

# **EMPLOYMENT RECORD-KEEPING & EMPLOYMENT POSTER REQUIREMENTS**

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## I. EMPLOYMENT RECORD-KEEPING REQUIREMENTS

### 1. Wage and Hour/Payroll Records

- Employers must generally maintain detailed payroll information with respect to each employee, including: name, identifying number/symbol (if used in place of name on any time, work or payroll record), home address, date of birth (if 18 or *under*), gender, occupation, time of day and day of week the workweek begins, regular rate of pay, hours worked each day and total weekly hours, additions to or deductions from earnings, total daily or weekly straight time earnings, total overtime pay (if applicable), total wages each pay period, date of payment and pay period covered by payment.
- Best practice is to maintain wage and hour records throughout the entire period of employment (and for the duration of any employment-related claim filed by an employee) and for four (4) years after termination of employment, since most employment-related claims that an employee could bring involving wage and hour issues must be filed within three (3) years or less following termination.
- Connecticut allows employers to store payroll records at a location other than where the employee works only after obtaining approval from the Connecticut Department of Labor's Wage and Workplace Division. So, if electronic storage of payroll records will be "off site," advance approval from the CT DOL must be obtained.
- The IRS permits electronic retention of payroll records, tax returns, W-2s, 1099s, and supporting materials. However, the U.S. Tax Court has ruled that "taxpayers are not relieved from the responsibility of retaining the hardcopy records from which the computer records were derived." Accordingly, relying exclusively on electronic copies of any of these types of records that may be needed in an audit directed at employment tax compliance may be problematic and it is safest to maintain hardcopies of these records.

## 2. Personnel Files

- An employee's personnel file generally must include any documents or reports pertaining to a particular employee which are used or have been used by an employer to determine such employee's eligibility for employment, promotion, additional compensation, transfer, termination, disciplinary or other adverse personnel action. This includes employee evaluations or reports relating to such employee's character, credit and work habits. The personnel file does not include any business-related documents used to plan for future operations or documents prepared for use in civil, criminal or grievance procedures.
- An employee's personnel file should be kept in a locked file cabinet or otherwise in a private location and access to the personnel files should only be given to those with a "need to know."
- Connecticut employers are only required to keep personnel files for one year following the termination of an employee's employment. It is recommended that personnel files should be maintained throughout the entire period of employment (and for the duration of any employment-related claim filed by an employee) and for seven (7) years after termination of employment, since most employment-related claims that an employee could bring must be filed within six (6) years or less following termination.
- Except for any specific rules noted for certain types of documents in the sections below, there are no rules for Connecticut employers as to whether personnel files can be maintained electronically. If an employer seeks to maintain personnel files only electronically, it is recommended that the employer follow the following guidelines:
  - a. Controls are implemented to ensure the integrity, accuracy, authenticity and reliability of the records kept electronically.
  - b. The electronic records are maintained in a secure location accessible only to those with a "need to know" and controls are implemented to prevent hacking.
  - c. The electronic records are maintained in an accessible location to enable quick inspection and retrieval.
  - d. The electronic records are readily convertible into legible and readable paper copy.
  - e. Appropriate back-ups are maintained to preservation of data.

- Employers must allow a current employee to inspect his/her personnel file within seven (7) days of a written request and also permit that employee to copy the file at the time of the inspection.
- Inspection of the personnel file by a former employee must take place at a mutually agreed upon location. If the employer and former employee cannot agree on a location, the employer has ten (10) days from the date of receiving the written request to mail a copy to the former employee.
- Employers must provide employees with a copy of “any documentation of any disciplinary action imposed on the employee” within one (1) business day after the discipline is imposed.
- Employers must “immediately provide” an employee with a copy of “any documented notice of that employee’s termination of employment.”
- Employers are required to include in every documented disciplinary action, notice of termination and performance evaluation, a “clear and conspicuous” statement that an employee may submit a written statement explaining his/her position if he/she disagrees with any information in the above-mentioned documents. The employee’s statement must be maintained as part of the employee’s personnel file and must be included in “any transmittal or disclosure from the personnel file to a third party.”
- The Connecticut Department of Labor has flexibility and discretion to decide a penalty for violation of the Act: up to \$500 for a first violation related to an individual employee or former employee and up to \$1000 for subsequent violations relating to that individual employee or former employee. In deciding upon a penalty, the Labor Commissioner is to consider all factors to “insure immediate and continued compliance,” including the character and degree of impact of the violation and any prior violations.
- Disclosure of personnel information of a present or former employee to other parties without a written authorization from the employee is generally forbidden.
  - a. Information that may be disclosed without a written authorization is verification of dates of employment and job title.
  - b. Written authorizations should contain a release of liability.

