



## Personnel

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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Reference Number: MTAS-691

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<b>K-1. Advertisements Regarding Job Openings, and records of Promotions, Training Programs, and Overtime Work.</b>	Retain 5 years.	28 U.S.C. § 1658; <i>Jones v. R.R. Donnelley &amp; Sons Co.</i> , 541 U.S. 369 (2004).
<b>K-2. Age Records.</b>	*Retain 3 years.	Fair Labor Standards Act (29 C.F.R. 516); Age Discrimination in Employment Act (29 C.F.R. 1627.3).
<b>K-3. Americans with Disabilities Act – Employer Records.</b> Request for reasonable accommodations.	*Retain 2 years.	Same employer record retention requirements as the Civil Rights Act of 1964 as Amended; Title VII of the Civil Rights Act (29 C.F.R. 1602.31).
<b>K-4. Applications, Resumes, or Other Replies to Job Advertisements, including Temporary Positions, etc.</b>	Retain 5 years from date record was made or human resources action was taken, whichever is later.  NOTE: If the city has adopted a policy of not accepting unsolicited resumes, they do not have to be retained. Otherwise, they should be kept 5 years.	28 U.S.C § 1658; <i>Jones v. R.R. Donnelley &amp; Sons Co.</i> , 541 U.S. 369 (2004).
<b>K-5. Bloodborne Pathogens/Infectious Material Standard.</b> Protect employees who may be occupationally exposed to blood or other infectious materials.  [1] Written exposure plan.  [2] Medical records.  [3] Training records.  [4] Employee exposure records.	[1] Retention period not specified. Must be available to workers and kept current.  [2] *Retain for duration of employment plus 30 years.  [3] *Retain 3 years.  [4] *Retain 30 years.	[1] Occupational Safety and Health Act (29 C.F.R. 1910.1030)  [2] Occupational Safety and Health Act (29 C.F.R. 1910.1020)  [3] Occupational Safety and Health Act (29 C.F.R. 1910.1030)  [4] Occupational Safety and Health Act (29 C.F.R. 1910.1020)
<b>K-6. Citizenship or Authorization to Work.</b> Immigration and Naturalization Services Form I-9 (employment eligibility verification form) for all employees hired after November 6, 1986.	Retain 3 years from date of hire or year after separation, whichever is later. (Minimum 3 years.)	Immigration Reform and Control Act (8 C.F.R. 274A.2).
<b>K-7. Contracts, Employee.</b> Contracts between city and employee.	Retain until 7 years after termination of employment.	Based on statute of limitations for breach of contract plus 1 year. T.C.A. § 28-3-109.
<b>K-8. Contracts, Personal Service of Independent Contractor.</b> Contracts between the city and independent contractors.	Retain 7 years after termination of contract.	Based on statute of limitations for breach of contract plus 1 year. T.C.A. § 28-3-109.

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<b>K-9. Demotion Records (See also transfer, layoff, termination).</b>	Retain 5 years.	28 U.S.C. § 1658; <i>Jones v. R.R. Donnelley &amp; Sons Co.</i> , 541 U.S.—(2004).
<b>K-10. Discrimination or Enforcement Changes.</b> Personnel records relevant to a charge of discrimination or enforcement against employer, including records relating to charging party and to all other employees holding positions similar or sought after, such as application forms or performance documentation.	*Retain until final disposition of charge of action.	Age Discrimination in Employment Act (29 C.F.R. 1627.3(b) (3)). Title VII of the Civil Rights Act (29 C.F.R. 1602.31). Executive Order 11246.
<b>K-11. Drug Testing Records (Required by Department of Transportation).</b> <ul style="list-style-type: none"> <li>• Breath alcohol test with results of .02 or higher.</li> <li>• Positive controlled substance test.</li> <li>• Documentation of refusal of test.</li> <li>• Calibration documentation.</li> <li>• Evaluation of referrals.</li> <li>• Copy of calendar year summary.</li> <li>• Substance abuse professional reports.</li> <li>• Records related to administration of drug and alcohol testing.</li> <li>• Follow-up tests and schedules for follow up.</li> <li>• Information on the alcohol and controlled substances testing process.</li> <li>• Records of inspection and maintenance.</li> <li>• Information on training.</li> <li>• Negative and canceled controlled test results.</li> <li>• Alcohol test results of less than .02 alcohol concentration.</li> </ul>	<ul style="list-style-type: none"> <li>*Retain 5 years.</li> <li>*Retain 2 years.</li> <li>*Retain as long as individual performs the function plus 2 years.</li> <li>*Retain 1 year.</li> </ul>	<p>Omnibus Transportation Employee testing Act of 1991 (49 C.F.R. 40.83, 49 C.F.R. 653.71(b)).</p> <p>49 C.F.R. 40.83</p> <p>.49 C.F.R. 40.83</p> <p>49 C.F.R. 653.71 (b).</p>
<b>K12. EEOC Information.</b> Records kept by local governments. Any political subdivision with 15 or more employees must keep records and information that are necessary for completion of Report EEO-4 (Local Government Information Reports) regardless of whether or not the political jurisdiction is required to file a report.	*Retain 2 years from the date making the record or personnel action whichever occurs later.	29 C.F.R. 1602.31
<b>K-13. Employee Earnings Records.</b>	*Retain office record for 3 years. After this time, microfilm or archive record and keep for 70 years.	Age Discrimination in Employment Act (29 C.F.R 1627.3); Fair Labor Standards Act (29 C.F.R. 516.5). Retention period of 70 years is due to retirement concerns and is based on approximate

