

INFORMATION MANAGEMENT & DOCUMENTATION

HR GUIDELINES FOR RESPONDING TO PERSONNEL FILE REQUESTS

Operation disruptions during and after the COVID-19 pandemic, coupled with a new emphasis on remote work, a move towards the digitization of organizational records, and the extension of statutes of limitation, have required organizations and their Human Resources (HR) professionals to analyze how they treat and store employment records. The Oregon Bureau of Labor and Industries' (BOLI) mandate is clear: "Employers must provide a reasonable opportunity for employees to look at their personnel, time, and pay records and obtain copies of these records upon request." Washington State Department of Labor & Industries (LNI) similarly instructs: "Employers are required to keep certain payroll and personnel documents for all employees. Employees have a right to request access to these records." The U.S. Department of Labor's (DOL) has issued similar instructions: "Every employer covered by the Fair Labor Standards Act (FLSA) must keep certain records for each covered, nonexempt worker. There is no required form for the records, but the records must include accurate information about the employee and data about the hours worked and the wages earned."



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Now is a good time to review your organization's policies and practices on record retention to ensure they comply with federal, state, and local requirements. For a number of organizations, especially ones with solo Human Resource practitioners, this can be a herculean task. Here are some tips to help you through it. These tips are derived from Oregon's personnel records statute, ORS 652.750, Washington State's personnel file statute, RCW 49.12.240, and BOLI and LNI guidance.

What Is a "Personnel File"?

In Oregon, the term "personnel records" means records of an employee that are used (or have been used) to determine the employee's qualification for employment, promotion, additional compensation, employment termination, or other disciplinary action, as well as "time and pay records" of the employee for the period required by the FLSA, 29 U.S.C. § 211(c), and accompanying regulations. (Oregon Revised Statute (ORS) 652.750).

In Washington, LNI's current guidance states:

"Personnel file" includes records that are regularly maintained by the employer as part of the business records or those that are subject to reference for information given to persons outside the company. The term "personnel files" is further interpreted to generally include, but is not limited to, records of employment and

such other information required for business or legal purposes; documents containing employees' qualifications; verification of training completed; signed job descriptions; supervisor's files; all performance evaluations, letters of commendation and letters of reprimand; salary, sick, and vacation leave hours; and summaries of benefits and other similar information.

See, [EMPLOYEE ACCESS TO PERSONNEL FILE ES.C.7.](https://lni.wa.gov/workers-rights/_docs/esc7.pdf) (https://lni.wa.gov/workers-rights/_docs/esc7.pdf)

Here is a sample list of documents to consider:

- **Personnel Records**

- Job announcements and descriptions
- Applications
- Résumés or curricula vitae (CVs)
- Worker qualifications (hiring records, past experience, academic information, etc.)
- Promotion records
- Pay increase documentation
- Verification of training completed
- Records given to persons outside of the organization as a part of a “reference check” or verification of employment
- Supervisor notes pertaining to named personnel actions
- Performance reviews or evaluations (including correct action plans)
- Disciplinary actions, reprimands, or records of verbal and written warnings
- Notices of termination

- **Payroll Records (Time and Pay)**

- Employee's full name, social security number, home address (including zip code), birth date (if younger than 19 years old), sex, occupation, employment state date
- Time and pay records regarding:
 - » The time and day of week when the employee's workweek begins, including hours worked each day and total hours worked each workweek
 - » The basis of when the employee's wages are paid
 - » Total overtime earnings for the workweek
 - » All additions to or deductions from the employee's wages
 - » The total wages paid each pay period
 - » Tips and service charges earned
 - » The date of payment and the pay period covered by the payment
 - » Additional records required for paid sick leave (Washington State)

Note: The Americans with Disabilities Act (ADA) prohibits employers from keeping medical information in an employee's personnel file.

Employee's Right to Access/Copies

Under Oregon law, personnel records must be provided to the employee or the employee's authorized representative **within 45 calendar days of the organization's receipt of an employee's request for personnel records**. The personnel records will be provided in one of the following forms, as requested by the employee:

1. **Electronically:** Downloadable and printable files (for example, portable document format (PDF) will be provided via a link sent to the employee's or employee's authorized representative's designated email.
2. **Physical or Hard Copies:** Physical copies will be provided to the employee in a manner that allows the employee to obtain a signed receipt of receipt.
3. **In-Person Review:** HR will arrange a mutually convenient time and place for the employee to review their files in person, obtaining a receipt of review from the employee. The personnel records should not be removed from the HR office.

OREGON PRACTICE TIP

According to BOLI, such a form is not required to trigger the 45-day deadline to produce personnel records under ORS 652.750. In addition, an employee is not required to cite or reference ORS 652.750 or RCW 49.12.249 in their request for personnel records.

Under Washington law, "[e]very employer shall, at least annually, upon the request of an employee, permit that employee to inspect any or all of their own personnel file(s)" (RCW 49.12.240). Such access must be provided "**within 10 business days** at the employee's usual place of employment, or a mutually agreed upon location" (<https://lni.wa.gov/workers-rights/workplace-policies/payroll-and-personnel-records>; RCW 49.12.250(1)). ("Each employer shall make such file(s) available locally within a reasonable period of time after the employee requests the file(s)."). Washington law does not require that electronic or hard copies be provided, just that the employee be provided with the required access, although as a practical matter many employers elect to provide copies to the employee.

