



A DIVISION OF LEAVITT PACIFIC INSURANCE BROKERS

Newsletter May 2011

## Record Retention

How long must an employer retain their personnel records including Employee Files, Payroll Records and Benefits Files?

An easy question, but a very convoluted answer!

There is no single clear answer on how long documents must be kept. Despite this unpleasant fact, it is possible for employers to develop logical and effective document retention programs that will offer legal protection.

Consider 4 types of employment files specifically:

1. personnel files
2. pre-employment files
3. payroll data and
4. medical (or "benefits") data

Seek advice from your tax attorney for guidance in retaining other types of corporate documents.

For personnel files, statutory document retention requirements are set forth under the federal equal employment opportunity laws which include title VII, ADA and ADEA. These requirements dictate that employment files are to be kept term of employment plus one year.

Here is the big HOWEVER though; individual states nondiscrimination laws also have document retention requirements. Some state requirements exceed the federal requirements. Some types of legal claims surrounding personnel files have a statute of limitations which exceeds both federal and state requirements. Employers may opt to retain records beyond that statutory minimum.

Here is the key, be aware of the statute of limitations for the potential employment claim risks that could impact your business.

As an example: Family and Medical Leave Act and the Fair Labor Standards Act have a statute of limitations of two years, three years for willful violations. If some employment records have been destroyed prior to the time period, defending an employment claim could be very difficult and perhaps very costly.

There are other types of legal claims action that would compel an employer to produce a defense: state common law fraud, tort and contract claims.

The statute of limitations for these types of claims vary from state to state. Generally you should retain personnel records for the longest statute of limitations. To be safe, take a look at the statute of limitations for claims in each state you operate your business. Those claims can include tort claims, which include defamation and invasion of privacy, contract laws when employees argue that an implied employment contract existed and fraud claims for misleading candidates about jobs.

To learn more about Records Retention, contact the HR professionals at MyOHR.  
[www.MyOHR.com](http://www.MyOHR.com)



**These articles should not be construed as legal advice or as pertaining to specific situations. Consult with your legal counsel for further information.**

## Stay “In The Know” in 2011 –

### Educational Seminars

We have a variety of educational seminars planned for 2011. Some will be live from the office of our partner in Campbell. Others will be conducted using “Go To Meeting” web conferencing.

Leavitt Pacific Insurance Brokers  
695 Campbell Technology Parkway, Ste 250  
Campbell, CA 95008

### May Educational Session

#### Social Security Administration Speaker -- David Hargraves

David will be presenting a broad overview of the benefits and services offered by the Social Security program.

#### Agenda:

- Benefits provided by Social Security Administration
- How to earn credits -- The credits are based on the amount of your earnings
- Understanding the benefits -- Today, about 164 million people work and pay Social Security taxes and about 50 million people receive monthly Social Security benefits
- Most of our beneficiaries are retirees and their families-about 34 million people
- Update for 2011
- Disability Benefits -- Understand the programs available

This session will be informative and interactive. Attendees will have the opportunity to address specific questions of impact to their businesses.

RSVP to [SSA Update](#) by Monday, May 23rd. This is a webinar, not a live session.

### June Educational Session

#### OHR’s Quarterly Harassment Prevention Training for Managers

As a service to your business we have a quarterly Harassment Prevention Training. Those sessions occur each quarter on the last Thursday of the month at 1:00 PM. Mark your calendars for March, June, September and December. We also do individual sessions for your offices, including Managers and Supervisors and non supervisory employees.

The next OHR Harassment Prevention Training for Managers session is scheduled for **Thursday, June 28th at 1:00 pm** in Campbell, CA. To register please RSVP for the live session at [Harassment Prevention Training](#)

### July Educational Session

#### Background Checks and Drug testing

Steve Ziemkowski with Parkin Security will address drug screening processes and how to conduct background checks.

This is a webinar. There is no charge to participants. To register please RSVP for the live webinar session at [Drug Screens](#)

***MyOHR provides key Human Resources consulting and support for small, emerging and mid-size companies. Focusing on Human Resource Legal Compliance, MyOHR assists business in achieving operational efficiency by***

***providing the infrastructure necessary to manage the workforce in compliance with State and Federal requirements. MyOHR is cost effective for companies that have not budgeted for a full-time HR position. Contact Jaime Orendac, SPHR-CA at [Jaimeo@MyOHR.com](mailto:Jaimeo@MyOHR.com).***