

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. Per Poland's Labor Code (Art. 94, 9b), HR documents should be stored in conditions that protect against unauthorized changes, unauthorized distribution, damage or destruction.

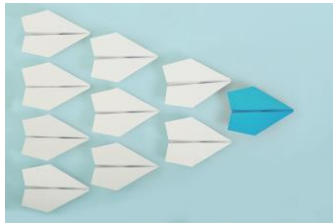
Retention Periods

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).

Historically, employee data in Poland had to be retained for 50 years, but this changed effective

January 1, 2019, reducing the required record retention period for employee data to 10 years if the employee was hired on or after January 1, 2019 (Act on Shortening the Period of Storage of Employee Files). Going forward, employers will be required to send monthly employee data reports to the Social Security Institution (ZUS) (Polish Social Insurance System Act, Art. 41, 1 and Art. 41f).



Employers also have the option to reduce the required retention period for employees hired between January 1999 and December 2018, to 10

years, starting from the end of the calendar year in which the information report was submitted, by submitting a special information report to ZUS. The report includes a list of information concerning the insured (i.e. the employees) who were registered by the contributions payer (i.e. the employer) for the first time during that period. Employers must provide the insured with a copy of the submitted information report (Social Insurance System Act, Art. 41a-41c; Act on Shortening the Period of Storage of Employee Files, Art. 7, 3).

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. Historically, the originals of some employee records had to be retained in paper form. Effective January 1, 2019, employer records were specifically permitted to be created and stored electronically (Act on Shortening the Period of Storage of Employee Files). If an employer chooses to keep employee records in paper format, then the employer is also obliged to retain paper copies of electronic records submitted by a job applicant or employee, certified by the employer (or authorized representative) (Sec. 5 of the Regulation).

In addition, note that under the Accounting Act (Art. 73, 1), accounting and inventory documents should be stored in their original form, i.e. if these documents are natively electronic they should be stored in the same form.

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