

Employee Records Retention



Presented by: Heffernan Consulting



Heffernan Consulting | 1350 Carlback Ave, Ste. 200 | Walnut Creek, CA 94596 | Ph: 800-234-6787 | www.heffins.com

Disclaimer

- The information presented is general in nature and is intended to present an overview of employment practices. The written and verbal contents of the presentation are not intended to constitute consulting and/or advice and no client relationship is established between the presenter and attendees.



Heffernan Consulting | 1350 Carlback Ave, Ste. 200 | Walnut Creek, CA 94596 | Ph: 800-234-6787 | www.heffins.com

Presenter: C.J. Westrick, SPHR

- National Certification through the Human Resources Certification Institute (HRCI) as a Senior Professional in Human Resources (SPHR) since 2002
- HR consultant since 2006
- 20+ years in HR management
- Former President of National Human Resources Association (NHRA) – San Diego Chapter



Heffernan Consulting | 1350 Carlback Ave, Ste. 200 | Walnut Creek, CA 94596 | Ph: 800-234-6787 | www.heffins.com

Today's Objectives

- Laws requiring retention
- Categories of records
- What is in each category
- Retention timelines



Heffernan Consulting | 1350 Carlback Ave, Ste. 200 | Walnut Creek, CA 94596 | Ph: 800-234-6787 | www.heffins.com

The News

- **Zales Delaware Inc.** agreed to pay \$1.8 million to settle allegations employees were shorted on wages by the company's time-rounding policy. The current class of about 2,500 Zales employees allege that Zales shaves minutes off timecards, denying employees pay and overtime compensation in violation of California labor laws. The class action also pursued claims that Zales instituted an unlawful meal and rest break policy. Tapia first filed suit in July 2013.
-CA



Heffernan Consulting | 1350 Carlback Ave, Ste. 200 | Walnut Creek, CA 94596 | Ph: 800-234-6787 | www.heffins.com

The News *cont.*

- **A Philadelphia commercial printer** has agreed to pay a \$31,350 civil penalty and \$273,892 in back wages and liquidated damages to a group of temporary workers to resolve a U.S. Department of Labor investigation that found it shorted workers wages in violation of the Fair Labor Standards Act. Some claims went back to at least November 2013. -PA
- **An environmental cleanup company** has agreed to pay nearly \$5.3 million to settle allegations it knowingly filed false payment claims with the U.S. Department of Energy and did not comply with the internal audit requirements in the company's federal nuclear remediation contract. -WA



Heffernan Consulting | 1350 Carlback Ave, Ste. 200 | Walnut Creek, CA 94596 | Ph: 800-234-6787 | www.heffins.com

The News *cont.*

- **Workers sued Consolidated Citrus and Ruiz Harvesting in September 2010**, alleging the companies violated federal and state labor laws by failing to pay the workers minimum wage and breached numerous provisions of their work contract, including failing to provide wage and transportation benefits and maintain payroll records, according to court documents. In February 2016, Consolidated Citrus told the court that it would appeal the \$195,156 in damages to the class and a previous ruling that it was jointly liable for the actions of subcontractor Ruiz. -NY

Remember: Employees keep records, too.



Heffernan Consulting | 1350 Carlback Ave, Ste. 200 | Walnut Creek, CA 94596 | Ph: 800-234-6787 | www.heffins.com



Heffernan Consulting | 1350 Carlback Ave, Ste. 200 | Walnut Creek, CA 94596 | Ph: 800-234-6787 | www.heffins.com

Reasons for Record Retention

EEOC

ERISA

OSHA

GINA

FEHA

FLSA

Unemployment Codes

Title VII

CA Fair Pay Act

ADA

ADEA

State Labor Codes

NLRA

Immigration Reform



Heffernan Consulting | 1350 Carlback Ave, Ste. 200 | Walnut Creek, CA 94596 | Ph: 800-234-6787 | www.heffins.com



Heffernan Consulting | 1350 Carlback Ave, Ste. 200 | Walnut Creek, CA 94596 | Ph: 800-234-6787 | www.heffins.com

What's in Your Files?