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		lifespan of employee. May destroy earlier if employee and any potential claimants are deceased
<b>K-14. Employer Information Report.</b> For political jurisdictions with 100 or more employees and other political jurisdictions with 15 or more employees from whom the commission requests as EEO-4 report, a copy of EEO-4 form (Employer Information Report) must be kept.	*Retain a copy of the report as each central office for 3 years.	Title VII of the Civil Rights Act (29 C.F.R. 1602.32).
<b>K-15. Employer Records of leave Under FMLA – Non-Exempt Employees.</b> Employers shall keep records pertaining to their obligations under the act in accordance with the record keeping requirements of the Fair Labor Standards Act (FLSA). Records kept must disclose the following. <ul style="list-style-type: none"> <li>• Basic payroll identifying employee data (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, total compensation paid.</li> <li>• Dates FMLA leave is taken.</li> <li>• Hours of the leave if FMLA is taken in increments.</li> <li>• Copies of employee notices of leave furnished to the employer and copies of all general and specific notices given to employees.</li> <li>• Documents describing employee benefits or employer policies and practices regarding the taking of paid and unpaid leave.</li> <li>• Premium payments of employee benefits.</li> <li>• Records of any dispute between employer and an employee regarding the designation of leave as FMLA leave.</li> </ul>	*Retain 3 years. No particular order or form of records is required.	Family and Medical Leave Act (29 C.F.R. 825.500)
<b>K-16. Employment Contracts –FLSA.</b> Individual employment contracts (where contracts or agreements are not in writing, a written memorandum summarizing the terms), including collective bargaining agreements, plans and trusts.	Retain for 5 years.	Fair Labor Standards Act (29 C.F.R. 516.5) Equal Pay Act (29 C.F.R. 1620.32 (b)) 28 U.S.C. § 1658.
<b>K-17. Employment Tax Record.</b>	Retain 4 years.	Internal Revenue Code (29 C.F.R. 31.6001-1).
<b>K-18. Family and Medical Leave Act (FMLA) Employer Records of Leave Under FMLA – Exempt Employees.</b> If employees are not subject to FLSA's record-keeping regulations for	*Retain 3 years. No particular order or form of record is required.	Family and Medical Leave Act (29 C.F.R. 825.500)

