

11 Employer FAQs (No. 3): When do I have to start saving electronic evidence?

By Robin E. Shea on August 29, 2011

Over the next 9 business days, I'll have a series of short posts addressing common questions that employers have about the law. If there is an "FAQ" that you would like for me to address, please let me know in the comments box.



*I may also have more in-depth postings as circumstances warrant. **Employer FAQ No. 3: When do I have to start saving electronic evidence?***

You should start preserving electronic documents (emails, Word and Excel files, Power Point shows, etc.), as well as text messages, voice mail, and any other relevant evidence, as soon as the first of the following occurs:

***You have a credible threat of legal action** (for example, a letter from an attorney with a draft complaint attached).

***An administrative complaint or charge, such as a discrimination charge with the Equal Employment Opportunity Commission, is filed against you.**

***You are sued.**

Of course, your normal document retention policy should require preservation of electronic and paper material, as well as photographs, drawings, recordings and videos, and anything else I've forgotten to mention specifically, for at least the longest applicable statute of limitations. The length of time will vary from state to state, but it is normally four years after termination of employment *at a minimum*. A "litigation hold," in which you preserve evidence because of actual or threatened litigation, *extends* this "default" retention period.

OK, so say I'm in a lawsuit. How long does the litigation hold have to stay in place? The hold should stay in place until the matter is absolutely, finally concluded with no further recourse by the parties. Normally, the litigation hold can be lifted when any one of the following occurs:

***The case is settled.**

***The losing party has exhausted all of his appeal rights.**

***The losing party has let the deadline for an appeal expire.**

[FAQ No. 1: What exactly is this "interactive process" we hear so much about?](#)

[FAQ No. 2: "What does 'right to work' mean?"](#)

Don't forget to send me your own employer FAQs! And, don't forget, [if you vote for Pedro Employment & Labor Insights, all of your wildest dreams will come true.](#)

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