- You should have 4 places for various information on current employees
 - Employee general file
 - Employee medical file
 - Employee legal file
 - I-9 file



Heffernan Consulting | 1350 Carlback Ave, Ste. 200 | Walnut Creek, CA 94596 | Ph: 800-234-6787 | www.heffins.com



Heffernan Consulting | 1350 Carlback Ave, Ste. 200 | Walnut Creek, CA 94596 | Ph: 800-234-6787 | www.heffins.com

Recruitment & Hiring

- Job applications
- Resumes
- Job inquiries sent to you
- Recommendation letters
- Help wanted ads
- Testing results
- Opportunities for training, promotion, or OT
- Job openings sent to agencies or labor unions
- Salary info (pay rates, market factors, job classifications)
- Offer letters
- Terms and conditions of employment



Heffernan Consulting | 1350 Carlback Ave, Ste. 200 | Walnut Creek, CA 94596 | Ph: 800-234-6787 | www.heffins.com

Background Checks

- Credit reports, criminal background checks, or other investigations of employees or applicants
- State law may prohibit an employer from making job decisions based on an employee's credit or arrest record
- If managers have access to these materials and use them to take action against an employee, your company might face legal liability



Heffernan Consulting | 1350 Carlback Ave, Ste. 200 | Walnut Creek, CA 94596 | Ph: 800-234-6787 | www.heffins.com



Recruitment & Hiring Retention

- 3 Years if you didn't hire that person
- 3 Years after termination if hired
 - Or for the duration of any claim or litigation involving hiring practices
- You are not required to keep unsolicited resumes



Overlaps

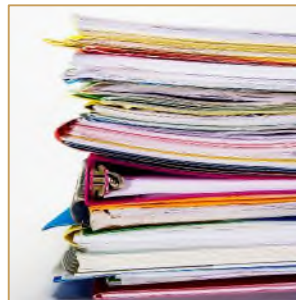
- If a record is listed in more than one category
 - Keep it for the longest period



Heffernan Consulting | 1350 Carlback Ave, Ste. 200 | Walnut Creek, CA 94596 | Ph: 800-234-6787 | www.heffins.com

Basic Personnel Files

- Disciplinary notices
- Promotions and demotions
- Performance evaluations
- Discharge, layoff, transfer and recall files
- Training records
- Testing files
- Job classifications
- Terms and conditions of employment



3 Years after termination



Heffernan Consulting | 1350 Carlback Ave, Ste. 200 | Walnut Creek, CA 94596 | Ph: 800-234-6787 | www.heffins.com



Heffernan Consulting | 1350 Carlback Ave, Ste. 200 | Walnut Creek, CA 94596 | Ph: 800-234-6787 | www.heffins.com

Payroll Records

- Name, employee number, address, age, sex, occupation
- Individual wage records
- Time and day work week begins
- Regularly hourly rate
- Hours worked (daily/weekly)
- Weekly OT earnings
- Daily/weekly straight time earnings
- Deductions
- Wages pay each pay period
- Payment dates and periods
- Piece rates
- Unemployment insurance records

Earnings Information	Current	YTD
Total Gross	4,389.30	
Deductions	0.00	
Net	0.00	
Time	4,389.30	5,277.30
EARNINGS TOTAL		
Regular Gross	351.14	438.18
Net Regular Gross	3,971.12	4,839.12

Statutory & Other Deductions	Current	Year to Date
Federal Withholding	311.17	311.17
State Withholding	0.00	0.00
Federal Unemployment	135.96	135.96
State Unemployment	0.00	0.00
State Disability Insurance	0.00	0.00
Medicare	62.67	62.67
Medicare Supplement	0.00	0.00
State Disability Insurance	351.14	351.14
State Unemployment	0.00	0.00
Medicare Retirement	67.04	67.04

