

## 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 (Cap. 91). Employees who fall under the Employment Act are local and foreign employees who are under a contract of service with an employer, except for seafarers, domestic workers and statutory board employees and civil servants. 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 no longer retaining 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

Employment Act. Employee records should include the following, in addition to other items:

- address;
- NRIC number or work pass number and expiration date;
- date of birth;
- gender;
- start date and final date of employment;
- termination notice period;
- working hours (including duration of meals and tea breaks);
- salary, allowances, overtime pay and other salary-related components;
- medical and dental benefits, and,
- dates and other details of public holidays and leave taken (including annual, medical, maternity, paternity, etc).

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, Cap. 354A).



## Format of Records

Multiple laws, decisions, and even everyday life practices apply when assessing the retention form of a document. In Singapore, there is generally no legal obligation to retain employee documents in paper form. Under Singapore's Electronic Transactions Act (ETA) 2010, it is generally permissible to retain records electronically, as long as certain conditions are met.

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