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<p>purposes of minimum wage or overtime compliance, an employer need not keep a record of actual hours worked provided that:</p> <ul style="list-style-type: none"> <li>• Eligibility for F MLA leave is presumed for any employee who has been employed for 12 months; and</li> <li>• A written record is maintained as to the agreement between the employer and employee regarding reduced or intermittent leave and the employee's normal schedule or average hours.</li> </ul>		<p>Family and Medical Leave Act (29 C.F.R. 825.110)</p> <p>Family and Medical Leave Act (29 C.F.R. 825.206)</p>
<p><b>K-19. Garnishment Documents.</b> Federal garnishment laws are enforced under the Fair Labor Standards Act. (Refer to "Payroll Records – Additions or Deductions from Wages Paid.")</p>	*Retain 3 years.	<p>Fair Labor Standards Act (29 C.F.R. 516.5) requires 3-year retention. Equal Pay Act (29 C.F.R. 1620.32 (c) requires 2-year retention. Keep to comply with longer period.</p>
<p><b>K-20. Group Health Insurance Coverage After Certain Qualifying Events.</b> Employers need records showing covered employees and their spouses and dependents:</p> <ul style="list-style-type: none"> <li>• Have received written notice of continuing group health insurance and COBRA rights; and</li> <li>• Whether the employee and his or her spouse and dependents elected or rejected coverage.</li> </ul>	Retain 7 years.	Internal Revenue Code (26 C.F.R. 54.4980B).
<p><b>K-21. Hiring Records.</b></p>	Retain 5 years from date records are made or personnel action is taken, whichever is later.	28 U.S.C. § 1658; <i>Jones v. R.R. Donnelley &amp; Sons Co.</i> , 541 U.S. 369 (2004).
<p><b>K-22. Insurance/Retirement Plans.</b></p> <ul style="list-style-type: none"> <li>• Benefit plan descriptions.</li> <li>• Records providing the basis for all required plan descriptions and reports necessary to clarify the information, including vouchers, worksheets, receipts, and applicable resolutions.</li> </ul>	<p>*Retain during the period that the plan or system is in effect, plus one year after the termination of the plan.</p> <p>*Retain not fewer than 6 years after filing date of documents</p>	<p>Age Discrimination in Employment Act (29 C.F.R. 1627.3 (b) (2)).</p> <p>Employee Retirement Income Security Act (29 C.F.R. 2520.101-1 through 2520.104b-30).</p>
<p><b>K-23. Layoff Selection.</b></p>	Retain 5 years from date record made or professional action taken.	28 U.S.C. § 1658; <i>Jones v. R.R. Donnelley &amp; Sons Co.</i> , 541 U.S. 369 (2004).
<p><b>K-24. Material data Safety Sheets (MSDSs).</b></p> <ul style="list-style-type: none"> <li>• Employers must have MSDSs on file for each hazardous chemical they use and ensure that copies are readily accessible to employees in their work area.</li> <li>• Employer must keep records of chemicals used, where they were used, when they were used and for how long.</li> </ul>	<p>No specific retention time set by statute. Must be maintained in a current fashion.</p> <p>*Retain 30 years.</p>	<p>Occupational Safety and Health Act (29 C.F.R. 1910.1020 (d) (1) (ii) (B)).</p> <p>Occupational Safety and health Act (29 C.F.R. 1910.1020 (d) (1) (ii) (B)).</p>
<p><b>K-25. Minimum Wage and Overtime Charges.</b></p>	*Retain 3 years.	Fair Labor Standards Act (29

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<p>See also the following in this section:</p> <ul style="list-style-type: none"> <li>• Citizenship or authorization to work.</li> <li>• Americans with Disabilities Act – Employer Record</li> <li>• Insurance/Retirement Plans</li> <li>• Occupational Injuries and Illness.</li> <li>• Payroll – Basis on which wages are paid.</li> <li>• Physical/Medical Exams. Veterans – Military Leave.</li> </ul>		<p>C.F.R. 516.6) requires retention for 2 years, but Department of Labor can request documents going back 3 years.</p>
<p><b>K-26. Occupational Injuries and Illness Records.</b> OSHA Form 300 Log of Work Related Injuries and Illnesses.</p> <p>OSHA Form 300A Summary of Work Related Injuries and Illnesses.</p> <p>OSHA Form 301 Injury and Illness Incident Report (effective January 1, 2002).</p>	<p>*Retain 5 years following the end of the year to which records relate.</p> <p>*Retain 5 years following the end of the year to which records relate.</p> <p>*Retain 5 years.</p>	<p>Occupational Safety and Health Act (29 C.F.R. 1904.9)</p> <p>Occupational Safety and Health Act (29 C.F.R. 1904.9)</p> <p>Occupational Safety and Health Act (29 C.F.R. 1904.9)</p>
<p><b>K-27. Older Workers Benefit Protection Act – Employer Records.</b> Same employer records retention requirements as the Age Discrimination in Employment Act (ADEA).</p> <p>Waiver of Age Discrimination in Employment Acts rights.</p>	<p>*Retain 3 years to comply with statute.</p> <p>Retaining as a personal record is recommended.</p>	<p>Age Discrimination in Employment Act (29 C.F.R. 1627.3, 29 C.F.R. 1602.30)</p> <p>Keeping waiver forever will assure that record is available to use in defense of an Older Workers Benefit Protection Act waiver of rights discrimination charge.</p>
<p><b>K-28. Payroll Records – Additions or Deductions from Wages Paid.</b> All records used by the employer in determining additions to or deductions from wages paid.</p>	<p>Retain 5 years.</p>	<p>28 U.S.C. § 1658; <i>Jones v. R.R Donnelley &amp; Sons Co.</i>, 541 U.S. 369 (2004).</p>
<p><b>K-29. Payroll Records – Age Discrimination in Employment Act.</b> Payroll or other records containing each employee's name, address, date of birth, occupation, rate of pay, and compensation earned per week.</p>	<p>Retain 5 years.</p>	<p>28 U.S.C. § 1658; <i>Jones v. R.R Donnelley &amp; Sons Co.</i>, 541 U.S. 369 (2004).</p>
<p><b>K-30. Payroll Records – Basis on Which Wages are Paid.</b></p> <ul style="list-style-type: none"> <li>• The basis on which wages are paid must be documented in sufficient detail to permit calculation for each pay period. The records may include payments of wages, wage rates, job evaluation, merit and incentive programs, and seniority systems.</li> <li>• The basic reason for these records is to give the Wage and Hour Division an indication of whether or not sex discrimination exists.</li> </ul>	<p>Retain 5 years.</p>	<p>28 U.S.C. § 1658; <i>Jones v. R.R Donnelley &amp; Sons Co.</i>, 541 U.S. 369 (2004).</p>

