



Recordkeeping Requirements

 OREGON SCHOOL PERSONNEL ASSOCIATION
EMPOWERING OREGON'S K-12 HR PROFESSIONALS

Fall Summit - 2023



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Employer Assistance

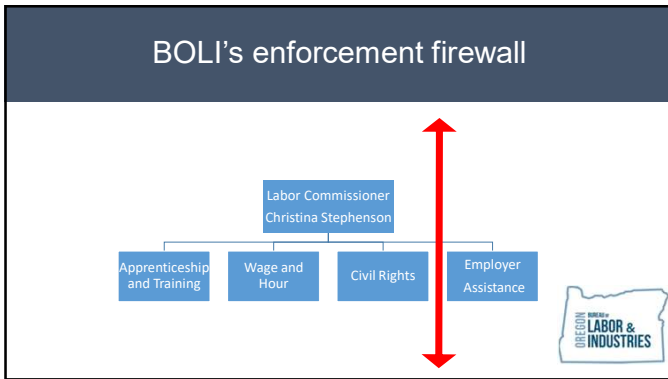
Main Number (971)-361-8400
email: employer.assistance@boli.oregon.gov
Website: <https://www.oregon.gov/boli/employers>

Training and Development Specialist:

Joseph Tam
Email: joseph.tam@boli.oregon.gov
Phone: (971) 612-0509




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BOLI's enforcement firewall

Labor Commissioner
Christina Stephenson

Apprenticeship and Training | Wage and Hour | Civil Rights | Employer Assistance




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Why do we keep records?

A. Legal requirements


For all employers: A variety of **federal and state laws** require employers to keep records.



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1. Affirmative Action Records


Affirmative Action Records	Minimum retention
Records document school, district, and ESD compliance with the statutes and regulations of the U.S. Equal Opportunity Commission dealing with affirmative action. Records may include but are not limited to plans, updates, policy statements, reports, and supporting information. SEE ALSO Equal Employment Opportunity Commission Compliance Records in #15. OAR 166-400-0050(1)	(a) Retain plans, updates, and policy statements: Permanent (b) Retain all other records: 3 years



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2. Benefits Continuation Records



Benefits Continuation Records	Minimum retention
Records document notifications to employees or dependents informing them of their rights to continue insurance coverage after termination of during disability or <u>family leave</u> . Continuation may be under COBRA or another provision. Notice is also sent to a third party administrator who administers the extended coverage. The records typically consist of notices sent and correspondence. Records may be filed with the Employee Benefits Records or Employee Personnel Records. See also Employee Payroll Records in the Payroll section. OAR 166-400-0050(2)	3 years after employee separation of eligibility expired



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Family Leave: Continuation of insurance benefits


FMLA	OFLA	Paid Leave
<p>During any FMLA leave, OFLA leave or Paid Leave, an employer must maintain the employee's coverage under any group health plan on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period.</p>		
OAR 839-009-0270(6)	29 CFR §825.209(a)	ORS 657B.060(2); OAR 471-070-1330(7)

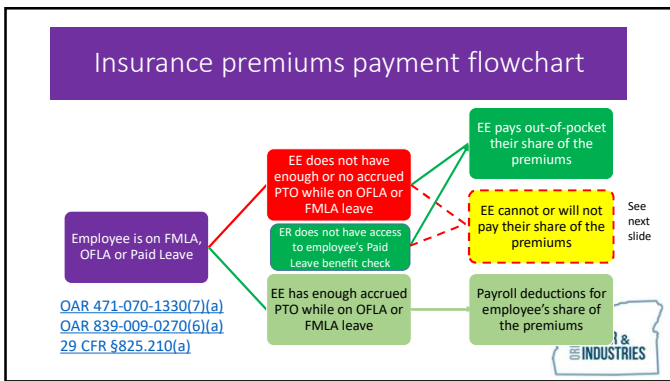
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Employees pay the same share while on leave

FMLA	OFLA	Paid Leave
<p>Group health plan benefits must be maintained on the same basis as coverage would have been provided if the employee had been continuously employed during the FMLA leave period. Therefore, any share of group health plan premiums which had been paid by the employee prior to FMLA leave must continue to be paid by the employee during the FMLA leave period.</p>	<p>An employer continuing health or other insurance coverage for an employee on OFLA leave may require that the employee pay only the same share of health or other insurance premium during the leave that the employee paid prior to the leave.</p>	<p>An employer continuing health care insurance coverage for an employee on PFML leave may require that the employee pay only the same share of premium costs during the leave that the employee would have been required to pay if not on leave.</p>
29 CFR §825.210(a)	OAR 839-009-0270(6)(a)	OAR 471-070-1330(7)(a)



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FMLA/OFLA: Employer's option when employee fails to pay

EE cannot or will not pay their share of the premiums

ER may elect to discontinue EE's insurance coverage following proper notice

Caution: EE must be allowed to re-enroll without delay upon reinstatement

ER may pay EE's share of premiums

ER may deduct up to 10% EE's gross pay after reinstatement for repayment

OFLA and FMLA:
OAR 839-009-0270(6)(c);
29 CFR §§825.212; 825.213

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Coverage lapses, guaranteed re-enrollment

FMLA	OFLA	Paid Leave
If coverage lapses because an employee has not made required premium payments, upon the employee's return from FMLA leave the employer must still restore the employee to coverage/benefits equivalent to those the employee would have had if leave had not been taken and the premium payment(s) had not been missed, including family or dependent coverage. 29 CFR 825.212(c)	If coverage lapses because an employee has not made required premium payments, upon the employee's return from OFLA leave the employer must still restore the employee to coverage/benefits equivalent to those the employee would have had if leave had not been taken and the premium payment(s) had not been missed, including family or dependent coverage. OAR 839-009-0270(6)(b)	If coverage lapses because an employee has not made required premium payments, upon the employee's return from PFMLI leave the employer must restore the employee to coverage/benefits equivalent to those the employee would have had if leave had not been taken and the premium payment(s) had not been missed, including family or dependent coverage. OAR 471-070-1330(7)(b)

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Benefits Continuation: Disability

Benefits Continuation Records	Minimum retention
Records document notifications to employees or dependents informing them of their rights to continue insurance coverage after termination of during <u>disability</u> or family leave. Continuation may be under COBRA or another provision. Notice is also sent to a third party administrator who administers the extended coverage. The records typically consist of notices sent and correspondence. Records may be filed with the Employee Benefits Records or Employee Personnel Records. See also Employee Payroll Records in the Payroll section. OAR 166-400-0050(2)	3 years after employee separation of eligibility expired

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No guaranteed benefits continuation: Disability

- An employee may have a serious health condition, *i.e.*, a disability, and they have exhausted their Paid Leave and OFLA/FMLA leave, or they have exhausted their Paid Leave and they are not eligible for OFLA/FMLA leave (*e.g.*, a 0.5 FTE employee), there are no legal requirements for the employer to guarantee the continuation of benefits but the employer must ensure that an employee with a disability is not treated differently than other non-disabled employees who are on a leave of absence.



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No guaranteed benefits continuation: On-the-job injury

- Similarly, an employee may have a serious health condition, *i.e.*, a disability, resulting from an on-the-job injury, and if they are not on FMLA leave, there are no legal requirements for the employer to guarantee the continuation of benefits but the employer must ensure that an injured worker with a disability, who has an accepted/denied workers' comp claim, is not treated differently than other non-disabled employees who are on a leave of absence.



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3. Collective Bargaining Records

Collective Bargaining Records	Minimum retention
Records document the negotiations and contractual agreements between a school, district, or ESD and an employee bargaining unit. Records may include but are not limited to union contracts and amendments; tentative agreements; arbitrator's recommendations; negotiation work notes; strike contingency plans; management counter proposals; negotiation updates; newspaper clippings; press releases; research background material; employee classification printouts; minutes, sound recordings, and exhibits; published manuals; and related correspondence and documentation.	(a) Retain contracts: 75 years after contract expires (b) Retain all other records: 6 years after contract expires


[OAR 166-400-0050\(3\)](#)



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4. Comparable Worth Study Records

Comparable Worth Study Records	Minimum retention
<p>Records documenting the analysis, study, and resolution of pay equity, alleged job discrimination, and related issues involving the agency and its employees. May include job content questionnaire summaries, position allocation reports, personnel reclassification studies, job category listings, study outlines, graphs, tables, and significant related records.</p> <p>OAR 166-400-0050(4)</p>	<p>(a) Retain final study or report: Permanent</p> <p>(b) Retain all other records: 5 years</p>



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Equal pay


Work of comparable character means work that requires substantially similar knowledge, skill, effort, responsibility and working conditions regardless of job title

Restrictions on asking about or factoring in current pay

The **8 bona fide factors**, one or more of which may be applied to justify entire differentials in compensation for work of comparable character are:

- A seniority system;
- A merit system;
- A system that measures earnings by quantity or quality of production, including piece-rate work;
- Workplace locations
- Travel, if it is regular and necessary for the employee;
- Education;
- Training;
- Experience


NOTE: Market forces are not a bona fide factor



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Equal pay analysis is not legally required

- Information that an employer has not completed an equal-pay analysis may not be used as evidence of a violation of ORS 652.220 in an action under ORS 652.230 or 659A.885 alleging a violation of ORS 652.220.
- [ORS 652.235\(4\)](#)



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5. Compensation Plan Records Records

Compensation Plan Records	Minimum retention
Records document the development, operation, and maintenance of the school, district, or ESD's personnel compensation plans. Records include compensation plans; salary surveys; merit matrixes; pay range tables; and related correspondence and documentation. OAR 166-400-0050(5)	(a) Retain compensation plans: 20 years (b) Retain pay range tables, merit matrixes: Until superseded (c) Retain all other records: 3 years.