### 3. Medical Records

- Medical records are papers, documents and reports prepared by a physician, psychiatrist or psychologist that are in the possession of an employer and are work-related or upon which an employer relies to make employment-related decisions, including any and all records in the employer's possession pertaining to workers' compensation claims, reasonable accommodation issues under the Americans With Disabilities Act ("ADA") or family and medical leave act ("FMLA") requests. Medical information also includes any medical history or condition of the employee or applicant obtained through a medical examination.
- Medical records must be kept separately in a locked confidential file cabinet or otherwise in a private location and should not be maintained as part of the personnel file. This is to prevent inappropriate access to information by unauthorized individuals who may otherwise have authority to review personnel file information. Access to medical information, including accommodation requests and/or work restrictions, must be limited to only those individuals with a "need to know."
- It is recommended that medical files should be maintained throughout the entire period of employment (and for the duration of any employment-related claim filed by an employee) and for two (2) years after termination of employment, since most employment-related claims that an employee could bring involving medical issues (ADA claims; FMLA claims; workers' compensation claims) must be filed within one (1) year or less following termination.
- Except for any specific rules noted for certain types of documents in the sections below, there are no rules for Connecticut employers as to whether medical files can be maintained electronically. Given the highly sensitive nature of medical files, it is not recommended that an employer maintain these files electronically.

### 4. Immigration Records

- Employers must retain completed Forms I-9 for all employees.
- Employers may, but are not required to, retain copies of the documents presented by the employee to satisfy the requirements of the Forms I-9, together with the Forms I-9.
- Forms I-9 (and any related documents maintained) can be retained in paper, microfilm, microfiche or electronic form either at the specific worksite, corporate headquarters or at another off-site storage facility.

- The storage choice must make it possible for documents to be transmitted to the worksite within three days of an official request for their production for inspection.
- Employers must retain completed Forms I-9 (and any related documents maintained) for three (3) years after the date they hire an employee or one (1) year after the date employment is terminated, whichever is later.
- The rules for retaining I-9 forms electronically are extensive. Detailed information can be provided upon request.

#### 5. OSHA Records

- Under the federal Occupational Health and Safety Act (“OHSA), on the job injuries and illnesses must be recorded on Form OSHA No. 300 (or equivalent) within six (6) working days after the employer receives notice that such illness or injury has occurred. In addition, employers must complete and maintain a detailed supplementary record with respect to each occupational illness or injury, within the same six (6) day period. Form OSHA No. 301, or equivalent, must be used. An employer must also keep copies of any Material Safety Data Sheets and written hazard communication programs provided to employees as well as records of blood borne pathogen or toxin exposures.
- The employer must keep the OSHA 300 log, the OSHA 301 Incident Report forms and the annual OSHA summary prepared for five (5) years following the end of the calendar year that these records cover. Other OSHA related records should be maintained permanently.
- Records required by OSHA may be kept electronically provided the computer they are stored on can produce forms equivalent to OSHA’s forms when they are needed and the system meets specific regulatory requirements, which are detailed and can be provided upon request. Further, employees must have limited access to injury and illness records kept electronically and when an authorized government representative asks for OSHA records, copies must be able to be provided within four (4) business hours. Finally, any x-rays must be preserved in their original state.

## 6. Employment Policies/Handbooks

- Although an employer is not required to keep any copies of employment policies or handbooks, it is recommended that an employer preserve any policies pertaining to “at-will” employment, workplace harassment or discrimination, equal employment opportunity, progressive discipline, rules of conduct, employee complaint procedures, employee leave (FMLA, vacation leave, sick leave, etc.) and employee benefits (insurance, 401(k), etc.) in order to defend against subsequently filed employment-related claims.
- The employer should maintain a permanent repository of past employment policies and handbooks.
- There are no rules for Connecticut employers as to whether employment policies/handbooks can be maintained electronically. It is recommended that any electronic retention of employment policies be done in the same manner as personnel files, above.

## II. **EMPLOYMENT POSTER REQUIREMENTS**

The following provides the list of employment posters that typically need to be displayed in every work location of Connecticut employers (depending on the size of the employer’s workforce<sup>1</sup>) in at least one area where employees regularly congregate (such as a lunch room).

- Federal Fair Labor Standards Act;
- Federal Equal Employment Opportunity;
- Federal Occupational Safety and Health Act;
- Federal Family and Medical Leave Act;
- Federal Uniform Services Employment and Reemployment Rights Act; and
- Federal Polygraph Protection Act;
- CT Sexual Harassment;
- CT “Discrimination is Illegal”;
- CT Workers’ Compensation;
- CT Unemployment Compensation;
- CT “Notice of Electronic Monitoring”;
- CT “Notice of Privacy Protection”;
- CT “Pregnancy Discrimination and Accommodation in the Workplace”;
- CT Paid Sick Leave; and
- CT Wage and Workplace Standards.

Other posters may be necessary for employers in certain industries as well.

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<sup>1</sup> Some posters may not need to be displayed depending on the number of employees employed in Connecticut (example, the Federal FMLA and CT Paid Sick Leave posters do not need to be displayed by employers with less than 50 employees in CT because these laws would not apply).

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