission Letter regarding Record Retention:

<http://www.ftc.gov/os/statutes/fcra/kilgo.shtm>

USA Fact Sheet on Record Retention:

<https://www.usafact.com/pdf/USA-FACT%20Record%20Retention.pdf>

Fair Labor Standards Act of 1938, as amended (FLSA)

29 U.S.C. § 201, et seq., 29 C.F.R. Parts 500 - 899 and 1620.32

<http://www.dol.gov>

Primary purpose is to establish minimum wage, overtime pay, record-keeping requirements, and child labor standards for non-exempt employees in both the public and private sectors.

Other Links:

USDOL Fact Sheet 21: Record Keeping Requirements under FLSA:

<http://www.dol.gov/whd/regs/compliance/whdfs21.htm>

ADP Article on FLSA Record Keeping Requirements:

<http://www.adp.com/tools-and-resources/compliance-connection/payroll-resources/record-keeping.aspx>

Family and Medical Leave Act of 1993 (FMLA)

29 U.S.C. § 2601, et seq., 29 C.F.R. Part 825

<http://www.dol.gov>

Primary purpose is to provide eligible employees the right to take up to 12 weeks of unpaid leave, or paid leave if it has been earned, in any 12-month period for certain qualifying events. Events include: (1) the birth of a child or placement of a child with the employee for adoption or foster care; (2) the need to care for a family member (spouse, son, daughter, or parent) with a serious health condition, and (3) the employee's own serious health condition if it renders him or her unable to do his or her job

Other Links:

USDOL FMLA Record Keeping:

<http://www.dol.gov/compliance/topics/benefits-leave-FMLA.htm#recordkeeping>

Garland's Digest, FMLA Record Keeping:

<http://www.garlands-digest.com/regs/fmla/29cfr825.500.html>

Ehow.com Article:

http://www.ehow.com/list_6779051_recordkeeping-requirements-fmla.html

Federal Insurance Contributions Act (FICA)

26 U.S.C. Subtitle C., Ch. 21 (§§ 3101-3128)

<http://www.ssa.gov/>

Primary purpose of the FICA tax is to establish a payroll tax to be used to fund federal programs for retirees, the disabled, and children or elderly spouses of deceased workers.

Other Links:

IRS Publication 15: Employer's Tax Guide:

<http://www.irs.gov/publications/p15/index.html>

Social Security Administration (SSA)

20 C.F.R. § 404, 1225[a] and [b].

<http://www.ssa.gov/>

Primary purpose is to provide a social insurance program funded through a dedicated payroll tax. The three main benefits provided are for retirement, disability, and death.

Other Links:

Best Record Keeping Practices for Organizational Representative Payees:

http://www.ssa.gov/payee/training_RKP.htm#sb=1

Social Security Administration (SSA) Records Management (RM) Policy:

<http://www.ssa.gov/open/our-records-management-program.html#a0=0>

ADP: Business Record Retention Guide:

http://www.adp.com/~media/Accountant/docs/Biz_Rec_Retention_03-118.ashx

Federal Unemployment Tax Act (FUTA)

26 U.S.C. Subtitle C., Ch. 23

<http://www.irs.gov/Individuals/International-Taxpayers/Federal-Unemployment-Tax>

Primary purpose of the Act is to authorize the Internal Revenue Service to collect a federal employer tax, used to fund state workforce agencies, covering the costs of administering the unemployment insurance and job service programs in all states.

Other Links:

IRS Publication 926: Household Employer's Tax Guide:

<http://www.irs.gov/publications/p926/index.html>

Intuit Payroll: Understand the Federal Unemployment Tax Act:

<http://payroll.intuit.com/support/kb/1000105.html>

Health Insurance Portability and Accountability Act of 1996 (HIPAA)

42 U.S.C. § 1324, et seq., 45 C.F.R. § 164.530

<http://www.hhs.gov/ocr/privacy/>

Primary purpose is to improve portability and continuity of health insurance coverage in the group and individual markets; combat waste, fraud, and abuse in health insurance and health care delivery; promote the use of medical savings accounts; improve access to long-term care services and coverage; and simplify the administration of health insurance. Further, the law establishes standards to provide patients protection and control over the privacy and release of individually identifiable medical records and health information.

