

HCM DATA ARCHIVING

The Hiring Records Compliance Guide

The information provided here is for general informational purposes only and does not constitute legal advice. No reader should act or refrain from acting on the basis of information here without seeking legal advice from counsel in the relevant jurisdiction.

Why hiring records are different

Most HR retention thinking centers on employees. Hiring records are governed by a separate, and in some ways stricter, web of rules because they cover applicants — people with no other footprint in your systems. When you decommission an ATS or HCM recruiting module, you may be deleting the only record that a person ever applied, what they were asked, how they scored, and why they were dispositioned out.

The retention rules at a glance (U.S. federal)

Requirement	Who it covers	What to keep	How long
Title VII / ADA / GINA / PWFA 29 CFR 1602.14	Employers with 15+ employees	Applications, resumes, tests, records of hiring, promotion, referral, selection	1 year from the record (whichever is later); until final disposition once a charge is filed
ADEA 29 CFR 1627	Employers with 20+ employees	Applications, job ads, test results, records related to hiring decisions	1 year
Section 503 & VEVRAA + Internet Applicant Rule 41 CFR 60-1.12, 60-300, 60-741	Federal contractors	All expressions of interest, resumes, search criteria, database search records, disposition reasons, self-ID data	2 years (1 year if under 150 employees or \$150K contract); duration of any audit/litigation. EO 11246 was rescinded in 2025, but Section 503 and VEVRAA are statutes — these duties survive and OFCCP still enforces them.
FCRA background checks	Any employer using consumer reports	Reports, authorizations, pre-adverse and adverse action notices	Claims up to 5 years after a violation; practitioners commonly advise retaining 5–6 years
Form I-9	All employers	I-9 and supporting documents	3 years after hire or 1 year after termination, whichever is later

The state layer raises the floor

California (SB 807 + FEHA) — applicant and personnel records must be kept 4 years, quadruple the federal minimum. The Civil Rights Council's automated-decision-system regulations (effective Oct 1, 2025) extend that 4-year duty to ADS data itself: selection criteria, screening inputs and outputs, and machine-learning data.

New York City (Local Law 144) — automated employment decision tools require an annual independent bias audit, a public results summary, and advance notice to candidates. Penalties are \$500–\$1,500 per violation, per day. A December 2025 State Comptroller audit criticized weak enforcement — expect it to tighten.

Illinois (HB 3773, effective Jan 1, 2026) — using AI with a discriminatory effect is now a civil-rights violation with a private right of action; employers must notify applicants when AI is used.

Colorado — the original AI Act was repealed and replaced (SB 26-189, May 2026) with a lighter-touch law taking effect January 2027, a moving target worth monitoring.

Why the real horizon is 3–7 years

The regulatory minimums are the floor, not the exposure window. An EEOC charge can be filed up to 300 days after the event — and once filed, it freezes all destruction of relevant records, including records of other candidates for the same role. State-law claims often reach back 3+ years. In litigation, plaintiffs routinely request applicant-flow data going back 3–7 years, and a company that can't produce records it was obligated to keep faces adverse inference — the court may instruct the jury to assume the missing records were unfavorable. The employer's lack of compliance shifts the burden of proof to the employer to deny the claim.

The migration trap

When you switch ATS or HCM platforms, vendors migrate active requisitions and recent candidates. Historical applicant data — rejected candidates, disposition codes, screening scores, applicant-flow demographics — typically stays behind in a system whose contract is about to end. Most legacy vendors purge data 12–18 months after contract termination. The company remains legally responsible for records it can no longer access.

FIVE QUESTIONS TO ANSWER BEFORE YOU DECOMMISSION YOUR OLD ATS

1. Can you produce every application, disposition code, and screening result for a requisition closed two years ago?
2. If a failure-to-hire charge names one candidate, can you pull all candidates for that same role, with outcomes?
3. Did any AI or automated tool score, rank, or knock out candidates in the old system — and did you keep its inputs and outputs?
4. What does your legacy vendor's contract say happens to your data 90 days after termination?
5. Who signs off that recruiting data is retained per policy before the old system goes dark?

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