



# HR Record Retention Requirements – Germany

## 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

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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).

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.

## Retention Obligations

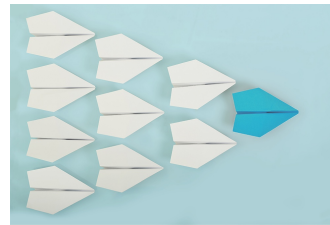
Retention obligations for certain basic categories of records are set out in Section 257 of the German Commercial Code and Section 147 of the German Fiscal Code. Additional retention obligations for specific kinds of records apply from other statutes. Where different retention periods apply to the same document, the longer retention period will generally prevail.

There are certain retention obligations from a labor law perspective for documents which contain the essential contractual working conditions (Sec. 2, Act on Notification of Conditions Governing an Employment

Relationship, NachweisG). Employers in certain industries (such as: construction, cleaning, security, waste including road cleaning, mail services, industrial laundry services, training suppliers, meat processing, transport logistics, hotel, restaurant, fair services) have to retain these records at the place of work (German Act on the Posting of Employees AEntG). These businesses or their employees also have to retain some additional documents, such as ID cards, so that they are immediately available.

## Format of Records

Multiple laws, decisions, and even everyday life practices apply when assessing the retention period of a document. In Germany, it is generally permissible to retain only electronic copies of records, and these records are admissible in civil



proceedings.

However, there are some exceptions to a company's ability to replace paper records with electronic versions,

including documents relating to annual financial statements, opening balance sheets, and certain custom documents. In addition, certain documents and agreements explicitly exclude electronic form. In these cases, the paper original with the wet signature should be retained (e.g. reference letters, dismissal letters, termination agreements).

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