Other Links:

Understanding Health Information Privacy:

<http://www.hhs.gov/ocr/privacy/hipaa/understanding/index.html>

HIPAA Record Retention & Destruction Requirements:

http://www.ehow.com/list_7567020_hipaa-record-retention-destruction-requirements.html

Immigration and Nationality Act

8 U.S.C. §1101, as amended, Section 274A

<http://www.uscis.gov/portal/site/uscis/menuitem.f6da51a2342135be7e9d7a10e0dc91a0/?CH=act&vgnnextchannel=fa7e539dc4bed010VgnVCM1000000ecd190aRCRD&vgnextoid=fa7e539dc4bed010VgnVCM1000000ecd190aRCRD>

Other Links:

U.S. Citizenship and Immigration Service E-Verify:

<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=75bce2e261405110VgnVCM1000004718190aRCRD&vgnextchannel=75bce2e261405110VgnVCM1000004718190aRCRD>

U.S. Citizenship and Immigration Service E-Verify Blogs:

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=c3b3ced0371f3310VgnVCM100000082ca60aRCRD&vgnextchannel=75bce2e261405110VgnVCM1000004718190aRCRD>

Federal Register: Electronic Signature and Storage of Form I-9, Employment Eligibility Verification:

<http://www.uscis.gov/ilink/docView/FR/HTML/FR/0-0-0-1/0-0-0-111373/0-0-0-114668/0-0-0-114987.html>

Immigration Reform and Control Act of 1986 (IRCA)

8 U.S.C. § 1324

Primary purpose is to make all employers responsible to verify the employment eligibility and identity of all employees hired to work in the U.S. after November 6, 1986. To implement the law, employers are required to complete Employment Eligibility Verification forms (I-9 Form) for all employees, including U.S. citizens.

Other Links:

Publication L99-603:

<http://www.uscis.gov/ilink/docView/PUBLAW/HTML/PUBLAW/0-0-0-15.html>

Boston University:

<http://www.bu.edu/hr/policies/federal-and-state-laws/immigration-reform-and-control-act-irca/>

Rehabilitation Act of 1973 and Rehabilitation Act of 1992

29 U.S.C. § 701, et seq., 41 C.F.R. 60-741.52

29 U.S.C. § 791, et seq.

Primary purposes are to prohibit job discrimination against individuals with a disability and to require the establishment of an affirmative action plan for qualified individuals with a disability

Other Links:

U.S. HHR Fact Sheet, Section 504:

<http://www.hhs.gov/ocr/civilrights/resources/factsheets/504.pdf>

Boston University:

<http://www.bu.edu/cpr/reasacom/whatlaws-rehaba.html>

ADA Guide to Disability Laws:

<http://www.ada.gov/cguide.htm>

Uniformed Services Employment and Re-employment Rights Act of 1994 (USERRA)

38 U.S.C. §§ 4301, et seq.

<http://www.dol.gov/vets/>

Purpose is to guarantee employees who enter the military, voluntarily or involuntarily, for specific periods of service, can return to their jobs with no loss of seniority or benefits.

***Uniformed Services Employment and Re-employment Rights Act of 1994 Amendment
Veterans' Benefits Improvement Act of 2004***

42 U.S.C. § 201, 203

<http://www.dol.gov/vets/>

Purposes are to extend the period for continuation of group health care coverage to 24 months (on and after December 10, 2004), and to require annual notice to covered employees of their USERRA rights by posting such in the workplace.

Other Links:

U.S. Department of Labor E-Law - Other Workplace Standards: Reemployment and Nondiscrimination Rights for Uniformed Services Members:

<http://www.dol.gov/compliance/guide/userra.htm>

Military.com USERRA FAQ:

<http://www.military.com/benefits/military-legal-matters/userra/userra-frequently-asked-questions.html>

C. State Laws

W. Va. Division of Labor

W. Va. Code § 21-1-1, et seq.

W. Va. Code § 21-5C-1, et seq., Minimum Wage and Maximum Hours Standards for Employees.

One of the primary purposes is to govern the terms and conditions of employment such as the West Virginia Parental Leave Act (PLA), Wage Payment and Collections, etc.

Wage Payment and Collection Act, W. Va. C.S.R. Tit. 42-5-4

Minimum Wage and Maximum Hours Standards Act, W. Va. C.S.R. Tit. 42-8-4:
<http://www.wvlabor.com/newwebsite/Pages/index.html>

Other Links:

West Virginia Division of Labor Wage and Hour FAQ:

<http://www.wvlabor.com/newwebsite/Documents/wageforms/newer%20forms/WPC%20FAQs.pdf>

West Virginia Division of Labor: Minimum Hours and Maximum Hours:

<http://www.wvlabor.com/newwebsite/Documents/wageforms/newer%20forms/MW%20FAQs.pdf>

West Virginia Division of Labor: Wage Collection Forms:

http://www.wvlabor.com/newwebsite/Pages/Wage_Hour_forms_wage_collection.html

W. Va. Human Rights Act (WV HRA)

W. Va. Code § 5-11-1, et seq., W. Va. C.S.R. Tit. 77-2-3.14

<http://www.hrc.wv.gov>

Primary purpose is to address discrimination and complaints regarding public accommodation and employment discrimination. The West Virginia Human Rights Commission's goal is to eliminate discriminatory practices based upon sex, race, color, ancestry, national origin, age, disability, religion, blindness, and familial status.

