

## A-Z Guide

# Records



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## Overview

1. You are required by law to keep wage and time records, holiday records, accident and notifiable event records, records of strikes and lockouts, and company records.
2. Keeping records of training and supervision, performance, discipline, and applications for leave and holidays can greatly enhance your ability to protect your organisation against legal proceedings.

## Introduction

This **A-Z Guide** discusses a variety of records that employers should retain, either by law or because they assist in the managing of employees and the workplace. It is relevant to note that “records” are more often than not informal notes taken by the employer. They are not proof that what they record is the truth, they are merely a record of what, when, whom and how much, such as time sheets and leave request forms. The information provided below under each heading reflects what the legislation requires of employers, and what best practice principles we recommend.

## Wage and time records

### Employment Relations Act 2000

The Employment Relations Act 2000 requires that employers keep a wage and time record for every employee;

- Under the Employment Relations Act 2000 s130 every employer must keep a record showing in the case of each employee:
  - The name of the employee; and
  - The employee’s age if under 20 years of age; and
  - The employee’s postal address; and
  - The kind of work in which the employee is usually employed; and
  - Whether the employee is employed under an individual employment agreement or a collective agreement; and
  - In the case of an employee employed under a collective agreement, the title and the expiry date of the agreement, and the employee’s classification under it; and
  - Where necessary for the purpose of calculating the employee’s pay, the hours between which the employee is employed on each day, and the days of the employee’s employment during each pay period; and
  - The wages paid to the employee each pay period and the method of calculation; and
  - Details of any employment relations education leave taken; and
  - Such other particulars as may be prescribed.

All or part of the record may be kept electronically and must be kept for 6 years. An employee or their authorised representative has right of access to the record in respect of that employee. Failure to keep or produce such records can result in a penalty of up to \$20,000 being imposed by the Employment Relations Authority.

### Record keeping relating to minimum entitlement provisions

There is now a requirement to keep records in sufficient detail to demonstrate that the employer has complied with minimum entitlement provisions.

This obligation is in addition to other legislative record keeping requirements.



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## Wages and time record

The law now states that the wages and time record under section 130 of the Employment Relations Act 2000 must be kept in a written form, or in a form or in a manner that allows the information in the record to be easily accessed and converted into a written form.

It is sufficient compliance to state an employee's usual hours in an employment agreement, or a roster or any other document or record used in the normal course of the employee's employment.

An employer *must record any additional hours worked even for salaried employees* in order to comply with the general requirement to keep records relating to minimum entitlements.

It is no longer possible to comply with section 130 by only keeping a wages and time record in accordance with any other Act.

### Best practice

If wage and time source documents such as time-sheets and job-sheets have been signed by an employee on completion they should be kept for 6 years as these can be used as proof of the claims made on them.

## Holiday records

### Holidays Act 2003

In addition to the requirement to maintain wage and time records, the Holidays Act 2003 s81 requires employers to keep holiday and leave records. Holiday records may be incorporated with any other wage or time record that the employer is required to keep and must contain the following information for each employee:

- The name of the employee; and
- The date employment commenced; and
- The number of hours worked each day in a pay period and the pay for those hours; and
- The employee's current entitlement to annual holidays; and
- The date on which the employee last became entitled to annual holidays; and
- The employee's current entitlement to sick leave; and
- The dates on which any annual holiday, sick leave, or bereavement leave has been taken; and
- The amount of payment for any annual holiday, sick leave, or bereavement leave that has been taken; and
- The portion of any annual holidays that have been paid out in each entitlement year (if applicable); and
- The dates and amount of payment, in each entitlement year, for any annual holidays paid out (if applicable); and
- The dates of, and payments for, any public holiday worked; and
- The number of hours that the employee worked on any public holiday; and
- The day or part of any public holiday agreed to be transferred and the calendar day or period of 24 hours to which it has been transferred (if applicable); and
- The date on which the employee became entitled to any alternative holiday; and
- The dates of, and payments for, any public holiday or alternative holiday on which the employee did not work, but for which the employee had an entitlement to payment; and
- The cash value of any board or lodgings provided; and
- The cash value of any alternative holidays that the employee has surrendered for payment; and
- The date of termination; and
- The amount of paid for holidays on termination; and
- Any other particulars that may be prescribed.



The information must be kept for not less than 6 years after the date on which the information was entered. However, our team recommends that you keep the information for the duration of the employee's employment, and for not less than 6 years after the employee's employment ends. An employee (or their representative or a Labour Inspector) may request access to, or a copy of, their holiday record.

Penalties of up to \$10,000 if the employer is an individual or \$20,000 if the employer is a company may be imposed by the Employment Relations Authority for failing to keep or provide access to holiday records where there is an action by an employee to recover holiday pay or to enforce entitlements to leave.

#### Best practice

Source documents that relate to the taking of holidays that show that an employee was exercising an entitlement, or requesting leave and payment in advance of entitlement on conditions, should also be kept for 6 years. If these documents are signed by the employee they can be used to prove that your records are correct.

## Personal or personnel files

### Privacy Act 2020

The Privacy Act 2020 does not stipulate that employers must retain their employees' personal information on file; but invariably the reality of employing is that employers do, for a variety of reasons associated with employment, collect personal information about their employees. Employers are bound to follow the Information Privacy Principles as set out in the Act. These principles stipulate that personal information must be stored securely to protect it from loss, modification, disclosure and misuse.

The Act provides that personal information should not be kept for longer than is required for the purposes for which the information may be lawfully used. You should keep this in mind if referring to your policies and procedures manuals for guidance. The Privacy Commissioner has found that an employer's policy to keep records for up to 5 years was not a breach of the information privacy principles in a case involving an employee who had taken a personal grievance over his dismissal.