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6. Criminal Background Check Records

Criminal Background Check Records	Minimum retention
Records document the pre-employment or periodic criminal record check made on prospective or current staff, faculty, and volunteers by schools, districts, or ESDs. Records include but are not limited to a Fingerprint-Based Criminal History Verification form documenting the result of a criminal history background check coordinated by the Oregon Department of Education through the FBI and Oregon Law Enforcement Data System (LEDS). The form includes name and other personal identifying information, indication of existence or absence of criminal record, and related documentation. Records may be retained as part of the Employee Personnel Record. SEE ALSO Employee Personnel Records and Recruitment and Selection Records (#22) in this section. OAR 166-400-0050(6)	(a) Retain background check logs until superseded or obsolete (b) Retain fingerprint cards until return of card or receipt of investigation findings (c) Retain all other records 90 days, destroy.



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Arrest and conviction records


- Employers may not ask about criminal history on application form or prior to an initial interview, if applicable. However, employers may consider an applicant's conviction history in making a hiring decision
- Exceptions also exist for:
 - Any contrary federal, state or local law
 - Law enforcement agencies
 - Employers in the criminal justice system
 - Non-employee volunteers
- BOLI has enforcement authority
- *Portland Ban the Box is stricter: requires conditional job offer before asking



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7. Disciplinary Action Records


Disciplinary Action Records	Minimum retention
<p>Records documenting termination, suspension, progressive disciplinary measures, and other actions against employees. May include statements, investigative records, interview and hearing records, findings, and related records. May be filed with Employee Personnel Records.</p> <p>OAR 166-400-0050(7)</p>	<p>(a) Retain investigations resulting in termination: 10 years after employee separation</p> <p>(b) Retain investigations resulting in disciplinary action or exoneration: 3 years after resolution</p> <p>(c) Retain unfounded investigations: 3 years.</p>



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Discipline with equal treatment


- Have you dealt with your employees equally, without discrimination? Are work rules applied consistently?
- Are all employees held accountable for the performance standards established for their positions?
- Have similarly situated employees (similar records and infractions) received the same disciplinary action?
- What is the school's / department's record for taking disciplinary action for this type of infraction?
- What is the district's record? (Review records in HR department.)



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Principles of discipline

- Purpose and principles of discipline
- Progressive discipline
 - Coaching
 - Verbal warnings
 - Written warnings
 - Suspension
 - Termination




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Final discipline considerations

Before you moving forward, consider:

- **Documentation: How strong are your records?**
- Absences due to protected leave
- Disability accommodation
- Harassment
- Complaints
- Retaliation/timing



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Termination

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Prepare for the termination meeting


- Assemble a pre-termination checklist:
 - Choose the appropriate time and place
 - Arrange for a member of management or Human Resources to be present
 - Prepare your words ahead of time (term letter?)
 - Arrange for passwords, keys, cards, and other equipment to be returned immediately



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Final pay


- Employee is terminated:
 - Final paycheck is due by the end of the following business day, unless there is a provision in the applicable collective bargaining agreement that states otherwise



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Disciplinary Action Records: “progressive disciplinary measure”

Disciplinary Action Records	Minimum retention
Records documenting termination, suspension, progressive disciplinary measures , and other actions against employees. May include statements, investigative records, interview and hearing records, findings, and related records. May be filed with Employee Personnel Records. OAR 166-400-0050(7)	(a) Retain investigations resulting in termination: 10 years after employee separation (b) Retain investigations resulting in disciplinary action or exoneration: 3 years after resolution (c) Retain unfounded investigations: 3 years.




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Documentation basics: At-a-glance

A few rules of the road:

1. **Be clear: Who, what, when, where and why.**
2. **Use direct quotes when possible.**
3. **Don't create bad documentation. Be precise. Avoid discriminatory or unlawful verbiage – and action.**
4. **Document facts, not conclusions.**
5. **Record ultimatums and performance issues.**
6. **When in doubt, keep it for at least seven years.**



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How to create documentation

Be careful with e-mail! Don't create bad documentation.

- Is it private?
- Will it be understood?
- Is it appropriate? (instantaneous impulse)
- E-mail correspondence may be discoverable
- Train your managers and supervisors to use e-mail appropriately



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Protected classes (partial)

Civil Rights Act of 1964 Federal Title VII <small>(For employers with 15 or more employees, except where noted)</small>	ORS Chapter 659A <small>(For employers with 1 or more employees, Except where noted)</small>
Race	Race
Color	Color
National Origin	National Origin
Sex (including pregnancy)	Sex (including pregnancy)
Religion	Religion
Retaliation	Retaliation
Association with other protected class	Association with other protected class



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Protected classes (partial)


Civil Rights Act of 1964 Federal Title VII <small>(For employers with 15 or more employees, except where noted)</small>	ORS Chapter 659A <small>(For employers with 1 or more employees, Except where noted)</small>
Age (40 and older in companies with 20 or more employees under ADEA)	Age (18 and older)
USERRA (1 or more employees)	Leave to serve in state-organized militia, Uniformed service leave and veteran status
Americans with Disability Act (in companies with 15 or more employees)	Disability (6 or more employees)



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Protected classes (partial)


Civil Rights Act of 1964 Federal Title VII	ORS Chapter 659A
Family and Medical Leave Act of 1993 (50 or more employees)	Oregon Family Leave Act (25 or more employees)
Genetic Information Nondiscrimination Act (GINA)	Genetic screening/discrimination and brain-wave testing
Union or "concerted activity"	Wage transparency



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Oregon protected classes (partial)


Additional protected classes under Oregon civil rights law (partial list)	
Sexual orientation and gender identity	Access to employer owned housing
Use of credit history	Reporting health care violations
Prohibition on requiring a medical release unless employer pays out of pocket costs	Family relationship
Garnishment	Veteran's preference in public employment
Testifying before the Oregon Legislature	Expunged juvenile record
Whistleblowing	Protection from certain tests, screenings and examinations



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Oregon protected classes (partial)


Additional protected classes under Oregon civil rights law (partial list)	
Marital status	Use of lawful tobacco products during off duty hours
Opposition to health or safety conditions	Leave for spouses of service members called to active duty
Injured worker status	Leave to donate bone marrow
Safety accommodations and leave for victims of domestic violence, harassment, sexual assault or stalking	Leave to serve in the Oregon Legislature
Leave for volunteer firefighting	Leave for jury duty
Paid Leave Oregon	



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Documentation for comparators


- Do you have documentation that demonstrates that other employees – regardless of protected class – were **treated equally**?



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Disciplinary Action Records: investigative records

Disciplinary Action Records	Minimum retention
Records documenting termination, suspension, progressive disciplinary measures, and other actions against employees. May include statements, investigative records , interview and hearing records, findings, and related records. May be filed with Employee Personnel Records. OAR 166-400-0050(7)	(a) Retain investigations resulting in termination: 10 years after employee separation (b) Retain investigations resulting in disciplinary action or exoneration: 3 years after resolution (c) Retain unfounded investigations: 3 years.




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What to investigate?

- Known misconduct
- Suspected misconduct
- Formal and informal complaints
- “Confidential” complaints
- Complaints about superintendent or anyone in a leadership position

Investigating:

- Violations of district’s policies or law
- Is the person making the complaint alleging discrimination based on protected class?




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Timing and scope

- Don't delay
- Prevent additional harm
- Harassment requires immediate response (24-48 hours)
- Failure to act can be a liability

Setting the scope:

- Can the investigator be impartial and perceived to be impartial?
- Who will be interviewed? Where?
- Is it confidential (Note: Be cautious about promising this)
- How will the investigation be documented?
- Do I need an employment law attorney who understands K-12 work environment?




