

HR EXPRESS

A PROGRAM OF THE GEORGIA MUNICIPAL ASSOCIATION



ELARBEE THOMPSON

Labor, Employment and Complex Litigation Specialists

Record Retention Requirements for Local Government Employers



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Benefits of Record Retention

- Meet requirements of state and federal regulations
- Avoid undesirable consequences of non-compliance
- Effectively support investigations and litigation
- Provide continuity in the event of a disaster
- Maintain agency memory





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Retention Requirements Under Georgia Law

- **Georgia Records Act**
 - Established a statewide records management system
 - Requires the establishment and maintenance of an “active and continuing program for the economical and efficient management of [public] records.” (O.C.G.A. § 50-18-94(3))
 - “Public records” = all records created or received in the performance of a public duty or paid for by public funds (O.C.G.A. § 50-18-99(c))



Retention Requirements Under Georgia Law

- The Secretary of State coordinates records management for state agencies & local government employers through the Division of Archives & History (“Georgia Archives”)
- Georgia Archives provides local governments employers with a list of common types of records maintained, along with recommended minimum retention schedules
 - Available online at www.GeorgiaArchives.org





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Retention Requirements Under Georgia Law

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Caring for Records

PERSONNEL (06)

Records	Description	Retention	Number
Accident Reports	Reports of employee accidents and injuries; including worker's compensation claims.	Workers' Comp Claims: 5 years and settlement of all claims due; Accident Reports not resulting in Workers' Comp Claims: 3 years.	GASC-06-001
Affirmative Action Records	Records documenting an agency's compliance with the requirements of the Equal Employment Opportunity Commission and response to federal program reviews, state compliance audits, annual reporting requirements, and internal audits.	Plans: Permanent; Audits, annual reports, and other records: 3 years.	GASC-06-002
Applications for Employment, Not Hired	Records documenting employment applications of persons not hired. Records may include but are not limited to: unsolicited, incomplete, and complete applications; supporting documentation, interview notes and materials; background surveys; and correspondence.	Unsolicited and incomplete applications: Useful life; All other records: 3 years.	GASC-06-003
Background Checks	Criminal and financial background checks on employees.	5 years.	GASC-06-004
Cafeteria Plan (Flexible Benefits) Records	Records documenting salary reduction-type plans authorized by the Internal Revenue Service.	6 years after termination of participant.	GASC-06-005
Continuation of Insurance Benefits (COBRA) Records	Copies of notices required by COBRA; documentation that notices were received; documentation of any circumstance in which COBRA is not offered due to gross misconduct.	6 years	GASC-06-006
Contracts, Employee	Service contracts between an individual and government agency.	7 years after expiration.	GASC-06-007



Retention Requirements Under Georgia Law

- Records management plan
 - Every local government employer must adopt via resolution or ordinance a records management plan that must include:
 - Name or title of person responsible for records management
 - Approved retention schedule
 - Provisions for maintenance and security of the records





Retention Requirements Under Georgia Law

- Records Management Officer
 - Must be designated by each local government employer
 - Oversees records management & compliance with Georgia Records Act
 - Maintains & updates local government employer's records management program & retention schedules





Retention Requirements Under Georgia Law

- Retention schedules
 - Retention schedules that depart from schedules provided by the Georgia Archives must be approved
 - Suggest that it also includes:
 - Where records are stored
 - Office? Off-site? Private institutions?
 - How records can be destroyed





Retention Requirements Under Georgia Law

- Maintenance and destruction of records
 - Records should not be maintained beyond applicable retention period absent litigation, EEOC charge, audit, investigation, etc.
 - Failure to destroy records per schedules can render management system useless, increase retrieval costs, & extend retrieval time
 - Records can only be destroyed in accordance with an approved records retention schedule
 - Otherwise, it is a misdemeanor





Retention Requirements Under Georgia Law

- Suspension of records retention periods
 - When particular records are relevant to litigation, EEOC charge, audit, investigation, etc.
 - Litigation holds
 - Retain for as long as needed





Retention Requirements Under Georgia Law

- Security of records
 - Must protect against removal, theft, unauthorized destruction, etc.
 - Must protect against unauthorized alterations (e.g., through access monitoring, user verification, etc.)
 - Considerations
 - Who has access?
 - Are the records backed up?
 - Firewalls? Malware?





