

## 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.



Effective April 2016, Singapore employers must maintain detailed employment records of employees covered by the Employment Act (Employment Regulations 2016, Employment Records, Key Employment Terms and Pay Slips). Employees who fall under the Employment Act are local and foreign employees who are under a contract of

service with an employer, except for managers or executives earning a monthly basic salary of more than S\$4,500, seamen, domestic workers and government employees. As a best practice, employers should maintain such employment records for all employees, not just those covered by the Employment Act.

## 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 Singapore, employers should follow the Retention Limitation Obligation outlined in the Personal Data Protection Act by destroying or de-identifying employee records once the purpose for the data collection has ended and there is no longer a legal obligation or business need to retain the employee or applicant records.



Under the Employment (Employment Records, Key Employment Terms and Pay Slips) Regulations 2016,

employers must maintain certain employee records for employees covered under the Employee Act. These employment records may be maintained in either soft or hard copy (including handwritten) for a period of the last 2 years for existing employees, and for the last 2 years for ex-employees, to be retained for 1 year after the employee leaves employment.

Employee records should include the following:

- address;
- NRIC number (for non-Singapore citizens), work pass number and expiration date;
- date of birth;
- gender;
- start date and final date of employment;

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- working hours (including duration of meals and tea breaks); and,
- dates and other details of public holidays and leave taken (including medical, maternity, childcare leave, etc).

In addition, salary records should follow the same retention schedule and contain all the information required for itemized pay slips. Different record retention periods apply for other documents. For example, workplace safety records must generally be kept for a minimum of 5 years (Workplace Safety and Health Act).

## Format of Records

Multiple laws, decisions, and even everyday life practices apply when assessing the retention form of a document.

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Under Singapore's Electronic Transactions Act (ETA) 2010, it is generally permissible to retain records electronically if:

- the information remains accessible for subsequent reference (i.e. you can view it later, as needed);
- it's retained in a format in which it was originally created/sent/received or, in a way that accurately represents the original data;
- it enables the identification of the origin and destination of the record, as well as the date/time it was sent/received; and,
- it complies with any other retention requirements for that type of record.

## PeopleDoc HR Compliance Assist

HR Compliance Assist helps PeopleDoc clients proactively and effectively manage compliance of their HR files and employees' data with foreign laws and regulations. Led by PeopleDoc's Chief Compliance Officer, the HR Compliance Assist team relies on a network of internal and external lawyers to provide clients with best practices and recommendations on topics such as HR document retention, employee data privacy, electronic signature and electronic archiving. HR Compliance Assist also provides local compliance monitoring and alert services in select countries where PeopleDoc's customers have employees. HR Compliance Assist is a service available to PeopleDoc customers.

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