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Conducting the investigation

- What's the chronology of events?
- Who will be interviewed? Complainant, accused, third party witnesses, witnesses identified by parties
- Prepared list of questions
- Setting: neutral area free from distractions
- What electronic evidence exists?

Some documentation basics:

- Date, start and end time
- Who's in the room
- Demeanor and comments
- Write summary immediately after the interview so that it's fresh




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Concluding an investigation

- Prepare report, focus on facts (Who, what, when, where, why and how)
- Describe the investigative process
- What policy, if any, was violated?
- Is the investigative process likely to withstand complaints? If not, correct issues

What happens after a report?

- Good faith standard applies to district's decision to discipline
- Response must be to end misconduct and deter future issues
- EEOC has guidance on potential actions to address misconduct: eoc.gov/policy/docs/harassment




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Corrective action

When an investigation yields substantial evidence, district should:


- Take immediate and **appropriate action to end harassment** and prevent it from recurring
- Provide counseling and training in milder cases, while outlining the consequences if it happens again
- Take stronger action in more offensive cases and termination and/or suspension in extreme situations
- Monitor the situation to ensure **no retaliation**



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Retaliation risk


- Opposition to harassment need only be based on reasonable and **good faith belief** (documentation + at will)
- An individual is protected even if the investigation does not result in a finding of discrimination or harassment
- Retaliation is any adverse action taken because of reporting or whistleblowing. Examples include:
 - Reduction in hours
 - Move to a less desirable location
 - Taunting, hazing
 - Failure to promote; reduction in salary
- Inform the accuser to notify you immediately of any retaliation or push back
- Districts are responsible for retaliation not just from principals or managers, but also from the employee's co-workers if the district knew or "should have known"



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8. Drug Testing Records

Drug Testing Records	Minimum retention
<p>Records document the testing of current and prospective employees for controlled substances prohibited by policy, procedure, or statute. Records may include but are not limited to the documentation of test results, the collection process, the random sample process, and those documenting the decision to administer reasonable suspicion drug testing.</p> <p>OAR 166-400-0050(8)</p>	<p>(a) Retain positive test results: 5 years</p> <p>(b) Retain negative test results: 1 year.</p>



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Additional information on drug test

- A drug test is not considered a medical examination or evaluation, for purposes of ORS 659A.133, 659A.136 and sections (1) and (2) of this rule, limiting employer actions in regard to medical examinations and inquiries.
- As provided in ORS 659A.306, the employer must pay the cost of any medical examination or evaluation or test, including a drug test, or the production of any health certificate required by the employer.
- [OAR 839-006-0242](#)(3) and (4)



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9. Employee Benefits Records

Employee Benefits Records	Minimum retention
Records document school, district, or ESD individual employee benefit information such as selection of insurance plans, retirement, pension, and disability plans, deferred compensation plans, and other benefit program information. Records may include but are not limited to plan selection and application forms, enrollment records, contribution and deduction summaries, personal data records, authorizations, beneficiary information, and related documentation. Records may be filed with the Individual Employee Personnel Record. SEE ALSO Employee Payroll Records in the Payroll Records section. OAR 166-400-0050(9)	(a) Retain PERS enrollment records, official copy: 75 years after date of hire (b) Retain all other records: 3 years after employee separation or eligibility expired.



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10. Employee Medical Records

Employee Medical Records	Minimum retention
Records document school, district, or ESD individual employee work related medical history. These records are not personnel records and must be kept physically separate from employee personnel records, in a separate location, as required by the Americans with Disabilities Act. Records may include but are not limited to medical examination records (pre-employment, pre-assignment, periodic, or episodic), X-rays, records of significant health or disability limitations related to job assignments, documentation of work related injuries or illnesses, hearing test records, hazard exposure records, drug testing records, first-aid incident records, physician statements, release consent forms, and related correspondence. SEE ALSO Hazard Exposure Records (#17) in this section. OAR 166-400-0050(10)	(a) Retain hazard exposure records: 30 years after separation (b) Retain all other records: 6 years after separation.



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ORS 659A.136 states...

- (2) An employer may conduct voluntary medical examinations, including voluntary medical histories, that are part of an employee health program available to employees at that work site. An employer may make inquiries into the ability of an employee to perform job-related functions.
- (3) Information obtained under subsection (2) of this section relating to the medical condition or history of any employee is subject to the same restrictions applicable to information acquired from medical examinations authorized under ORS 659A.133.



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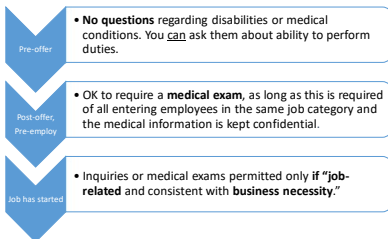
ORS 659A.133(3)(b) states...

- Information obtained regarding the medical condition or history of the applicant is collected and **maintained on separate forms and in separate medical files and is treated as a confidential medical record**, except as follows:
- (A) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations.
- (B) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment.
- (C) Officers and employees of the Bureau of Labor and Industries investigating compliance with ORS 659A.112 to 659A.139 shall be provided relevant information on request.



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Medical inquiries: three stages of employment

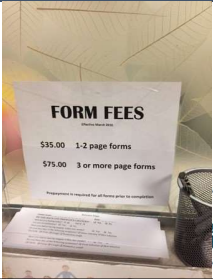


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Medical inquiries: Employer pays

[If] We require medical verification


[Then] We pay out-of-pocket costs associated with certification



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You ask for it, you pay for it!


- **ORS 659A.306** Requiring employee to pay for medical examination as condition of continued employment prohibited; exceptions.
- (1) It is an unlawful employment practice for any employer to require an employee, as a condition of continuation of employment, to pay the cost of any medical examination or the cost of furnishing any health certificate.
- (2) Notwithstanding subsection (1) of this section, it is not an unlawful employment practice for an employer to require the payment of medical examination or health certificate costs:
 - (a) From health and welfare fringe benefit moneys contributed entirely by the employer; or
 - (b) By the employee if the medical examination or health certificate is required pursuant to a collective bargaining agreement, state or federal statute or city or county ordinance.



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11. Employee Personnel Records

Employee Personnel Records	Minimum retention
<p>Records document school, district, and ESD individual employee work history. Records may include but are not limited to applications; notices of appointment; training and licensure (certification) records; records of health limitations; in service training records; salary schedules; tuition reimbursement records; personnel actions; performance evaluations; teacher evaluation reports; letters of commendation and recommendation; letters of reprimand; notices of disciplinary action; notices of layoff; letters of resignation; home address and telephone disclosures; emergency notification forms; oaths of office; grievance and complaint records; pension, retirement, disability, and leave records; and related correspondence and documentation. SEE ALSO Criminal History Check Records, Recruitment and Selection Records, Employee Medical Records (#10), and Employee Benefits Records in this section.</p> <p>OAR 166-400-0050(11)</p>	<p>(a) Retain employment applications (most recent and first successful), teacher licensure (certification) records, personnel actions, oaths of office, home address/telephone disclosures, emergency notification form (most recent): 75 years after date of hire</p> <p>(b) Retain grievance, complaint, and disciplinary records: 3 years</p> <p>(c) Retain all other records: 3 years after separation.</p>



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Disputes with BOLI over Employee Personnel Records

THE PACIFIC INDEX

NEWS SPORTS ARTS AND CULTURE FOOD STAFF

STATE PLANS TO FINE PACIFIC \$843,000 10

By Lane Johnson | Updated: News | 7/13/23

Investigation Alleges Pacific Withheld Employee Personnel Files

At Pacific University, a gathering storm of lawsuits threatened to break over the administration. In October, the first round of potentially damaging lawsuits and fines arrived when the Oregon Bureau of Labor and Industries (BOLI) dropped a nearly \$1 million fine on Pacific University. The action was taken by BOLI as a "notice of intent to assess civil penalties" of up to \$843,000 in fines based on seven specific complaints from former employees of Pacific University that their employee personnel files had been withheld.

Moreover, the fine is just one part of a much larger picture: Included in the set of complaints to BOLI are four former professors who, in addition, have filed lawsuits against Pacific University. Those lawsuits have been filed individually over the course of 18 months—and were reported on by The Pacific Index back in October 2021.

The lawsuits allege a variety of employee maltreatment, including wrongful termination, infliction of emotional distress, retaliation, gender and sex discrimination, and more.

The first of these lawsuits was filed by Dr. Richard Paxton in late May 2021, following the suspension, investigation, and subsequent termination of his tenure as a Professor of Education at Pacific University. Paxton passed away last December, but the lawsuit is continuing through the estate and his wife, Kelly Paxton.

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Don't be confused by the retention period under BOLI's personnel records law

- "Upon termination of employment, the employer shall keep:
 - (a) The terminated employee's personnel records for not less than 60 days."

