

LEGAL FRAMEWORK

Legislative Framework for Record Retention Requirements

As most HR professionals know, document retention for employee-related records—such as personnel files, payroll information, benefits records, and background checks—is a particularly complicated process, required by law, with variations from country to country. Complicating the process further, each document in each country has its own individual retention requirements, and the financial penalties for noncompliance can be significant. A carefully designed and implemented HR record retention policy is a necessary step to support an employer's robust compliance program.

While disposing of too many records can increase a company's legal exposure, disposing of too few records may also increase legal exposure as well as the cost of storage. Employers must identify which records should be retained, how long records should be retained and the different formats in which records may be stored. Employers must also determine how to ensure internal HR record retention policies comply with all applicable regulations and local laws.



General Recordkeeping Requirements

Keeping HR records through a robust document retention policy may be useful to employers for various reasons, including (a) maintaining the corporate memory of the company; (b) satisfying legal or regulatory requirements; (c) preserving documents with an enduring business value to the company; and (d) protecting the company against the risks of litigation and the need to preserve evidence and comply with disclosure obligations as necessary.



However, a balance must often be struck between keeping documents for a sufficiently long period of time, so as to meet an employer's legitimate business objectives, and not keeping those documents unnecessarily, which could

give rise to a breach of data protection laws or otherwise create unnecessary risk.

Russia's Federal Law dated February 8, 1998 No. 14-FZ, On Limited Liability Companies (LLC Law) and the Federal Law dated December 26, 1995 No. 208-FZ, On Joint-Stock Companies (JSC Law) require that companies that fall within those laws retain certain corporate documents (such as articles of association). These laws include non-exhaustive lists of documents to be retained and make general references to other record retention requirements.

The JSC law states that companies shall retain documents at the place where the executive body is located. The LLC law does not include a specific rule, but implies that documents should be provided to company shareholders within short

timeframes, which in practice means documents should be retained at the company's offices or remain easily accessible.

Retention Periods

Most countries have minimum and maximum retention periods for certain HR records. Even if there is no statutory minimum retention period for a certain category of records in a particular country, it is often recommended to retain records until the expiration of the relevant time limits for bringing legal actions or regulatory investigations (statutes of limitations).

In addition to maintaining minimum retention periods, some countries also have maximum retention periods. A record's survival must often be limited so as to safeguard the privacy of persons whose personal data is contained in that record. In particular, records must be kept for no longer than is necessary for achieving the purposes for which the records were collected or subsequently used. After the maximum retention periods have expired, the documents should be either permanently deleted or anonymized (i.e., all references to data subjects should be redacted so that it is no longer possible to identify those persons).

Russian employers should not destroy HR records (or other required documents) prior to the end of the minimum archive period, though it may be

possible to retain the record for a longer period. If records are retained for longer than the minimum retention period, the employer should formalize these decisions and include a rationale for retaining the record longer than the required retention period. Retention tables should be adopted as the employer's internal policy, signed by the company's authorized officer and, communicated to employees, including obtaining their wet signatures. Employers should also implement safe deletion and destruction procedures, access rules and restrictions, etc. and have them included in the company's formal policies.



Format of Records

Multiple laws, decisions, and even everyday life practices apply when assessing the

retention period of a document. Russian labor laws relating to electronic recordkeeping are currently construed restrictively as there is a regulatory gap in the electronic retention of HR records. This will likely change in the future as Russian labor legislation is updated to help the transition to digitize employment relations. At this time, where records are required to be retained, conservative employers retain the paper original in addition to any electronic copies, in case the validity of a record is questioned.

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