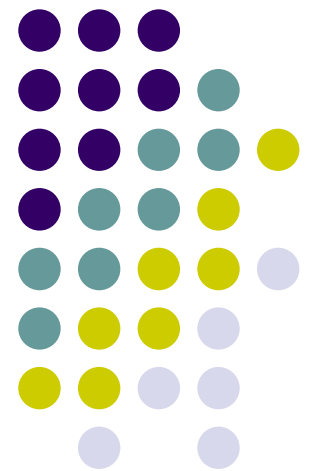


HR Recordkeeping and Retention

It's just good business!



What will we address today?



- What records need to be kept?
- Why do they need to be kept?
- How long do they need to be kept?
- What are the penalties if we don't keep them (or never had them to begin with)?

The Fair Labor Standards Act

- Established standards for:
 - Minimum wage
 - Overtime pay
 - Recordkeeping
 - Child Labor





Exempt vs. Non-exempt?

- The FLSA also established guidelines to classify positions as non-exempt (“hourly”) or exempt (“salaried”).
- Exempt positions are called such because they are exempt from the overtime provisions of the Act.

What makes a position exempt or non-exempt?

- The desire of the position incumbent;
- The desire of the employer to avoid paying overtime;
- The salary of the position;
- The nature of the job duties.





FLSA Recordkeeping Requirements

- For non-exempt employees:
 - Full name and social security number
 - Address, including zip code
 - Birth date, if younger than 19
 - Gender and occupation
 - Time and day of week when employee's workweek begins
 - Hours worked each day
 - Total hours worked each workweek



Wait ... there's more ...

- Basis on which employee's wages are paid
- Regular hourly rate of pay
- Total daily or weekly straight-time earnings
- Total overtime earnings for the workweek
- All additions to or deductions from wages
- Total wages paid for each pay period
- Dates of payment and the pay period covered by the payment

How long?

■ All FLSA records must be kept for a minimum of:

- 1 year
- 3 years
- 10 years
- Forever plus 3 days





Penalties for Non-compliance

- Payment of back wages
- Civil penalties
- Criminal prosecution

The Family and Medical Leave Act

- Eligible employees
- Total of 12 workweeks unpaid leave
- Rolling 12-month period
- For:
 - Birth and care of newborn child
 - Placement of child for adoption or foster care
 - Care for qualified family member with serious illness
 - Serious health condition of the employee

FMLA Recordkeeping Requirements

- Basic employee data (name, address, SSN, occupation, pay rate, terms of compensation, daily and weekly hours worked per pay period, additions to and deductions from wages)
- Dates of leave taken
- Record of designation as FMLA
- For intermittent leave, hours of leave
- Employee notices and documents describing employee benefits or policies and practices regarding paid and unpaid leave
- Records of premium payments of employee benefits
- Records of any dispute regarding designation of leave

How long?

- Three years from the date the leave was taken
- Where?
 - Separate from personnel file

Penalties for Non-compliance

- Wages, employment benefits, or other compensation denied or lost due to violation
- If FMLA denied, actual monetary loss such as the cost of providing care, up to a sum of 12 weeks of wages
- Add interest to both of above
- Add liquidated damages = above
- Appropriate equitable relief (reinstatement and promotion)
- Employee may recover attorneys fees, reasonable expert witness fees, and other costs!



The Immigration Control and Reform Act

- Employers may only hire persons who may legally work in the US
- Employers must verify identity and employment eligibility of anyone to be hired



The IRCA Vehicle for Compliance

- The I-9 form
 - Within 3 business days of hire or ...
 - Must be completed accurately
 - Should be kept separate from personnel file
 - Exemptions:
 - Employees hired prior to Nov. 7, 1986 and continuously employed
 - Independent contractors
 - Private, casual domestic workers

How long?