ORS 652.750(3)

Note: The Archives Division's rule for school district's employee personnel records has longer retention periods for various employee personnel records.




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BOLI's personnel records law includes: Time and pay records

Basic obligation

- An employer must record the hours worked each day and work week for each non-exempt employee (Employers may also require exempt employees to track hours)
- An employer may use any method of timekeeping (including a time clock, timekeeper or the worker's own record) provided it is complete and accurate
- OAR 839-020-0080 & 29 C.F.R. § 516.2



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Wait, seven years? Yes, seven years.

It's almost always in the employer's interest to exceed the legally required retention period. Some statute of limitations considerations:

Type of legal action	Time limit to file
Tort claims	2 years
Overtime claims	2 years (Oregon) or 3 years for "willful violations" (FLSA)
(Most) employment discrimination complaints	5 years
General wage claims	6 years
Contract claims	6 years



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Employee Personnel Records: records of health limitation & disability

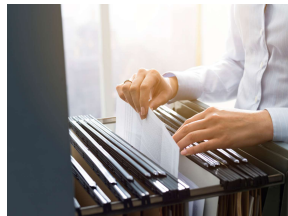
Employee Personnel Records	Employer's responsibilities
Records document school, district, and ESD individual employee work history. Records may include but are not limited to applications; notices of appointment; training and licensure (certification) records; records of health limitations; in service training records; salary schedules; tuition reimbursement records; personnel actions; performance evaluations; teacher evaluation reports; letters of commendation and recommendation; letters of reprimand; notices of disciplinary action; notices of layoff; letters of resignation; home address and telephone disclosures; emergency notification forms; oaths of office; grievance and complaint records; pension, retirement, disability, and leave records; and related correspondence and documentation. SEE ALSO Criminal History Check Records, Recruitment and Selection Records, Employee Medical Records, and Employee Benefits Records in this section. OAR 166-400-0050(11)	<ul style="list-style-type: none"> Respect the employee's medical privacy Keep the health limitations and employee's disability confidential Principals, supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations



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File and keep it separate!


- Information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record
- ORS 659A.133(3)(b)



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Employee Personnel Records: "letter of resignation"


Employee Personnel Records	Minimum retention
Records document school, district, and ESD individual employee work history. Records may include but are not limited to applications; notices of appointment; training and licensure (certification) records; records of health limitations; in service training records; salary schedules; tuition reimbursement records; personnel actions; performance evaluations; teacher evaluation reports; letters of commendation and recommendation; letters of reprimand; notices of disciplinary action; notices of layoff; letters of resignation ; home address and telephone disclosures; emergency notification forms; oaths of office; grievance and complaint records; pension, retirement, disability, and leave records; and related correspondence and documentation. SEE ALSO Criminal History Check Records, Recruitment and Selection Records, Employee Medical Records, and Employee Benefits Records in this section. OAR 166-400-0050(11)	(a) Retain employment applications (most recent and first successful), teacher licensure (certification) records, personnel actions, oaths of office, home address/telephone disclosures, emergency notification form (most recent): 75 years after date of hire (b) Retain grievance, complaint, and disciplinary records: 3 years (c) Retain all other records: 3 years after separation.



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Final pay


- Employee quits with at least 48 hours notice:
 - Final paycheck is due on the final day of employment
- Employee quits with less than 48 hours notice:
 - Final paycheck is due by the 5th business day or the next regular payday, whichever occurs first



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Employee Personnel Records: "leave records"

Employee Personnel Records	Minimum retention
Records document school, district, and ESD individual employee work history. Records may include but are not limited to applications; notices of appointment; training and licensure (certification) records; records of health limitations; in service training records; salary schedules; tuition reimbursement records; personnel actions; performance evaluations; teacher evaluation reports; letters of commendation and recommendation; letters of reprimand; notices of disciplinary action; notices of layoff; letters of resignation; home address and telephone disclosures; emergency notification forms; oaths of office; grievance and complaint records; pension, retirement, disability, and leave records ; and related correspondence and documentation. SEE ALSO Criminal History Check Records, Recruitment and Selection Records, Employee Medical Records, and Employee Benefits Records in this section. OAR 166-400-0050(11)	(a) Retain employment applications (most recent and first successful), teacher licensure (certification) records, personnel actions, oaths of office, home address/telephone disclosures, emergency notification form (most recent): 75 years after date of hire (b) Retain grievance, complaint, and disciplinary records: 3 years (c) Retain all other records: 3 years after separation.




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See also:
“Leave Applications” under Payroll Records

Description	Minimum retention:
Applications or requests submitted by employees for sick, vacation, compensatory, personal business, family and medical leave, long term leave, and other leave time. Information usually includes employee name, department, date, leave dates requested, type of leave requested, and related data. SEE ALSO Employee Time Records in this section.	3 years

[OAR 166-400-0045\(7\)](#)




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See also:
Leave Balance Reports under Payroll Records

Description	Minimum retention:
Reports documenting individual employee accrual and use of sick, vacation, compensatory, personal business, family and medical leave, and other leave time. Information usually includes employee name and number, social security number, leave beginning balance, leave time accrued, leave time used, ending balance, and related data. SEE ALSO Employee Benefits Records in the Personnel section	(a) Retain year-end leave balance reports: 75 years after date of hire, (b) Retain all other reports: 4 years.

[OAR 166-400-0045\(8\)](#)



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Family Leave

- **Oregon Family Leave Act:** Employers with 25 or more employees (no specific recordkeeping requirements, though recommended) Useful templates/Toolkit for OFLA/FMLA here:
• <https://www.oregon.gov/das/HR/Pages/FMLA.aspx>
- **Family Medical Leave Act (federal):** All school districts and ESDs and public employers are covered and must post the FMLA notice, put it in their handbooks and make it available to all employees **and applicants**





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FMLA recordkeeping

- Covered employers who have eligible employees must maintain records that must disclose the following:

(1) Basic payroll and identifying employee data, including name, address, and occupation; rate or basis of pay and terms of compensation; daily and weekly hours worked per pay period; additions to or deductions from wages; and total compensation paid.

- 29 C.F.R. §825.500(c)




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FMLA recordkeeping

- **(2) Dates FMLA leave is taken** by FMLA eligible employees (e.g., available from time records, requests for leave, etc., if so designated). Leave must be designated in records as FMLA leave; leave so designated may not include leave required under State law or an employer plan which is not also covered by FMLA.
- **(3) If FMLA leave is taken by eligible employees in increments of less than one full day, the hours of the leave.**

- 29 C.F.R. §825.500(c)




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FMLA recordkeeping

- **(4) Copies of employee notices** of leave furnished to the employer under FMLA, if in writing, and copies of all written notices given to employees as required under FMLA and these regulations See §825.300(b)-(c). Copies **may be maintained in employee personnel files.**

- 29 C.F.R. §825.500(c)




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OFLA / FMLA records

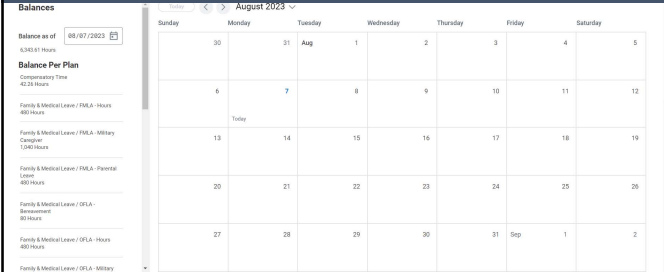
Family leave packets provided to employees when leave is requested should include:

- Notice of eligibility/rights and responsibilities (FMLA) and/or
- Notice of eligibility and qualification (OFLA)
- Designation notice (FMLA)
- Medical verification (must notify employee in writing of this requirement and consequences for failure to provide)
- Written notification if the employee must use paid leave (before foreseeable leave and within 5 days after emergency leave begins)



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My employer uses Workday® for tracking



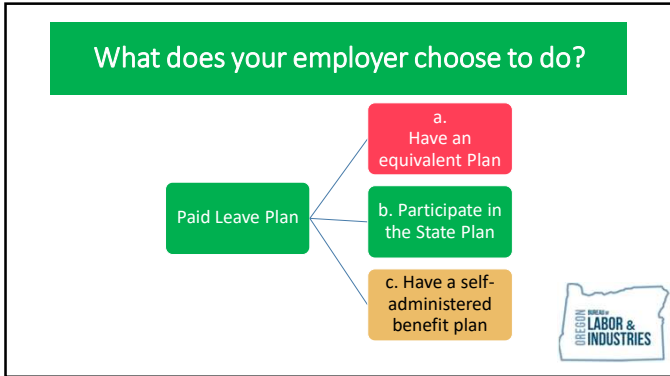
71

Is recordkeeping required for leave taken under Paid Leave Oregon?

