

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.

Certain records in Malaysia must be retained on the company premises in case of inspection. Under the Employment Regulations 1957 (Reg. 6), employers must keep relevant registers in the place of employment. In addition, under the Companies Act, a number of corporate documents (ex. registers of members/shareholders/directors, financial statements, and meeting minutes) must be retained at the company's registered office. The Income Tax Act 1967 (Sec. 82 and 82A) also requires that records relating to business or income in Malaysia be kept and retained in Malaysia.

Note that there is no requirement that these documents must be retained in hard-copy form.

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).



In Malaysia, as a general best practice, **employers often keep records one year longer than the legally required retention period in case a claim is made at the end of the relevant retention period.** In cases where there is a claim, the related records are retained until the claim is resolved.

Format of Records

Multiple laws, decisions, and even everyday life practices apply when assessing the retention period of a document. In Malaysia, electronic records are permitted. It's important to note that the original version of records is given a higher legal value than copies (primary vs. secondary evidence). Therefore, when storing records electronically some Malaysian employers follow the best practice of keeping the original version of records, in case they are requested.

Last updated March 2020.

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