

What Payroll Records Does the Law Require?



Although it's not exactly a glamorous task, the obligation to maintain complete and accurate payroll records is in some ways the most important part of a payroll manager's job. It also happens to be a legal obligation. There's plenty of literature about the technological and administrative aspects of payroll recordkeeping. But the legal dimension is typically overlooked. That's a real shame because complying with payroll recordkeeping obligations is a huge challenge. This story will show you how.

Defining Our Terms

Payroll recordkeeping obligations are spread out over almost a dozen different federal and provincial laws, including not just employment standards and other provincial laws such as the *Employer Health Tax Act* in Ontario but federal laws like the *Income Tax Act*, *Employment Insurance Act* and the *Canada Pension Plan*.

While employment standards laws require you to maintain specific identifying and demographic data about individual employees, the tax and payroll laws require you to keep records that support your payroll process. More precisely, under the latter laws, you must keep "records and books of account" that verify the amounts you need to withhold and taxes you need to pay with regard to employees' earnings. (QPP requires records that can be used to verify benefits payable.)

Although we'll discuss the tax and payroll laws where they're relevant, the principle focus of this article is the employee-specific recordkeeping requirements under provincial employment standards law.

What's At Stake

Recordkeeping is the foundation on which most payroll functions are based. Without the right records, you can't make proper withholdings and remittances. In addition to payment errors, failure to maintain records exposes your organization to a host of liability risks under employment standards laws.

Government Access: For example, the laws require employers to furnish labour boards and government inspectors access to their payroll records or face potential fines and other penalties, which, in some provinces such as NL can include jail.

Employee Wage Claims: You also need complete and accurate payroll records documenting hours worked and compensation paid to fend off claims by employees and former

employees over wages, overtime, vacation pay and other issues. In some provinces, like NB and NL, the employment standards laws say that an employee's wage claim is presumed to be valid if the employer doesn't have accurate records to refute the claim.

WHAT THE LAW REQUIRES

Although the details vary, the payroll recordkeeping contained in employment standards laws impose the same 3 basic obligations on employers:

- Keep the appropriate information;
- Maintain the records so that they're accessible to government officials; and
- Retain the records for an appropriate period before getting rid of them.

OBLIGATION 1: KEEPING THE RIGHT INFORMATION

The employment standards laws of each province and territory contain detailed recordkeeping requirements specifying the kinds of information that employers must maintain for each employee on the payroll. The catalog of required information is similar but not identical from province to province. One of the main differences is in how much information you must keep. On the high end are provinces such as BC, MB, NB, QC and SK that require employers to keep more than 15 specific pieces of information about employees and their payroll history. On the low end are jurisdictions like NS, ON and YT which require between 10 -12 pieces of information.

In general, there are 3 categories of payroll-related information that you must maintain under employment standards laws:.

1. Identifying Information

You must maintain basic identifying information on each employee, including:

- The employee's name and address;
- Date of birth or current age—except in YT (federal law requires tracking age only of employees younger than 17; ON and QC require date of birth of employees younger than 18);
- Date of employment—except in YK; and
- Gender—Fed, NS and SK only.

One piece of identifying information that employment standard laws don't require you to keep is the employee's Social Insurance Number. (Exception: SINs are required under Fed, NB, PEI and QC employment standards laws.) However, federal tax and payroll laws do require keeping of the SIN. For example, the *Employment Insurance Act* requires employers to maintain the SIN of employees in insurable employment. Additionally CPP and EI require that the employer not just have the SIN but actually see the employee's SIN card.

2. Payment Information

You must also maintain certain payroll information on an ongoing basis such as wage rates, hours worked, deductions, allowances, paid holidays and vacation or other leave information.

You also must record the hours worked by the employee each day. Exceptions: You don't have to track the daily hours of employees who are exempt from mandatory overtime (ON), managers or supervisors (Fed) or salaried employees (PEI). In MB, employers needn't record daily hours if hours don't vary from day to day so long as they keep

track of hours exceeding regular work hours.

However, it's wise to record employees' daily hours even if your province doesn't specifically require you to, experts advise. First of all, you might be wrong in judging the employee exempt from mandatory overtime. If you ever end up in court fighting an employee about overtime wages, you could be forced to pay what the employee claims you owe if you don't have your own records to refute the employee's claims about hours worked.

Again, note that federal income tax, EI and CPP and provincial tax laws don't specifically say you have to keep information about specific payments. However, the obligation is implied because you'll need this information to support the deductions you withhold and amounts you pay for taxes and pension contributions.

3. Documents and Agreements

Some employment standards laws require employers to include in their records certain documents relating to the terms of payment. Notable examples:

- In BC, ON and YK, employers must keep copies of overtime averaging agreements with their payroll records;
- Fed, AB, ON and NB require documentation regarding leaves of absence;
- Federal law requires employers to keep copies of agreements regarding the waiver or postponement of vacation time and notice of job modifications or reassignments;
- AB, NB, NT and NU require employers to keep a copy of any notice of termination in their payroll records; and
- As noted above, federal Income Tax Act, EI and CPP and some provincial tax laws require employers keep records and books of account that support the accuracy of withholdings and tax payments.

Insider Says: BC specifies that payroll records be kept in English. MB says payroll records can be in either English or French.

Conclusion

Recordkeeping isn't a sexy topic, especially when the issue is related to legal requirements. And that's probably why it's so hard for payroll managers to find specific advice about what records the law requires them to maintain—both about their employees and their payroll processes. Hopefully, this article and the accompanying charts will give you a much clearer picture of what the law requires you to do.