- **Answer:** Tracking is required.
- **All employers** must maintain payroll records, including records documenting employee contributions and expenses. Employment records must reflect the total hours worked by all employees and the **amount of leave taken by employees under Paid Leave Oregon** for the current calendar year including the last three calendar years. Source: Paid Leave Oregon: [Employer Guidebook 12/2022](#), page 14




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Recordkeeping: Equivalent Plan


- OAR 471-070-2240(1)
- **Equivalent Plans: Recordkeeping and Department Review**
- Employers with an approved equivalent plan must, for a period of **six years** from the date the equivalent plan became effective, retain in any format in the employer's records all of the following related to the equivalent plan:



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Recordkeeping: Equivalent Plan

- OAR 471-070-2240(1)
- (a) Oregon Quarterly Tax Reports and other reports as required in OAR 471-070-3030(2);
- (b) Information and records relating to the equivalent plan, including:
 - (A) Any amendments to the equivalent plan;
 - (B) Financial information regarding the employer's administrative cost, maintenance, and claim documentation for the plan; and
 - (C) Copy of any written notice(s) provided to employees about the plan as required in ORS 657B.210(11)(c) and applicable administrative rules.



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Recordkeeping: Equivalent Plan

- OAR 471-070-2240(1)
- (c) Employee benefit applications with the current status of pending, approved, or denied along with the reason for denial;
- (d) Information regarding any disputes and appeals; and
- (e) Records regarding each employee's leave taken and any benefits paid or denied and the reason for denial under the equivalent plan.



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Be prepared to disclose the records

- OAR 471-070-2240(2)
- The records identified in section (1) of this rule must be provided to the department for review upon request, with reasonable notice to the employer. The department may request to review the records at any time.




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Oregon sick leave record requirements


- Employers are required to post the general sick time notification or provide it in the handbook or electronically:
- oregon.gov/boli/employers/Documents/BOLI_SickLeave.pdf
- Employers must also notify employees at least quarterly of the amount of sick time available (many employers include this information on the pay stub)



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12. Employment Eligibility Verification Forms (I-9)

Employment Eligibility Verification Forms (I-9)	Minimum retention
<p>Records document the filing of U.S. Immigration and Naturalization Service Form I-9 form which verifies that an applicant or employee is eligible to work in the United States. Information includes employee information and verification data such as citizenship or alien status and signature, and employer review and verification data such as documents which establish identity and eligibility, and employer's signature certifying that documents have been checked.</p> <p>OAR 166-400-0050(12)</p>	<p>3 years or 1 year after employee separation, whichever is longer (8 CFR 274a-2)</p>



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Form I-9 (Expires 07/31/2026)



Employment Eligibility Verification
 Department of Homeland Security
 U.S. Citizenship and Immigration Services

**USCIS
Form I-9**
OMB No.1615-0047
Expires 07/31/2026

START HERE: Employers must ensure the form instructions are available to employees when completing this form. Employers are liable for failing to comply with the requirements for completing this form. See below and the [instructions](#).

ANTI-DISCRIMINATION NOTICE: All employees can choose which acceptable documentation to present for Form I-9. Employers cannot ask employees for documentation to verify information in Section 1, or specify which acceptable documentation employees must present for Section 2 or Supplement B, Reverification and Status. Treating employees differently based on their citizenship, immigration status, or national origin may be illegal.

Section 1. Employee Information and Attestation: Employees must complete and sign Section 1 of Form I-9 no later than the first day of employment, but not before accepting a job offer.

Last Name (Family Name)		First Name (Given Name)		Middle Initial (if any)	Other Last Names Used (if any)	
Address (Street Number and Name)			Apt. Number (if any)	City or Town	State	ZIP Code
Date of Birth (mm/dd/yyyy)	U.S. Social Security Number	Employee's Email Address			Employee's Telephone Number	
<input type="checkbox"/> I am aware that federal law prohibits the falsification of information and/or <input type="checkbox"/> Check one of the following boxes to attest to your citizenship or immigration status (See page 2 and 3 of the instructions.):						

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Legislative background

The **2019 Legislative Assembly** passed [SB 370](#) to provide workers timely notice of upcoming federal audits.

The law includes two main components:

- Employers **must notify employees** within **three days** of receiving notice of a federal inspection or I-9 audit
- Directs BOLI to develop a **template** for employee notification:

oregon.gov/boli/employers/Pages/federal-inspections-notice.aspx




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Notice checklist

- ✓ Employers must post notice
- ✓ Employers must make reasonable attempts to individually notify employees

Notice must include:

1. A copy of the federal notice
2. Date of inspection
3. Info about scope of the audit (if known)
4. The employer's legal obligation to inform its workforce
5. Telephone number for information and advocacy related to immigrant and refugee worker rights (Portland Immigrant Rights Coalition at **1-888-622-1510**)



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13. Employee Recognition Records

Employee Recognition Records	Minimum retention
Recognition of employees for special service to the agency. May include service awards, recognition certificates, commendations, award nominations, lists of past recipients, and presentation or ceremony records and photographs. Some records in this series may have historic value. For appraisal assistance contact the Oregon State Archives. SEE ALSO Employee Suggestion Award Records (#14) in this section.	6 years

[OAR 166-400-0050\(13\)](#)



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14. Employee Suggestion Award Records

Employee Suggestion Award Records	Minimum retention
Records documenting an employee suggestion program where employees may submit suggestions that improve effectiveness, efficiency, and economy in agency operations. Employees may receive awards for adopted suggestions. Records may include suggestion forms and evaluations, award information, and related documentation. SEE ALSO Employee Recognition Records (#13) in this section.	(a) Retain adopted suggestions: 2 years (b) Retain suggestions not adopted: 1 year.

[OAR 166-400-0050\(14\)](#)



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15. Equal Employment Opportunity Commission Compliance Records

Equal Employment Opportunity Commission Compliance Records	Minimum retention
Records document school, district, or ESD compliance with the U.S. Equal Employment Opportunity Commission regulations. Records may include but are not limited to reports; anti-discrimination committee meeting records and reports; workplace analyses; discrimination complaint policies and procedures; complaints; reports; exhibits; withdrawal notices; copies of decisions; hearings and meeting records; report listing number of employees by gender, race, and job classification; and related correspondence and documentation. SEE ALSO Affirmative Action Records (#1) in this section.	(a) Retain plans, updates, and policy statements: Permanent (b) Retain complaint records and documentation: 3 years after final decision issued (c) Retain all other records: 3 years.


[OAR 166-400-0050\(15\)](#)



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Equal Employment Opportunity Commission Compliance Records: Complaints

Equal Employment Opportunity Commission Compliance Records	Minimum retention
<p>Records document school, district, or ESD compliance with the U.S. Equal Employment Opportunity Commission regulations. Records may include but are not limited to reports; anti-discrimination committee meeting records and reports; workplace analyses; discrimination complaint policies and procedures; complaints; reports; exhibits; withdrawal notices; copies of decisions; hearings and meeting records; report listing number of employees by gender, race, and job classification; and related correspondence and documentation. SEE ALSO Affirmative Action Records (#1) in this section.</p> <p>OAR 166-400-0050(15)</p>	<p>(a) Retain plans, updates, and policy statements: Permanent</p> <p>(b) Retain complaint records and documentation: 3 years after final decision issued</p> <p>(c) Retain all other records: 3 years.</p>




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Oregon Workplace Fairness Act

Modernizes protections for harassment victims in the workplace.

The law includes four main components:

- Extends the **statute of limitations** for most employment civil rights complaints from **one year to five**
- Prohibits employers from asking for **non-disclosure agreements** or **no-rehire provisions** for discrimination settlements
- Employer can void **severance agreements** for managers who violate harassment or discrimination policies
- Requires employers to **adopt a policy** prohibiting discrimination and sexual assault; model policy here: <https://www.oregon.gov/boli/workers/Pages/discrimination-at-work.aspx>
 - Multiple avenues of reporting
 - Employers and managers must document unlawful discrimination and harassment
 - Public employers must follow up with victim quarterly for 1 year after – document this!




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Policy: Documenting incidents under Oregon Workplace Fairness Act

ORS 659A.375 Employer policies relating to prevention of discrimination and sexual assault; requirements. (1) Every employer in this state shall adopt a written policy containing procedures and practices for the reduction and prevention of discrimination prohibited by ORS 659A.030, including sexual assault, as defined in ORS 659A.370, and discrimination prohibited by ORS 659A.082 and 659A.112.

- (2) At a minimum, the policy must:
 - ****
 - (f) **Include a statement that advises employers and employees to document any incidents** involving conduct prohibited by ORS 659A.030, including sexual assault as defined in ORS 659A.370, or conduct prohibited by ORS 659A.082 and 659A.112.



