

# How Long Should You Keep Business Records?

by Quenda Behler Story

What should you do with all those old business records that you store in file cabinets, boxes, and stacks in the corner? Do you have to keep them forever?

Of course, the answer is no. Last winter my husband and I went through the papers from his contracting business and pitched the records that I had insisted he keep. He's been retired for about eight years, and he wanted to get rid of that stuff. Did I let him throw everything away? Well, despite the fact that I'm really paranoid about throwing business records away, we got rid of it all.

So why keep any of it, ever? Isn't it just providing ammunition for someone who wants to sue you? Well, in a way it is. Once a lawsuit gets going, the plaintiff can use the discovery process to root through your business and personal papers to look for evidence against you. People who have not been involved in civil litigation have no idea of the extent to which you can be forced to produce evidence against yourself. That's because people have heard about how they can't be required to incriminate themselves. But "incriminate" is the key word here. A civil lawsuit is not a criminal action, so those civil rights that protect you if you're arrested are no help to you at all if you're sued.

Am I suggesting that you put a dumpster outside your office door and get started? No, certainly not. There are two main reasons to retain records: some records the law requires you to keep, and some records you should keep in case you're sued. In a lawsuit, good records can prove your defense. If you don't have good records, the plaintiff can imply that you got rid of them because you had something to hide.

### Records You're Required To Keep

Immigration forms are a good example of what you must keep. The Immigration Act of 1986 requires employers to fill out and retain the Employment Eligibility Verification Form I-9. The form attests to the fact that the employee presented the employer with specified documents that proved he was eligible to work in this country.

As an employer, you are required to keep the I-9 for each employee for a minimum of three years and for at least one year after they stop working for you. This means if someone leaves after one year of employment, you have to keep his I-9 on file for the next two years. But if he leaves after five years, you only have to keep the I-9 on file for one more year.

**Accident reports are keepers too.** If there's a workers comp claim, you want to be able to see if your accident report matches the employee's current description of the accident. Reporting requirements for OSHA and state accident logs vary from state to state. Not everyone is subject to them, but as a rule of thumb the feds require you to keep accident logs for at least five years.

You also need to keep employee tax records. Hang on to their W-4s and copies of their W-2s for no less than four years — even if you go out of business during that time. As for your own tax records, the current rules require the IRS to complete an audit within four years of the filing, unless there is evidence of fraud or significant underreporting, in which case the IRS can essentially pursue you at its leisure.

### Records To Keep in Case of Lawsuit


If you are sued, you may need some records to prove your innocence. But

you don't need to keep them forever because the law places "limitations" on how many years people can wait before they sue you. Limitations vary depending on the state you are in and the kind of lawsuit it is. For example, warranty actions are typically limited to one year. However, I just read about a warranty-based lawsuit that took place on the West Coast in which the court said the one-year limitation was not applicable. The action reverted to what you might think of as the default law about limitations, which in most states is three to six years. But it may be longer. In California, there's liability for so-called latent defects for ten years.

If it's not a warranty, workers comp, or negligence claim, it's probably a lawsuit about a contract. Those kinds of actions have longer limitation periods — often up to six years.

When you're saving your business records, don't forget that those certificates of insurance you get from your subs are business records, too. So are your personnel records. You should preserve all of your personnel warnings, discipline records, and safety records, in case you're ever faced with a lawsuit from a current or former employee.

### Final Advice

So, is there an answer for how long to keep records that doesn't require you to sort out the different kinds of business records (with the inherent risk that you thought that the paper you pitched was one kind of document but it turned out to be something else)? Sure, just keep everything for six years. I used to tell people to save everything for eleven years, but as I've gotten older I'm less nervous. Now I'm comfortable with six years — unless, of course, you're in California. 

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