

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.



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).

Under the European General Data Protection Regulation (GDPR), Human Resources departments have an obligation to limit storing personal employee and applicant data. One way to demonstrate this is by having a clear and well documented retention policy that limits retention periods to what is legally or contractually required.

Format of Records

Multiple laws, decisions, and even everyday life practices apply when assessing the retention period of a document. Belgium employers can retain electronic or hard copies of the personnel register, the special personnel register and individual accounts. These records generally must be retained:

- at the address where the employer is registered in Belgium with the National Social Security Office;
- in the employer's place of residence or at the registered office in Belgium (with prior notification to the district head of the Supervision of the Social Laws);
- in the case of foreign employers, who don't have a physical office, documents can be retained by a proxy residing in Belgium (with

advanced registered letter to the district head of the Supervision of Social Laws of the jurisdiction where the documents will be saved).



Employer work rules must be retained in each workplace and a posting of where to locate the work rules must be displayed in paper form. The work

rules can be retained electronically as long as all employees have access to the electronic version (for example, storing on the company intranet when all employees have access to a work computer). In cases where an electronic record of the work rules is not easily accessible to all employees (such as factory workers who don't have access to a computer), a hard paper copy must remain available in the workplace. A copy of the employer's work rules must also be provided to each individual employee and can be provided electronically as long as the employee agrees. Note that employers should keep evidence of the employee's receipt of the work rules.

In Belgium, some HR records require the employee's agreement in order for the document to be sent and stored electronically (see Natively Electronic Documents for additional details).

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