



HR Record Retention Requirements – Spain

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

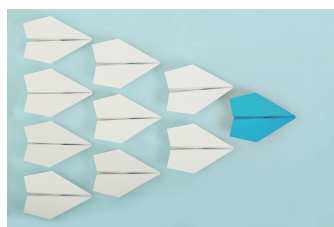
Most countries have minimum and maximum retention periods for certain HR records. Even if there is no statutory minimum retention period for a certain category of records in a particular country, it is often recommended to retain records until the expiration of the relevant time limits for bringing legal 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.



The Spanish Supreme Court, for instance, has established that the employer must retain, in its own interest, all

documentation related to the creation/rise, modification and termination of its rights and obligations at least during the period of time in which the employer may exercise such rights or might be requested to comply with said obligations, in accordance with legal provisions on statute of limitations.

The Spanish Data Protection Agency has issued similar criteria. Report 00148/2019 of 9 December 2020 briefly summarizes the time limits for the retention of personal data based on legal obligations or in light of the statute of limitations for legal action and employer liability (generally 1-5 years post termination of employment).

Format of Records

Multiple laws, decisions, and even everyday life practices apply when assessing the retention period of a document. Spain's Ministry of Employment requires that employers make records of working time available to employees, their representatives and for inspection (Workers' Statute and Royal Legislative Decree 8/2019, of 8 March, Art. 34.9). These records must either be physically at the workplace or, be immediately accessible from the workplace to avoid the possibility that the records may later be created, manipulated or falsified. While it is generally permissible to retain only electronic copies of records, and these records are admissible in civil proceedings, it is recommended that Spanish employers maintain archived copies of non-natively electronic (i.e. physical) employee-related records in the event a judge or authority specifically requests it.

Last updated April 2023.

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