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EEO-1 reporting (federal)

- Employers with 100 or more employees (lower thresholds apply to federal contractors) required to file with the U.S. Equal Employment Opportunity Commission.
- The EEOC requires data on demographics of employees to determine gender and race/ethnicity by job category
- Window for submitting data for 2022: opened Mid-July, 2023
- More information and forms here: eoc.gov/employers/eo-data-collections

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16. Grievance Records

Grievance Records	Minimum retention
Records document grievances brought by or against employees of schools, districts, or ESDs. Records may include but are not limited to notice of grievance; informal discussion notes; format hearing notes (including audio tapes); final summary statements or reports; private arbitrator or Employment Relations Board rulings; correspondence; and supporting documentation. OAR 166-400-0050(16)	3 years

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Workers' compensation claims

Employers may not discriminate against injured workers (ORS 659A.020(2));


- Employers with **six or more employees** must provide available/suitable light duty employment;
- Employers with **twenty-one or more employees** must reinstate injured workers to job at injury

If an accident report contains medical information or history, maintain the record in a **separate medical file**

Medical files must be kept confidential (ORS 656.360)

Confidentiality exceptions:


- Supervisors and managers may be told about restrictions on work duties or other accommodations
- First aid and safety personnel may be informed



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18. Layoff, Dismissal, and Non-Renewal Records


Layoff, Dismissal, and Non-Renewal Records	Minimum retention
Records document the procedures and computations used in laying off, dismissing, or non-renewal of contracts of school, district, and ESD employees. Records may include but are not limited to service credit computations, service credit lists, layoff ranking lists, layoff notice letters, employee layoff election forms, documentation in support of action taken, and related correspondence. OAR 166-400-0050(18)	3 years after final disposition



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19. Personnel Research Records


Personnel Research Records	Minimum retention	
Records document the study and analysis of personnel issues such as comparative salary, pay equity, collective bargaining, fringe benefits, manning standards, minimum qualifications, recruitment, training, job discrimination, and related issues involving the school, district, or ESD and its employees. Records may include but are not limited to questionnaires, data, summary reports, studies, surveys, and related documentation. OAR 166-400-0050(19)	(a) Retain final study or report: Permanent	(b) Retain all other records: 5 years



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20. Photo Identification Records


Photo Identification Records	Minimum retention
<p>Photographs and other records used to identify agency employees, private security personnel, contract workers, and others. May include photographs taken for agency identification cards, driver's license photographs, and information such as name, date of birth, physical description, identification number, driver's license number, and other data.</p> <p>OAR 166-400-0050(20)</p>	<p>Until superseded or obsolete</p>



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21. Position Description and Classification Records


Position Description and Classification Records	Minimum retention
<p>Records document job descriptions and the studies and evaluations of school, district, or ESD positions to determine if reclassification is appropriate. Records may include but are not limited to current and new job descriptions, organizational charts, classification specifications, desk audits, classification review reports, and related correspondence and documentation.</p> <p>OAR 166-400-0050(21)</p>	<p>3 years after superseded or obsolete</p>



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Keep the position description current

- **ORS 659A.115** Qualification for position. For the purposes of ORS 659A.112, an individual is qualified for a position if the individual, with or without reasonable accommodation, can perform the essential functions of the position. For the purpose of determining the essential functions of the position, due consideration shall be given to the employer's determination as to the essential functions of a position. If an employer has prepared a **written description** before advertising or interviewing applicants for a job, the position description shall be considered evidence of the essential functions of the job.




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LIFE OF AN ACCEPTED WORKERS' COMP CLAIM

- Claim "Closure"
 - Medical stability
 - Physical limitations
 - Released to "regular work" *?
 - Permanency Award


*job description



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22. Recruitment and Selection Records


Recruitment and Selection Records	Minimum retention
<p>Records document the recruitment and selection of agency employees. Records may also document the recruitment and selection of contracted service providers such as attorneys, auditors, insurance agents, labor consultants, and others. Records may include but are not limited to job announcements and descriptions, applicant lists, applications and resumes, position advertisement records, civil service and other examination records, classification specifications, affirmative action records, interview questions, interview and application scoring notes, applicant background investigation information, letters of reference, civil service records, position authorization forms, certification of eligibles, recruitment summary records (job announcement, position description, documentation relating to the announcement and test, and test items and rating levels), and related correspondence and documentation. SEE ALSO Employee Personnel Records (#11) and Employment Eligibility Verification Forms (I-9) (#12) in this section.</p> <p>OAR 166-400-0050(22)</p>	<p>(a) Retain announcement records, position description, and records documenting creation of test and rating scale 10 years</p> <p>(b) Retain unsolicited applications and resumes 3 months if not returned to solicitor</p> <p>(c) Retain unsuccessful applications and other records 3 years after position filled or recruitment cancelled</p>



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Elements of hiring to keep for your records


- Job analysis
- Written job description
- Job advertisement
- Documented recruiting efforts
- Applications
- Interviews (including interview questions and notes taken based on the interviewee's reply)
- Background checks and references



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Creating applications


- Beware boilerplate applications online or from stationary stores: Tailor an application to the specific job, your district, and the position
- Ensure questions do not solicit protected information
- Include "EEO" and "at will" statements
 - **Omit questions about arrest and conviction records (Ban the Box), if applicable**
 - **No questions about previous salary (Equal Pay Act)**
- Periodically review for compliance



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23. Teacher Registration and Licensure (Certification) Records


Teacher Registration and Licensure (Certification) Records	Minimum retention	
<p>Records document the registration and licensure (certification) of school teachers, including substitute teachers. Records may include but are not limited to licensure (certification) records which list teacher name, type of license (certificate), date of licensure (certification), salary, days taught; Oregon Department of Education licensure (certification) reports which list type of license (certificate), teacher, and district; and related documentation. Early records may include county superintendent administered examination results, copies of examinations, and teacher salary information. SEE ALSO Employee Personnel Records (#11) in this section.</p> <p>OAR 166-400-0050(23)</p>	<p>(a) Retain licensed (Certificated) Personnel Reports: 2 years after school year in which records were created</p>	<p>(b) Retain substitute teachers records: 1 year after school year in which records were created</p>
<p>(c) Retain all other records: 75 years after date of hire</p>		



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24. Training Program Records


Training Program Records	Minimum retention
<p>Records document the design, implementation, and administration of training programs and opportunities provided to school, district, and ESD employees, including in service training for faculty. Records may include but are not limited to class, workshop, or conference descriptions; instructor certifications; planning documentation; instructional materials; course outlines; class enrollment and attendance records; training certification forms; and related correspondence and documentation.</p> <p>OAR 166-400-0050(24)</p>	<p>3 years after school year in which records were created.</p>



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Onboarding recordkeeping


- Form W-4
- Emergency contact information
- New hire reporting:
https://www.doj.state.or.us/wp-content/uploads/2017/06/Oregon_New_Hire_Reporting_Form.pdf
- Acknowledgement of handbook or policies
- Onboarding is compensable time



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Orientation and documentation


- Provide basic information
- Review policy manual or handbook
- **Signed** acknowledgement form
- Review policy manual or handbook (obtain signed acknowledgement form)
- Review job description
- Set out benchmarks and goals for performance
- Contact information
- Where to go with questions
- Mentor



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25. Volunteer Program Records


Volunteer Program Records	Minimum retention	
Records document the activities and administration of volunteer programs in the school, district, or ESD. Records may include but are not limited to volunteer hour statistics; volunteer program publicity records; insurance requirement records; volunteer training and orientation records; inactive volunteer files; and related correspondence and documentation. OAR 166-400-0050(25)	(a) Retain volunteer worker records: 3 years after separation	(b) Retain all other records: 5 years



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26. Wellness Program Records

Wellness Program Records	Minimum retention:
<p>Records document the development, operation, and activities of a school, district, or ESD wellness program. Records may include but are not limited to program statements, health and safety surveys, committee minutes, newsletters, and related correspondence and documentation.</p> <p>OAR 166-400-0050(26)</p>	<p>3 years after school year in which records were created.</p>



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Why do we keep records?

A. Legal requirements
 For all employers: A variety of federal and state laws require employers to keep records.


B. Effective employee management
 Records help employers manage **employee performance** -- and their workforce in general.



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A word of advice

- "Mind reading" should not be required.
- You cannot remember what you had for breakfast this morning.



117

Why do we keep records?

A. Legal requirements
 For all employers: A variety of federal and state laws require employers to keep records.

B. Effective employee management
 Records help employers manage employee performance -- and their workforce in general.


C. Legal defense
 Retention of records – **even when not legally mandated** – if often the key to a successful legal defense.