Retention Requirements Under Georgia Law

- Electronic information
 - Definition of “public record” includes “computer based or generated information”
- Formats include:
 - Email
 - Text message
 - Social media
 - Voicemail





Retention Requirements Under Georgia Law

- Available assistance – “RIMS”
 - Georgia Archive’s Records and Information Management Services program
 - Provides training and guidance
 - Call: (678) 364-3710





Retention Requirements Under Federal Law

- ADEA (age discrimination)
 - Payroll or other records (including temp positions) showing names, addresses, dates of birth, occupations, rates of pay, & weekly compensation
 - 3 years
 - Ads for open positions & applications in response
 - 1 year (90 days for temporary positions)
 - Employment decisions (promotions, layoffs, etc.)
 - 1 year (90 days for temporary positions)
 - Benefit plans, seniority & merit systems
 - 1 year
 - Where EEOC charge or lawsuit filed: until “final disposition”





Retention Requirements Under Federal Law

- ADA (disability discrimination)
 - Applications & records related to hiring, requests for reasonable accommodation, promotion, demotion, transfer, lay-off, termination, compensation & selection for training or apprenticeship
 - 1 year
 - Where EEOC charge or lawsuit filed: until “final disposition”





Retention Requirements Under Federal Law

- Title VII (race, gender, national origin, etc.)
 - Applications & records related to hiring, requests for reasonable accommodation, promotion, demotion, transfer, layoff, termination, compensation & selection for training or apprenticeship
 - 1 year from making the record or taking the personnel action
 - Where EEOC charge or lawsuit filed: until “final disposition”





Retention Requirements Under Federal Law

- COBRA

- Benefit plan documents, annual reports (including summaries), summary plan descriptions, all recorded information used in compiling required reports, copies of COBRA notices & acknowledgments of receipt, documents relating to COBRA denial due to gross misconduct, & COBRA-related correspondence

- 6 years





Retention Requirements Under Federal Law

- **Equal Pay Act**

- Personnel records that contain employee name & address, gender, occupation, pay rate, & length of workweek
 - 3 years
- Any records which relate to the payment of wages, wage rates, job evaluations, job descriptions, merit systems, seniority systems, & payment of wage differential to employees of opposite sex
 - 2 years





Retention Requirements Under Federal Law

- FLSA (payment of wages)
 - Records containing personnel information, such as name, address, SSN, date of birth, date of hire, date of termination, gender & occupation
 - 3 years from termination of employment
 - Records containing workday & payment information, such as time each workday began/ended, wage rate tables, work schedules, and amount of & reason for each deduction from or addition to wages
 - 2 years from termination of employment
 - Records regarding minors, such as certificates of age
 - 3 years from termination of employment





Retention Requirements Under Federal Law

- FMLA (medical leave)
 - Applies to all local government employers regardless of size
 - Records regarding medical certifications, type of leave taken, dates/hours of leave taken, name, position, & pay rate of person on leave, copies of all notices given to/received from employee, documents describing employee benefits or employer policies regarding leave, premium payments, beginning/ending dates of leave period, & records of any leave-related dispute
 - 3 years from the date the leave ended





Retention Requirements Under Federal Law

- **FICA and FUTA** (social security and unemployment taxes)
 - Information related to FICA & FUTA withholdings
 - 4 years from the date tax is due or tax is paid
- **FACTA** (consumer credit information)
 - Requires reasonable measures to protect against unauthorized access to or use of consumer credit information in connection with its disposal (e.g., shredding)



Retention Requirements Under Federal Law

- **GINA (genetic information)**
 - Genetic information (including family medical history) must be maintained in separate medical file
 - 1 year from making record or taking personnel action (*effective April 3, 2012*)
 - Where EEOC charge or lawsuit filed: until “final disposition”
- **IRCA (immigration)**
 - Form I-9 (Employee Eligibility Verification Form)
 - 3 years after date of hire or 1 year after date of termination, whichever is later





Retention Requirements Under Federal Law

- Electronic Records: E-Sign Act
 - Electronic records may be used to satisfy federal retention requirements
 - Must:
 - Accurately reflect information set forth in record
 - Remain accessible, for such period as required under other law & in form that allows record to be accurately reproduced





Consequences of Non-Compliance

- Adverse inference
- Sanctions/Contempt of Court
- Inadmissibility of evidence
- Mandamus/injunctive relief





Designing an Effective Records Maintenance Program

- Define how long, how, & where to store both paper & electronic records
- Consider all forms of electronic records & information
- Specify how records are to be destroyed when retention period has expired





Designing an Effective Records Maintenance Program

- Detail circumstances under which program should be suspended (“litigation hold”)
 - Lawsuit, EEOC charge, subpoena, Open Records Act request, audit, investigation, etc.
- Designate Records Management Officer
- Define penalties for non-compliance & consistently impose them





Designing an Effective Records Maintenance Program

- Describe manner of organization & catalog stored records
- Include record maintenance plan in employee handbook and have employees sign when plan is updated
- Train employees on records maintenance plan & monitor adherence





Designing an Effective Records Maintenance Program

- When potentially contentious termination occurs or where litigation or EEOC charge is likely:
 - Make *forensic images* of:
 - Employee's hard drive
 - Employee's network drive
 - Employee's assistant's hard drive
 - Copy employee's email off email server
 - Back up all data



Conclusion

All local government employers in Georgia are encouraged to assign a high priority to records management & retention and to implement & maintain a plan consistent with the requirements & suggestions set forth in the written materials provided



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Questions and Answers





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