#### Best practice

Your organisation is obliged to have a privacy officer who is responsible for managing requests for access to personal information.

This person may be best qualified to advise your organisation from time to time on any matters the Privacy Commissioner has issued an opinion on, and the effects of any of his or her opinions on your organisation's policy and procedures in respect of personal or personnel files. Having a policy covering privacy issues is a good way of ensuring that all of your employees (and their supervisors) understand what personal information is collected and why, how long it is kept, how it may be accessed, and any other matters you consider appropriate in your circumstances.

Refer to the **A-Z Guide on Privacy 2020** for a more full discussion of the Information Privacy Principles.

### Employment Relations Act 2000

The Employment Relations Act 2000 does not require employers to keep personnel files; however the Act has two timeframes that are relevant to this discussion. An employee may raise a personal grievance up to 90 days after an employment relationship has ended and once raised it can remain alive for a further 3 years.

#### Best practice

Personnel files should be kept at least 90 days after an employment relationship ends and then disposed of appropriately. If a personal grievance is raised, but not settled, the files should be kept until the 3-year limitation has passed. Any records you make in respect of a disciplinary matter should be retained for the duration of the employee's employment.



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## Human Rights Act 1993

Documentation can be important evidence in defending a complaint of discrimination. The Human Rights Commissioner can decide not to act on a complaint if it relates to a matter about which the complainant has had knowledge for longer than 12 months.

### Best practice

If your organisation has reason to believe that a job applicant or an employee's employment may result in a complaint under this Act then you should retain the employee's personal or personnel file for at least 12 months.

## Notifiable event records (death/injury/illness/incident)

## Health and Safety at Work Act 2015

This Act requires employers, self-employed people, and principals to maintain a record of notifiable events. A record of each notifiable event must be kept for at least 5 years from the date on which notice of the event was given to Worksafe NZ.

### Best practice

These records can provide you with a valuable insight into your employee's performance, health and well-being, so they should not be discarded quickly. For this reason you should consider keeping a copy of these records on your employees' files for the duration of the employment.

As a source of information about your organisation's health and safety record, including the rates of death/injury/illness/incident, these records can provide you with information that tracks your organisation's progress in health and safety management. This information may be invaluable for insurances, investment, valuations and, employer-employee relations.

## Health monitoring records

## Health and Safety at Work (General Risk and Workplace Management) Regulations 2016

Health monitoring reports in relation to workers must be kept as confidential record and kept for 40 years after the date on which the record is made, if the monitoring is undertaken to detect asbestos related disease and for any other case, 30 years after the date on which the record is made.

These records can only be disclosed with the workers consent. However, worker consent will not apply under regulations 40 or 41.

Any PBCU who contravenes of these regulations commits an offence and will be liable for conviction, for an individual, to a fine not exceeding \$2,000; and for any other person, to a fine not exceeding \$10,000.



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## Training records

### Health and Safety at Work Act 2015

This Act places obligations on employers in respect of the training and supervision of employees around the plant, substances and work. It requires employers to keep records in respect of their health and safety representatives.

#### Best practice

You will not be able to establish, if required, that your employees have received training and/or supervision in respect of any work, the plant or substances if you have not kept a record of such. You should develop a method of recording all training your employees receive, including at their induction, so that you and the employee can reflect on training received as the circumstances require.

### Employment Relations Act 2000

The Employment Relations Act 2000 does not require you to keep training records. However, if you terminate the employment of an employee for misconduct or serious misconduct relating to substandard performance or the use or misuse of something and your decision to terminate is challenged then the employee's training record may provide important information that may help justify your decision.

#### Best practice

A record should be kept of all induction procedures, training and coaching that an employee receives. When you come to review an employee's progress or consider their ongoing employment, a training record that sets out what training and supervision the employee has had will assist you in this process. You should even keep a record of the fact that your employees have been advised of your organisation's policies and procedures and/or that they have received a copy of those.

## Records of strikes and lockouts

### Employment Relations Act 2000

Section 98 of the Employment Relations Act 2000 stipulates that the employer of the employees participating in a strike or affected by a lockout must keep a record (in the prescribed form) of the strike or lockout, and, within one month after the end of the strike or lockout give a copy of the record to the chief executive of the Department of Labour.

#### Best practice

Employers have the right to suspend employees during strikes and lockouts. The effect of suspension under the Act is to remove the right of employees to be paid for the time during which they are striking or locked out. Because this has a direct bearing on employees' wages and time records a copy of a record of strike or lockout should be retained with any source documents kept in respect of employees' wages for 6 years.



## Company records

A number of statutes prescribe how long particular records relating to organisations should be kept. Companies are required to keep their records for 7 years which is the minimum length of time records should be retained under:

The Tax Administration Act 1994;

The Child Support Act 1991;

The Companies Act 1993.

### Conclusion

Compliance with your record keeping obligations is relatively minimal. This guide shows, however, that there are good reasons for keeping more extensive records relating to, and arising out of, your employment relationship. Compliance rules change all the time, and principles of best practice change to keep abreast. The best way of keeping on top of any changes in respect of record keeping is to attend the Member Briefings and visit the website regularly.

### Remember

- **Always call AdviceLine to check you have the latest guide**
- **Never hesitate to ask AdviceLine for help in interpreting and applying this guide to your fact situation.**
- **Use our AdviceLine employment advisors as a sounding board to test your views.**
- **Get one of our consultants to draft an agreement template that's tailor-made for your business.**

This guide is not comprehensive and should not be used as a substitute for professional advice.

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