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A word of advice

- If it was not written down, it did not happen!



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Summary: Recordkeeping

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Documentation is everywhere

Examples:

- Work assignments
- Performance goals and expectations
- Meeting notes
- Follow up memos
- Investigations
- Performance appraisals
- Disciplinary actions



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Confidentiality

Sources of medical information

- Accident/incident reports
- Form 801/827 – injured workers
- Doctor’s release
- OFLA/FMLA/Paid Leave Oregon paperwork
- Medical certification/fitness for duty
- Life insurance applications



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Personnel files


- Official personnel files
 - Kept in Human Resources
 - Medical files are separate
- Supervisory/Principal’s files
 - NO medical information
 - NO information you would not want others to see (domestic violence or safe leave)
- ALL of it may be discoverable



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Personnel records

- All records used to make personnel decisions (ORS 652.750)
 - All records wherever located, including e-mail
 - Hiring records
 - Performance evaluations
 - Disciplinary records
 - **Time and pay records, if requested**
- Employer has 45 days to provide access to originals or certified copy and may charge actual and reasonable costs (copies, postage, staff time)
- Required retention period is 60 days! Best practice? Much longer: 7 years
- "Certified" copy or access to originals




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Public Records Laws

ATTORNEY GENERAL'S
PUBLIC RECORDS
AND
MEETINGS MANUAL


<https://www.doj.state.or.us/oreg-on-department-of-justice/public-records/attorney-generals-public-records-and-meetings-manual/appendix-e/>



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Interesting entry

- January 31, 2001, Charles Hinkle ». Petition denied for records of the Oregon School Activities Association because the association was not a state agency and therefore its denial was not subject to review by the Attorney General. The association was a voluntary consortium of public and private school districts, none of which were state agencies. Its role in regulating high school competition was not an activity traditionally performed by state agencies. The association did not have authority to make binding decisions for state government, did not receive any financial support from state government, and was not subject to supervision or control on a day-to-day basis from state government.



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Interesting entry

- April 5, 2002, Paul B. Meadowbrook ». Petition granted in part for investigatory information gathered by the Teacher Standards & Practices Commission. Information submitted by students was not exempt under ORS 342.176(4) as material not related to disciplinary action even though the information was not factually related to the charges under investigation; the publicly disclosed investigative report that resulted in discipline referred to this information and the commission obtained the information during the investigation that led to discipline.
- Some of this same information was not exempt under ORS 192.355(2) because disclosure would not constitute an unreasonable invasion of privacy; the investigator had advised the student providing the information that public disclosure might result during the disciplinary process.
- The information subpoenaed from the school district that came from confidential personnel files and that was publicly disclosed in the commission's final order of suspension was not exempt as a transferred record under ORS 192.355(10) because the considerations giving rise to the confidentiality no longer applied. However, the petition was denied in part for the information that had not been publicly disclosed.
- And the teacher's settlement offer to the commission was not exempt as confidential information under ORS 192.355(4) - even though the offer was labeled as confidential, the commission never promised confidentiality.



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Interesting entry

- November 23, 2007, Amy Hsuan ». Petition granted in part for a settlement agreement between the Teacher Standards & Practices Commission and a teacher. The settlement was not exempt under ORS 342.176(4) because it reflected a final decision by the commission, and was therefore not a part of the underlying investigation.



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Interesting entry

- May 16, 2018, Shasta Kearns Moore ». Petition granted for information from a Teacher Standards and Practices Commission investigation into a teacher. The executive director's recommendation on discipline was not exempt as an internal advisory communication under ORS 192.355(1). Portions of the recommendation were purely factual in nature and therefore had to be disclosed. For the portions that contained frank opinions, the commission did not show that disclosure would chill candid discussions. In particular, the recommendation was "largely clinical and detached" and did not "contain any controversial opinions or conclusions."
- Personal health information about the teacher was not exempt under HIPAA or ORS 192.558 because the commission was not a covered entity for purposes of those laws. And that information was not exempt under ORS 192.355(2) because disclosure would not constitute an unreasonable invasion of privacy; the information did not reveal any diagnoses, intimate or embarrassing medical details, medications, or treatment plans, and the teacher voluntarily offered this information to the commission in order to help resolve the complaint in his favor. In addition, clear and convincing evidence demonstrated that the public interest required disclosure: the complaint involved serious allegations implicating student safety, and the health information may have influenced the commission's decision on discipline.



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1. Deduction Authorization Records

Description	Minimum retention:
<p>Records documenting employee application and authorization for voluntary payroll deductions, direct bank deposits, and related actions. Payroll deductions are directly deposited or remitted to the authorized financial institution, insurance company, or other agency or vendor. Records may include insurance applications, enrollment cards, deduction authorizations, approval notices, deduction terminations, and related records.</p> <p style="text-align: center; font-size: small;">OAR 166-400-0045(1)</p>	<p>3 years after superseded, terminated, or employee separates.</p>

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Payroll Deductions

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General prohibition

ORS 652.610(3)

- No employer may withhold, deduct or divert any portion of an employee's wages unless the deduction is specifically permitted by law.



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Permissible deduction (1)

ORS 652.610(3)(a)

For example:

- Employer is required to do so by law (e.g. state and federal incoming tax withholdings, social security, Medicare, workers' benefit fund, PFMLI employee contributions).



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Permissible deduction (2)

ORS 652.610(3)(b)

For example:

- Deductions are voluntarily authorized in writing by the employee, are for the employee's benefit and are recorded in employer's books.




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Permissible deduction (3)

ORS 652.610(3)(c)

- Employee voluntarily signed authorization for deduction for any other item, provided ultimate recipient of money is not the employer and deduction is recorded in employer books.

For example: Charitable contributions



Oregon Food Bank

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Permissible deduction (4): Authorized by a union contract – ORS 652.610(3)(d)

Description	Hours	Rate	Amount	Vendor	Description	Current	YTD	Current
TOTAL REG	176.00	7,678.00	7,678.00	EMP/DEP AD&D	POSTAX/200K	6.80	81.60	
MEM INCENT			17.50	LONGTERM DIS	90 DAY/66%	85.99	1,011.24	
GROSS PAY			7,695.50	DEE/COMP	PRE TAX	130.53	1,534.92	
FED TAX			401.84	SEIU				
OTT			5.79	OPEU LIFE				598.68
STATE TAX			390.00	DEP LIFE	SK/DEPNOT	1.29	15.48	
SOC SEC TAX			472.68	DLT PPO DT1%	EMP&SPOUSE	1.16		114.41
MEDICARE TAX			110.54	PRCH 250 1%	EMP&SPOUSE	15.39		1,523.34
WBF TAX			1.87	BASIC LIFE1%	PRETAX/10K	.02		1.58
EMPL DEDNS			2,409.70	SHORTERM DIS	80% BENEFIT	52.96	622.96	
NET PAY ADJ			.04	SEIU ISSUES	SEIU ISSUES	2.75	33.00	
NET DEPOSIT			3,903.82	EMP LF/65-69	040K PRETAX	41.80		
NET CHECK			.00	EMP LF/65-69	060K POSTTAX	62.70	1,254.00	
FEDERAL J 00				SP/DP 65-69	POSTAX/100K	104.50	1,254.00	
STATE J 00				VISION PLUS	EMP&SPOUSE	13.05	156.60	
				VSP 1%	EMP&SPOUSE	.17		17.22
				DIRECT DEP	SOB WELLFUND	5.00		
				EMPLOYEE PAID	RETIREMENT	460.68	5,417.28	

137

Permissible deduction (5): Writ of Garnishment

IN THE _____ COURT OF THE STATE OF OREGON
FOR THE COUNTY OF _____

_____))

Plaintiff,)

v.)

_____))

Defendant.)

TO:)

Case No. _____

WRIT OF GARNISHMENT

ORS 652.610(3)(e)

138

INCOME WITHHOLDING ORDER

What is an income withholding order?

What are the different types of withholding orders?

- Current support
- Current support & arrears
- Arrears only
- Amended
- Termination
- Cash medical support



Examples of Child Support for Employees 139

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\$2.00 per week processing fee

- in addition to the amount being sent to the garnishor, \$2.00/week processing fee may be collected after the last payment is made under the writ. The fee may be withheld from the wages of the debtor (the employee), and is in addition to the amounts withheld for payment to the garnishor under the writ or under any other writ delivered to the garnishee.

\$2.00 per week



140

Permissible deduction (6): Recoup unpaid cash loan or cash advance

Under specific conditions that meet the legal criteria!