Washington provides that any information the employer determines to be irrelevant or erroneous must be removed from the personnel file (RCW 49.12.250(2)). If the employee disputes the employer's determination, then the employee can add a statement containing a rebuttal or correction (RCW 49.12.250(2)). A former employee has the right to rebut or correct the employer's determination for a two-year period (RCW 49.12.250(2)).¹

Retention and Safekeeping of Personnel Records

In accordance with federal law and Oregon law, employers must keep an employee's personnel records for at least 60 days after termination. Time records—that is, records on which wage computations are based, i.e., timecards and piece work tickets, wage rate tables, work and time schedules, and records of additions to or deductions from wages—

¹ *Employees under criminal investigation do not have the right to modify their personnel file. RCW 49.12.260.*

must be retained for two years. Payroll records, collective bargaining agreements, and sales and purchase records should be retained for three years.

Washington law likewise requires employers to keep employees' payroll records for at least three years, and they may be kept in either an electronic and/or written format. Payroll records must contain the employee's:

- Full name
- Home address
- Occupation
- Date of birth (for employees under 18)
- Employment start date
- Time of day and day of week the employee's workweek begins
- Actual hours worked on a daily and weekly basis
- Rate(s) of pay
- Total wages earned (including straight time, overtime, piece work units earned, and bonuses)
- Tips and service charges earned
- Addition to or deductions from wages
- Additional records required for paid sick leave
- There are additional records that must be maintained for any employees under 18. See, <https://www.lni.wa.gov/workers-rights/youth-employment/how-to-hire-minors>.

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

The statute of limitation for a wage or contract claim in both Oregon and Washington is six years. For that reason, most employers choose to retain the records for at least seven years.

Destroying Records

After the required retention periods for recordkeeping end, the employer must properly dispose of or destroy employees' payroll and personnel records or penalties can apply. See, for Washington, RCW 19.215.020.

Reporting Data Breaches

Under Washington law, any employer with personally identifying, sensitive, or health-related information must notify employees if they are affected by an actual or suspected data breach. Notification must be given to affected employees as soon as possible, unless otherwise directed by law enforcement. If a data breach affects more than 500 people, it must be reported to the Office of the Attorney General. See the Attorney General's [Data Breach Notifications page](#) for more details.

Best Practices for Collection and Transmittal of Personnel Records

- 1. Collect and Review the Personnel File:** If an employee requests their personnel file or personnel records, HR should collect and, after careful review, provide the documents held within HR's system or files that fall within the definition of "personnel records."
- 2. Don't Forget Any Supervisor File(s):** HR should request and provide personnel records from the employee's supervisor's file(s).

PRACTICE TIP

Organizations should provide some instruction and direction to supervisors about whether (and how) they should be keeping informal files on employees. Although supervisors may temporarily maintain records concerning ongoing employee performance, these records will be considered personnel records if they fall within the definition of "personnel records." At a minimum, supervisors should be informed and periodically reminded that they are expected to comply with the organization's personnel record retention and confidentiality requirements and must transmit any personnel records to HR in a timely manner and upon request by HR.

- 3. Include Payroll Records:** If the employee has requested time and pay records, HR should collect and incorporate the time and pay records from the organization's payroll file(s) for the last three years of the employee's employment.
- 4. Plan for Legal Review, if Needed:** Before producing a personnel file, employers should consider whether legal review may be needed and plan accordingly. In particular, legal review may be needed to confirm whether and to what extent any responsive document may need to be redacted or otherwise protected from disclosure based on the attorney-client privilege, work production doctrine, the Family Educational Rights and Privacy Act of 1974 (commonly referred to as FERPA), the Health Insurance Portability and Accountability Act (HIPAA), data privacy laws, or other disclosure protection.
- 5. Contents of Sample Transmittal Communication/Certification Requirement:** In Oregon, the transmittal communication sent with the personnel records must include language to comply with the certification requirement in ORS 652.750. Below is a sample transmittal communication:

Dear **[insert Employee's name]**:

In response to your request for certified personnel file dated **[insert date]**, and in accordance with ORS 652.750 and **[insert name of organization]**'s personnel records policy, the following link to a **[Dropbox, Google, etc.]** folder includes a certified copy of your personnel records **[if applicable: including time and pay records for the last three years of your employment with [insert organization's name]]**.

Link: **[insert Dropbox, Google, etc. link]**

The certified copies are in a downloadable and printable format. Please let us know if you have any difficulties accessing the documents.

[If applicable: Please note that confidential information (e.g., the employee's social security numbers, dates of birth, and account information) has been redacted. In addition, please note that, in accordance with Oregon law, [insert organization's name] is withholding documents based on the attorney-client privilege—namely, documents related to a privileged investigation conducted by [insert name of attorney investigator and name of company].

In your request, you indicated that you would like to receive the documents by email at **[insert email address]**. Please let us know if you would like to receive hard copies of the personnel records. Please note that in accordance with the **[insert organization name]**'s personnel records policy and Oregon law, **[insert organization name]** charges a reasonable fee associated with the cost of providing hard copies. **[insert organization name]** accepts checks payable to "**[insert organization name]**" in the amount of \$20.00 for hard copy requests.

Thank you,

[insert name of organization employee]

OREGON PRACTICE TIP

If the personnel records are sent electronically, the above statement should be included in the email containing the [Dropbox, Google, etc.] link. **If copies of the personnel records are mailed**, then the above statement should be included in a cover letter accompanying the files. **If the personnel records are viewed in person**, then HR should email the above statement to the employee within one business day of the personnel file review session.

Washington does not have a certification requirement.

Disclaimer: This summary is not legal advice and is based upon current statutes, regulations, and related guidance that is subject to change. It is provided solely for informational and educational purposes and does not fully address the complexity of the issues or steps employers must take under applicable laws. For legal advice on these or related issues, please consult qualified legal counsel directly.