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<ul style="list-style-type: none"> <li>• Although there is no specific form furnished by the Wage and Hour Division to calculate benefits costs, the data necessary to calculate these costs should be readily available to Wage and Hour audit personnel.</li> </ul>		
<p><b>K-31. Payroll Records for FLSA-Exempt Employees.</b> (Bona fide executive, administrative, and professional employees).</p> <ul style="list-style-type: none"> <li>• Name of employee (as used for Social Security purposes) and identifying number or symbol, if such is used on payroll records.</li> <li>• Home address, including ZIP code.</li> <li>• Date of birth if under 19 years of age.</li> <li>• Sex and occupation.</li> <li>• Time of day and day of week in which employee's workweek begins, if this varies between employees; otherwise, a single notation for the entire establishment will suffice.</li> <li>• Total wages paid each pay period.</li> <li>• Dates of payment and pay period covered.</li> </ul>	Retain 5 years.	<p>28 U.S.C. § 1658; <i>Jones v. R.R Donnelley &amp; Sons Co.</i>, 541 U.S. 369 (2004).</p> <p>Records of hours worked are recommended for Department of Labor Wage and Hour Audits.</p>
<p><b>K-32. Payroll Records – FLSA Non-Exempt Employees.</b> All required for exempt employees plus:</p> <ul style="list-style-type: none"> <li>• Regular hourly rate of pay for any week when overtime is worked and overtime compensation is due. (May be in the form of vouchers or other payment data.)</li> <li>• Daily hours worked and total hours worked each work week. (Workday may be any consecutive 24-hour period, and work week is any fixed and regularly recurring period of 7 consecutive days.)</li> <li>• Total daily or weekly straight-time earnings or wages due for hours worked during the workday or work week.</li> <li>• Total premium pay for overtime hours. This premium pay for overtime hours excludes the straight-time earnings for overtime hours recorded under the above item.</li> <li>• Total additions to or deductions from wages paid each pay period, including employee purchase orders or wage assignments. Also, in individual employee records, the dates, amount, and nature of the items that make up the total additions and deductions.</li> </ul>	Retain 5 years.	<p>28 U.S.C. § 1658; <i>Jones v. R.R Donnelley &amp; Sons Co.</i>, 541 U.S. 369 (2004).</p>

