

Office of Federal Contract Compliance Programs

# Directive (DIR) 2008-01

Renumbered on 9/16/2013 as DIR 2008-01



## U.S. DEPARTMENT OF LABOR Employment Standards Administration Office of Federal Contract Compliance Programs Washington, D.C. 20210

Transmittal Number: 279

DATE: May 14, 2008

OFCCP ORDER NO.: ADM Notice/Other

1. **SUBJECT:** Preserving Employment and Personnel Records in Electronic Format.
2. **PURPOSE:** To set forth OFCCP's policy regarding: (1) the use of electronic recordkeeping systems to comply with the record retention regulations; and (2) the destruction of paper originals of personnel and employment records that are otherwise preserved in electronic format.
3. **FILING INSTRUCTIONS:**  
  
Holders of ADM and LEG Binders only: File this Notice with the attachment behind the "Other" tab in your Administrative Practices Binder.  
  
District and Area Office EOSs and EOAs only: File this Notice with the attachment behind the tab for ADM Directives in your FCCM Binder.
4. **OBSOLETE DATA:** None.
5. **DISTRIBUTION:** A, B (both hard copy and electronically), and C (hard copy only).
6. **EXPIRATION DATE:** This directive remains in effect until superseded.

(Signed) Charles James

Charles E. James, Sr.  
Deputy Assistant Secretary for  
Federal Contract Compliance

May 14, 2008  
Date

1. **SUBJECT:** Preserving Employment and Personnel Records in Electronic Format.

2. **PURPOSE:** To set forth OFCCP's policy regarding: (1) the use of electronic recordkeeping systems to comply with the record retention regulations; and (2) the destruction of paper originals of personnel and employment records that are otherwise preserved in electronic format.

3. **BACKGROUND:** Section 60-1.12 (a) of the regulations implementing Executive Order 11246 currently requires any personnel or employment record that is made or kept by the contractor to be "preserved" by the contractor for a minimum of two years. However, if the contractor has fewer than 150 employees or does not have a contract of at least \$150,000, § 60-1.12 (a) provides that the record retention period is a minimum of one year. The regulations implementing the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212, and Section 503 of the Rehabilitation Act of 1973, as amended, contain record retention provisions that are similar to § 60-1.12. See 41 CFR 60 250.80, 41 CFR 60 300.80, and 41 CFR 60 741.80. The current regulations also require that contractors permit access to their premises so that the OFCCP may inspect and copy their books and records, including computerized records. See 41 CFR 60-1.43, 60-250.81, 60-300.81, and 60-741.81.

Contractors and consultants have asked whether the OFCCP record retention regulations permit the destruction of the paper originals of employment and personnel records when such records are otherwise retained electronically.

The OFCCP has interpreted the term "preserve" as having its ordinary dictionary meaning, "to keep safe from harm, injury, or destruction." Webster's Ninth New Collegiate Dictionary, p. 931 (1984). Historically, the OFCCP has required that records be retained in their original form, and precluded a contractor from destroying the original paper records before the retention period has expired. However, the regulations do not prescribe a particular format in which the records must be preserved.

The OFCCP record retention provisions contain language similar to that found in the Equal Employment Opportunity Commission's (EEOC) regulations. Significantly, the EEOC addressed whether electronic recordkeeping would satisfy the recordkeeping requirements under Title VII, the ADA, and the ADEA in an Informal Discussion Letter. See <https://www.eeoc.gov/foia/eeoc-informal-discussion-letter-157>. The Informal Discussion letter states in part "nothing in 29 CFR § 1602.14 (Title VII and ADA record keeping) requires preservation of records in paper, rather than electronic, form. However, please make sure that any system adopted by your clients captures and retains all information contained in documents. This would ensure that documents are properly 'preserved' as required by 29 CFR § 1602.14."

In addition, several Government agencies have issued regulations on the use of electronic recordkeeping systems. See e.g., DOL's Employee Benefits Security Administration's (EBSA) regulation at 29 CFR 2520.107-1; the Pension Benefit Guaranty Corporation's (PBGC) regulations at 29 CFR 4000.53 and 4000.54; the Securities and Exchange Commission's regulations at 17 CFR 31.a-2 and 17 CFR 275.204-2; and the Commodities Futures Trading Commission's regulation at 17 CFR 1.31. Generally, these regulations allow paper or non-electronic records to be stored in electronic formats provided certain safeguards are in place to ensure that the electronic storage system is reliable and records stored electronically are complete, accurate, and accessible.

In light of the increasing use of electronic media in all aspects of business administration, and the advances made in the technology used for converting paper documents into electronic formats, the OFCCP believes that it is appropriate to reexamine whether it is permissible for contractors to preserve in an electronic format those personnel and employment records originally created in paper form, and dispose of the paper originals.

4. **POLICY:** The OFCCP regulations at 41 CFR 60-1.12, 60-250.80, 60 300.80 and 60-741.80 require that contractors preserve complete and accurate personnel records. The regulations at 41 CFR 60-1.43, 60-250.81, 60-300.81 and 60-741.81 also require contractors to permit the OFCCP access to their records, including computerized records, for inspection and copying. See also 41 CFR 60-1.4(a)(5) and 60-1.20(f). These obligations continue. Contractors may use an electronic recordkeeping system to comply with the record retention requirements. However, if records are maintained electronically, contractors must take care to ensure that the electronic records comply with the record retention and access regulations, i.e., the electronic records are accurate, complete, and accessible to the OFCCP.

A contractor may transfer original paper records to its electronic recordkeeping system, if the medium used accurately reproduces the paper original and would constitute a duplicate or substitute copy of the original paper record under Federal

law. In addition, a contractor may dispose of the original paper records any time after they are transferred to its electronic recordkeeping system, except that the original paper record may not be disposed of if the electronic copy would not accurately reproduce the original record. During a compliance evaluation, compliance officers may ask that paper originals stored in electronic format be converted into legible and readable paper copies and provided to OFCCP.

The use of an electronic recordkeeping system does not in any way alter the longstanding requirement that the contractor allow OFCCP to inspect and copy records at the contractor’s premises during a compliance evaluation or complaint investigation. Thus, all of the contractor’s electronic records must be made readily available for review, and must be readable and capable of being copied by OFCCP.

Compliance officers should consider electronic recordkeeping systems with the following characteristics as complying with record retention regulations:

- the system has reasonable controls to ensure the integrity, accuracy, authenticity, and reliability of the records kept in electronic form;
- the electronic records are maintained in such a manner that they may be readily inspected and/or copied by the OFCCP, as required under the regulations at 41 CFR 60–1.43, 60–250.81, 60–300.81 and 60–741.81 (for example, the recordkeeping system should be capable of retaining, preserving, retrieving and reproducing the electronic records);
- paper originals stored in electronic format are readily convertible into legible and readable paper copy; and
- adequate records management practices are established and implemented (for example, such practices might include labeling electronically maintained or retained records, providing a secure storage environment, creating back-up electronic copies, observing a quality assurance program evidenced by regular evaluations of the electronic recordkeeping system, and retaining paper copies of records that cannot be clearly, accurately or completely transferred to an electronic recordkeeping system).

5. **OBSELETE DATA:** None.

6. **DISTRIBUTION:** A, B (both hard copy and electronically), and C (hard copy only).

7. **EXPIRATION DATE:** This directive remains in effect until superseded.

**(Signed) Charles James**

Charles E. James, Sr.  
Deputy Assistant Secretary for  
Federal Contract Compliance

**May 14, 2008**

Date

*The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.*

*Last updated on September 16,2013*

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