Other Links:

West Virginia Human Rights Act:

<http://www.legis.state.wv.us/wvcode/code.cfm?chap=05&art=11>

W. Va. Occupational Safety and Health Act (OSHA)

W. Va. Code § 21-3A-1, et seq., 29 C.F.R. § 1900-1999 (See § 1904.33 and 1904.37)

http://www.wvlabor.com/newwebsite/Pages/Safety_main.html

One of the primary purposes of the Act is to assure the safety and health of America's workers by setting and enforcing workplace safety standards and providing training, outreach, and education; establishing partnerships; and encouraging continual improvement in workplace safety and health.

States operating OSHA-approved State Plans must have occupational injury and illness recording and reporting requirements that are substantially identical to the requirements in 29 C.F.R. 1900, et seq.. State Plan recording and reporting requirements for State and local government entities may differ from those for the private sector, but have the same requirements as federal OSHA for determining which injuries and illnesses are recordable and how they are recorded. OSHA does not apply to the Division of Corrections, Hospitals, and Education. Although federal regulations do not apply to other State agencies, the State has adopted the federal regulations and guidelines, except for the accident reporting and posting requirements.

NOTE: Health insurance claims and first aid records are to be maintained separate from an employer's medical program, however, the records need not be retained for any specific period of time.

Other Links:

West Virginia Division of Labor Safety OSHA Consultation:

http://www.wvlabor.com/newwebsite/pages/Safety_osh_consultation.html

W. Va. Public Employees Retirement Act

W. Va. Code § 5-10-1, et seq.,

W. Va. C.S.R. Tit. 162-5-1, et seq. (Public Employees Retirement System)

<http://www.wvretirement.com>

Primary purpose is to provide for the orderly retirements of employees, of the state, and the other participating public employers, who become eligible because of age or total and permanent disability, and to provide certain survivor benefits and to administer the several State retirement plans.

Other Links:

Public Employee Retirement System (PERS) Publications:

<http://www.wvretirement.com/Publications.html>

W. Va. Public Records Management and Preservation Act

W. Va. Code § 5A-8-1, et seq., W. Va. C.S.R. Tit. 148-12, 13 and 14

<http://www.legis.state.wv.us/wvcode/Code.cfm?chap=05a&art=8>

Personnel records of the State of West Virginia, its agencies, and departments, are subject to the maintenance, retention, and disposal provisions of the Public Records Management and Preservation Act (PRMPA). W. Va. Code §5A-8-7(c) includes in its list of duties of the administrator that he or she “[e]stablish standards for the preparation of schedules providing for the retention of state records of continuing value and for the prompt and orderly disposal of state records no longer possessing sufficient administrative, legal, or fiscal value to warrant their further keeping”.

Agency personnel should contact its designated Records Manager, who is the liaison with the Records Administrator, regarding retention and disposal schedules and the possible archiving of records.

Other Links:

West Virginia Record Management and Preservation Board:

<http://www.wvculture.org/history/rmpb/rmpbcode.html>

West Virginia Division of Culture and History: Applying Effective Record Keeping Practices:

<http://www.wvculture.org/history/rmpb/crmmanual1.html>

Workforce West Virginia

Unemployment Division

W.Va. Code § 21A-10-4, W. Va. C.S.R. Tit. 83-1-5 and

Section 5.01 of the Regulations of the Commissioner, Unemployment Compensation

<http://www.wvcommerce.org>

Primary purpose is to administer unemployment compensation services through the collection of employer contributions and the payments of benefits to eligible people

Other Links:

Workforce West Virginia Employer Handbook:

http://www.wvcommerce.org/app_media/assets/doc/businessandworkforce/workforcewv/unemploymentcompensation/employers/Employer_Handbook_Revised_11_16_10.pdf

Workers' Compensation

Rules of former Workers Compensation Division now enforced by Offices of the Insurance Commissioner.

W.Va. Code §23-1-1, *et seq.*

W.Va. C.S.R. Tit. 85, Series 1-16

Other Links:

West Virginia Offices of the Insurance Commissioner:

<http://www.wvinsurance.gov/WorkersCompensation.aspx>