4 Years



Heffernan Consulting | 1350 Carlback Ave, Ste. 200 | Walnut Creek, CA 94596 | Ph: 800-234-6787 | www.heffins.com

Employee Wage Records

- Wages
- Wage rates
- Time cards
- Individual employees' hours and days
- Employment agreements/contracts
- Piece rates
- Records explaining wage differentials between sexes and between departments for same level of job
- Wage rate calculation for straight time and OT
- Shift schedules
- Itemized wage statements (pay stubs)



3⁺ Years



Heffernan Consulting | 1350 Carlback Ave, Ste. 200 | Walnut Creek, CA 94596 | Ph: 800-234-6787 | www.heffins.com



Heffernan Consulting | 1350 Carlback Ave, Ste. 200 | Walnut Creek, CA 94596 | Ph: 800-234-6787 | www.heffins.com

Employee Benefits Data

- Benefit elections
- Beneficiary designations
- Eligibility determinations
- COBRA notices
- Summary plan descriptions



6+ Years

- Records required to determine retirement benefits (401K and similar plan)

Indefinitely



Heffernan Consulting | 1350 Carlback Ave, Ste. 200 | Walnut Creek, CA 94596 | Ph: 800-234-6787 | www.heffins.com

Insurance Applications

- ADA
 - Medical records and information must be kept in a file that's separate from the employee's regular personnel file
 - Kept confidential
- Consider the information on:
 - Health insurance applications
 - Workers compensation insurance claims/updates



Heffernan Consulting | 1350 Carlback Ave, Ste. 200 | Walnut Creek, CA 94596 | Ph: 800-234-6787 | www.heffins.com

FMLA

- Leave policies and benefits
- Dates and hours of leave used
- Records relating to any dispute regarding designation of leave
- Employee benefits relating to the leave



= 3 Years



Heffernan Consulting | 1350 Carlback Ave, Ste. 200 | Walnut Creek, CA 94596 | Ph: 800-234-6787 | www.heffins.com



Heffernan Consulting | 1350 Carlback Ave, Ste. 200 | Walnut Creek, CA 94596 | Ph: 800-234-6787 | www.heffins.com

Legal Claims/Investigations



- Workplace investigations (of a harassment complaint or theft incident, for example) kept in separate confidential files or sealed envelopes... not legally required, but strongly recommended
- Personnel and payroll records about complaining parties
- Personnel and payroll records about all other employees holding or applying for similar positions

Until disposition of case



Heffernan Consulting | 1350 Carlback Ave, Ste. 200 | Walnut Creek, CA 94596 | Ph: 800-234-6787 | www.heffins.com

Miscellaneous Records

- I-9 Forms
 - Check that you used the current version at the time of hire
 - Keep separate in case you're audited

Later of 3 years from hire or 1 year after term

- Child labor certificates/notices **3 Years**
- Union and employee contracts **3 Years**
- Affirmative Action programs/documents **5 Years**



Heffernan Consulting | 1350 Carlback Ave, Ste. 200 | Walnut Creek, CA 94596 | Ph: 800-234-6787 | www.heffins.com

Recommendations

- If a record is listed in more than one category
 - Keep it for the longest period
- Digitize most records for ease of storage
 - Keep hard copies of records where the employee's actual signature may be legally important (e.g., contracts)
- Create retention policies so employees know not to "clean house" with emails and files
- Attorneys recommend keeping the files for the life of the company!



Heffernan Consulting | 1350 Carlback Ave, Ste. 200 | Walnut Creek, CA 94596 | Ph: 800-234-6787 | www.heffins.com

Thank You *Mahalo*
Tack **Kiitos**
Grazie **Toda**
Obrigado **Thanks**
Takk **Merci**
Gracias



Heffernan Consulting | 1350 Carlback Ave, Ste. 200 | Walnut Creek, CA 94596 | Ph: 800-234-6787 | www.heffins.com