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<b>K-33. Payroll Records – Title VII Purposes.</b> Rates of pay or other terms of compensation.	Retain 5 years from date record is made or personnel action taken, whichever is later.	28 U.S.C. § 1658; <i>Jones v. R.R Donnelley &amp; Sons Co.</i> , 541 U.S. 369 (2004).
<b>K-34. Permit – Required Confined Space.</b> Canceled permit entry forms and training certification.	*Retain 1 year.	Occupational Health and Safety Act (29 C.F.R. 1910.146(e) (6)), (29 C.F.R. 1910.146 (g) (4)).
<b>K-35. Personnel Files.</b> File for each employee tracking pay, benefits, performance evaluations, personnel actions, and employee's hiring and termination.	Retain 7 years after termination. NOTE: *Retain medical records for 30 years after termination. *Retain exposure records for at least 30 years.	Based on 5-year statute of limitations for personnel actions plus 2 years. (29 C.F.R. 1910.1020 (d) (1)).
<b>K-36. Personnel Policies.</b> Policies of the office regarding hiring procedures, leave, benefits, personnel rules and regulations, fair and reasonable complaint conference and hearing procedures for employees dismissed, demoted, or suspended, etc. Certain policies are required under T.C.A. §§ 6-54-123, et seq. Additional policies would be optional. The policy may not grant a property right or contract rights to a job to any employee.	Retain 3 years after the policy is superseded. NOTE: A copy of the resolution or ordinance adopting the policy, or its caption, shall be published in a newspaper of general circulation in the municipality before final adoption. A copy of the personnel policy shall be kept in the office of the city recorder or clerk and made available to an employee upon request.	28 U.S.C. § 1658; <i>Jones v. R.R Donnelley &amp; Sons Co.</i> , 541 U.S. 369 (2004).
<b>K-37. Physical/Medical Records.</b> Results of physical examinations considered in connection with personnel action.	Retain 5 years.	28 U.S.C. § 1658; <i>Jones v. R.R Donnelley &amp; Sons Co.</i> , 541 U.S. 369 (2004).
<b>K-38. Physical/Medical Records Under FMLA.</b> Records and documentation, including an FMLA leave request relating to medical certifications, re-certifications, or medical histories of employees or employee's family members shall be maintained in separate files/records and be treated as confidential medical records, except that: <ul style="list-style-type: none"> <li>• Supervisors and managers may be informed regarding necessary restrictions and accommodations, not the true nature of the condition.</li> <li>• First aid and safety personnel may be informed (when appropriate) if the employee might require emergency treatment.</li> <li>• Government officials investigating compliance with FMLA shall be provided relevant information.</li> </ul>	*Retain 3 years. No particular order or form of records is required.	Family and Medical Leave Act (29 C.F.R. 825.500)
<b>K-39. Physical/Medical Records Under OSHA.</b> Complete and accurate records of all medical examinations required under OSHA law.	Retain for duration of employment plus 30 years unless specific OSHA standard provides a different time period.	Occupational Safety and Health Act (29 C.F.R. 1910.1020).
<b>K-40. Promotion records or Notices.</b>	Retain 5 years from date record is	28 U.S.C. § 1658; <i>Jones v. R.R</i>

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	made or personnel action is taken, whichever is later.	<i>Donnelley &amp; Sons Co.</i> , 541 U.S. 369 (2004).
<b>K-41. Seniority or Merit rating Systems.</b>	Retain for the period that the plan or system is in effect plus 5 years.	28 U.S.C. § 1658; <i>Jones v. R.R. Donnelley &amp; Sons Co.</i> , 541 U.S. 369 (2004).
<b>K-42. Termination Records.</b>	Retain 5 years from the date the record is made or personnel action taken, whichever is longer.	28 U.S.C. § 1658; <i>Jones v. R.R. Donnelley &amp; Sons Co.</i> , 541 U.S. 369 (2004).
<b>K-43. Time Worked Records.</b> All basic time and earnings cards or sheet and work production sheets of individuals where all or part of the employee's earnings are determined.	Retain 5 years.	28 U.S.C. § 1658; <i>Jones v. R.R. Donnelley &amp; Sons Co.</i> , 541 U.S. 369 (2004).
<b>K-44. Transfer Records.</b>	Retain 5 years from the date record is made or personnel action taken, whichever is later.	28 U.S.C. § 1658; <i>Jones v. R.R. Donnelley &amp; Sons Co.</i> , 541 U.S. 369 (2004).
<b>K-45. Travel Authorizations.</b>	Retain 5 years after creation of record.	Keep for audit purposes.
<b>K-46. Veterans, Military Leave.</b> Organizations must grant leaves of absence to perform military obligations. Service limits are set on the amount of time an employee may spend on active duty and still be eligible for reemployment. Employees are reemployed to their former positions or a position of like status and pay with seniority and vacation as if they had not taken military leave.	Retain 7 years.	Uniform Services Employment and reemployment Rights Act (5 C.F.R. 1208). NOTE: Retention period not specified by regulations. The service limit on the time an employee may spend in active duty and still be eligible for reemployment can be up to 5 years.
<b>K-47. W-2s. Annual wage and tax statements.</b>	Retain 7 years.	Keep for audit purposes.
<b>K-48. W-4s. Withholding allowance certificates.</b>	Retain 5 years after superseded or upon separation of employee.	Keep for audit purposes.
<b>K-49. Wage Rate Tables.</b> All tables or schedules (from their last effective date) of the employer that provide rates used to compute straight-time earnings, wages, or salary or overtime compensation.	*Retain 3 years.	Fair Labor Standards Act (29 C.F.R. 516.6) requires 2-year retention, but Department of Labor can request records going back 3 years.

\*Indicates a mandatory retention period based on state and federal law.

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