- Completed I-9's must be retained:
 - 1 year
 - 3 years
 - 10 years
 - Forever and a day
 - None of the above





Correcting past violations

- The employer has an ongoing responsibility to be in compliance!
 - Missing information
 - Incorrect information
 - No information, i.e. no I-9's ever completed



Matters of Non-compliance

- Failure to properly complete the form
- Knowingly hiring, continuing to employ or contracting to obtain the services of an unauthorized alien
- Providing or knowingly accepting false social security cards
- Pattern and practice of I-9 compliance failure



Penalties for Non-compliance

- Paperwork violations
 - Fines between \$100 and \$1100 for each individual for which a mistake is made
- Substantive violations
 - Fines between \$275 and \$2200 for each unauthorized worker for first-time offenders
 - Every subsequent offense: up to \$11,000 per offense
- Criminal penalties
 - Including fines and imprisonment where violations appear willful

Age Discrimination in Employment Act (“ADEA”)

- ❑ Protects individuals 40 years of age or older from employment discrimination based on age
- ❑ Employees and applicants
- ❑ Protections cover all terms and conditions of employment:
 - ❑ *Hiring*
 - ❑ *Firing*
 - ❑ *Promotion*
 - ❑ *Layoff*
 - ❑ *Compensation*
 - ❑ *Benefits*
 - ❑ *Job Assignments*
 - ❑ *Training*

ADEA Record-keeping Requirements

- Payroll or other records with employees':
 - Names
 - Addresses
 - Dates of birth
 - Occupations
 - Rates of Pay
 - Weekly Compensation

ADEA ALSO REQUIRES:

- Employment Applications
- Job Advertisements and Postings
- All Personnel Records:
 - Promotion
 - Demotion
 - Transfer
 - Selection for Training
 - Layoff
 - Recall

How Long?

- All records must be kept for:
 - 1 year
 - 3 years
 - 10 years
 - Forever plus eighteen months
 - It all depends

And the answer is:

- It all depends!
 - 3 years for payroll records
 - 1 year for applications and other personnel records
 - If charge or lawsuit: until final disposition

Penalties for Non-compliance

- ❑ Reinstatement, promotion, back wages
- ❑ Civil lawsuits, including jury trial
- ❑ Punitive damages for future monetary loss and emotional injury



Additional Major Legislation and Record-keeping Requirements

- Title VII of the Civil Rights Act
 - Prohibits discrimination in all terms and conditions of employment on basis of race, color, sex, creed, national origin

- The Americans with Disabilities Act (“ADA”)
 - Extends Title VII civil rights to qualified individuals with disabilities, and individuals who associate with them

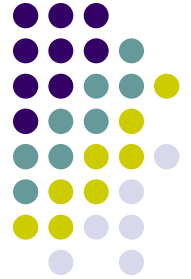
Record-keeping Requirements:

- ❑ Applications and other personnel records relating to promotions, transfers, demotions, layoffs, terminations, etc.
- ❑ Records must be kept for one year from making the record or taking the personnel action
- ❑ If charge or lawsuit filed, until final disposition!

Penalties for Non-compliance

- Compensatory damages
 - Out-of-pocket monetary losses, future monetary losses, emotional pain, suffering, inconvenience, mental anguish, etc.
- Injunctive Relief
 - Order to hire or reinstate
- Punitive Damages
 - If malicious or reckless practices, up to \$300,000 per plaintiff
- Other Damages
 - Attorney and expert witness fees, back pay, front pay, and interest

So What Do We Do Next?



- Above all

- **Don't Panic**



For IRCA Compliance

- Audit your current I-9 records
- Correct incorrect information
- Complete missing information
- Insure completion for **ANY AND ALL** missing forms



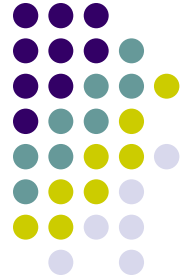
For FMLA Compliance

- Begin to utilize FMLA forms provided by HR
- Contact your HR Rep when any employee is absent for five or more days, or notifies you that he/she will be absent for five or more days
- Attend FMLA training when it is offered by HR

For other compliance matters:



- Audit your records NOW to insure that you are keeping what you need to keep
 - How you need to keep it
 - Where you need to keep it



For further assistance

- Contact your HR Rep!