ORS 652.610(3)(f)



141

The legal criteria are:

- The deduction is made from the payment of wages upon termination of employment and is authorized pursuant to a written agreement between the employee and employer for the repayment of a loan made to the employee by the employer, if all of the following conditions are met:
 - (A) The employee has voluntarily signed the agreement;
 - (B) The loan was paid to the employee in cash or other medium permitted by ORS 652.110;



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The legal criteria are:

- (C) The loan was made solely for the employee's benefit and was not used, either directly or indirectly, for any purpose required by the employer or connected with the employee's employment with the employer;
- (D) The amount of the deduction at termination of employment does not exceed the amount permitted to be garnished under ORS 18.385; and
- (E) The deduction is recorded in the employer's books.

ORS 652.610(3)(f)



143

Recoup insurance premiums



144

Recoup insurance premiums: FMLA

29 C.F.R. § 825.212(b)

- The employer may recover the employee's share of any premium payments missed by the employee for any FMLA leave period during which the employer maintains health coverage by paying the employee's share after the premium payment is missed.

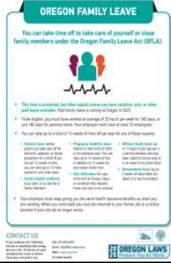


145

Recoup insurance premiums: OFLA

OAR 839-009-0270(6)(c)

- If the employer pays (directly or indirectly, voluntarily or as required by state or federal statute) any part of the employee's share of health or other insurance premium while an employee is on OFLA leave, the employer may deduct up to 10 percent of the employee's gross pay each pay period after the employee returns to work until the amount is repaid.

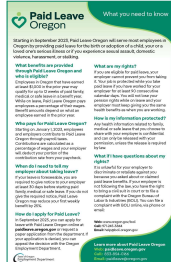


146

Recoup insurance premiums: Paid Leave

OAR 471-070-1330(7)(c)

- If the employer pays (directly or indirectly, voluntarily or as required by state or federal statute) any part of the employee's share of health or other insurance premium while an employee is on PFML leave, **the employer must receive permission from the employee to deduct from their pay** the employee's share of health or other insurance premiums paid by the employer until the amount is repaid.




(1)

147

Recoup insurance premiums: Paid Leave

OAR 471-070-1330(7)(c)

- The employer may deduct up to 10 percent of the employee's gross pay each pay period after the employee returns to work until the amount is repaid.





(2)

148

Prohibited deductions

- Dining and dashing customer's check
- Breakage or loss by employee
- Uniforms or laundering of such
- Cash shortages
- Bad checks or credit cards
- Costs of tools, equipment, or their maintenance, or deposits on uniforms, tools or equipment

149

2. Deduction Registers


Description	Minimum retention:
Registers Registers or records serving the same function of documenting voluntary and/or required deductions from the gross pay of agency employees. Types of deductions include federal income and social security taxes, state tax, workers' compensation, union dues, insurance, deferred compensation, credit union, parking permit, prewritten checks, garnishments, levies, charitable contributions, and others. Information may include employee name and number, pay period, social security number, total deductions, net pay, check number, and related data.	(a) Retain registers documenting state and federal taxes: 5 years (b) Retain all other registers: 3 years.

[OAR 166-400-0045\(2\)](#)

150

3. Employee Payroll Records


Description	Minimum retention:
<p>Records document school, district, or ESD individual employee pay history. Records include but are not limited to source documents authorizing payroll deductions and withholding such as retirement enrollment forms, insurance applications, and beneficiary designations, leave authorization records, pay related personnel action documents, garnishment orders, child support claim records, electronic deposit authorizations, work out of class and overtime authorizations, deduction reports, and correspondence. SEE ALSO Employee Personnel Records in the Personnel Records section.</p> <p style="text-align: right;">OAR 166-400-0045(3)</p>	<p>(a) Retain PERS enrollment forms, official copy: 75 years after date of hire</p> <p>(b) Retain all other records: 3 years after employee separation.</p>



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4. Employee Time and Attendance Records

Description	Minimum retention:
<p>Records document school, district, or ESD employee attendance and time worked. Records may include but are not limited to time cards or sheets; monthly summary reports of employee attendance; forms used to record attendance, sick, vacation, overtime, and compensatory time; leave requests and approval forms; leave records; absence, sick, and vacation leave summary reports; overtime authorization or certification; staff attendance logs; substitute teacher logs; and related documentation and correspondence.</p> <p style="text-align: right;">OAR 166-400-0045(4)</p>	<p>4 years</p>




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Wage Claims

It's almost always in the employer's interest to exceed the legally required retention period. Some statute of limitations considerations:

Type of legal action	Time limit to file
Overtime claims	2 years (Oregon) or 3 years for "willful violations" (FLSA)
General wage claims	6 years

Note:
Check with your school district's employment law attorney to see if the district needs to retain the "Employee Time and Attendance Records" longer than 4 years.



153

Requiring salaried exempt employees complete timesheets

Yes, it is lawful.




No prohibitions



154

5. Federal and State Tax Records


Description	Minimum retention:
<p>Records, in addition to those itemized in this section, used to report the collection, distribution, deposit, and transmittal of federal and state income taxes as well as social security tax. Examples include the federal miscellaneous income statement (1099), request for taxpayer identification number and certificate (W-9), employer's quarterly federal tax return (941, 941E), tax deposit coupon (8109), and similar federal and state completed forms.</p> <p style="text-align: right; font-size: small;">OAR 166-400-0045(5)</p>	<p>(a) Retain for the retention of records documenting expenditure of grant funds: see Grant Records in the Financial section</p> <p>(b) Retain all other records: 4 years.</p>



155

6. Garnishment Records

Description	Minimum retention:
<p>Records documenting requests and court orders to withhold wages from employee earnings for garnishments, tax levies, support payments, and other reasons. Usually includes original writs of garnishment, orders to withhold for the Oregon Department of Human Resources, federal or state tax levies, recapitulations of amounts withheld, and related records. Information usually includes employee name and number, name of agency ordering garnishment, amount, name of party to whom payment is submitted, dates, and related data.</p> <p style="text-align: right; font-size: small;">OAR 166-400-0045(6)</p>	<p>3 years after resolution</p>



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7. Leave Applications

Description	Minimum retention:
Applications or requests submitted by employees for sick, vacation, compensatory, personal business, family and medical leave, long term leave, and other leave time. Information usually includes employee name, department, date, leave dates requested, type of leave requested, and related data. SEE ALSO Employee Time Records in this section.	3 years

[OAR 166-400-0045\(7\)](#)

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8. Leave Balance Reports

Description	Minimum retention:
Reports documenting individual employee accrual and use of sick, vacation, compensatory, personal business, family and medical leave, and other leave time. Information usually includes employee name and number, social security number, leave beginning balance, leave time accrued, leave time used, ending balance, and related data. SEE ALSO Employee Benefits Records in the Personnel section	(a) Retain year-end leave balance reports: 75 years after date of hire, (b) Retain all other reports: 4 years.

[OAR 166-400-0045\(8\)](#)

158

9. Payroll Administrative Reports


Description	Minimum retention:
Records document school, district, or ESD payroll statistics, payroll budget preparation, projections, workload and personnel management, and payroll research. Records may include but are not limited to recapitulation reports organizing wages, deductions, and other data into categories such as quarter-to-date, year-to-date, fiscal year-to-date, department, division, section, employee/employer contributions, and others.	3 years

[OAR 166-400-0045\(9\)](#)

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10. Payroll Registers

Description	Minimum retention:
Records document the earnings, voluntary and required deductions, and withholdings of school, district, and ESD employees. Records include but are not limited to monthly listings of all paid employees with details of their earnings and deductions.	(a) Retain year-end payroll register: 75 years (b) Retain leave accrual and monthly payroll registers: 10 years (c) Retain all other registers: 3 years
OAR 166-400-0045(10)	



160

11. Unemployment Compensation Claim Records


Description	Minimum retention:
Records document claims submitted by former school, district, or ESD employees for unemployment compensation. Records include but are not limited to claims, notices, reports, claim determination appeal records, and related documentation and correspondence.	3 years
OAR 166-400-0045(11)	



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12. Unemployment Reports

Description	Minimum retention:
Records document school, district, or ESD employee earnings on a quarterly basis. Records are used to determine the costs and charges in the event of an unemployment compensation claim. Information in the records includes employee name, social security number, quarterly earnings, days worked, totals, and other data.	3 years
OAR 166-400-0045(12)	



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13. Wage and Tax Statements




W-2 Wage and Tax Statement
2023

Minimum retention:

5 years

OAR 166-400-0045(13)



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14. Withholding Allowance Certificates



W-4 Employer's Withholding Certificate

Minimum retention:

5 years after superseded or employee separates

OAR 166-400-0045(14)



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Employer Assistance
800 NE Oregon Street, Ste. 1045
Portland, OR 97232-2180
Phone: (971) 361-8400
Email: Employer.assistance@boli.Oregon.gov

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