

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).

In Serbia, most company and employment records must be kept permanently (Law on Records Regarding Employment, Law on Safety and Health at Work and related by-laws). When it comes to the rules relating to the retention of documents, Serbia is at a crossroads. As HR records containing personal data are expected to be retained permanently, the law is in conflict with the storage limitation principle in under the Data Protection Law.

In the coming years, the Serbian government will likely have to reconcile the expectation of permanent employee records retention with the Data Protection Law requirement that personal data records should be limited only to what is necessary for the specific purpose of the collection.



Format of Records

Multiple laws, decisions, and even everyday life practices apply when assessing the retention period of a document. While electronic records can be considered to have equal value to paper records if certain safeguards are taken, employers should consider retaining the original version of employee documents until there is more clarity as to how the Electronic Document, Electronic Identification and Electronic Business

Trust Services Law (Official Gazette of the Republic of Serbia no. 94/2017) (EDA) applies to employment related records. In certain cases, it may be required or more practical to have hand-signed paper employee records, given the conservative nature of Serbian courts. For example, records on employees trained for health and safety at work should be in hard-copy form with wet-ink signatures.

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