Global Labor and Employment Law Strategic Topics

Employment documentation management globally

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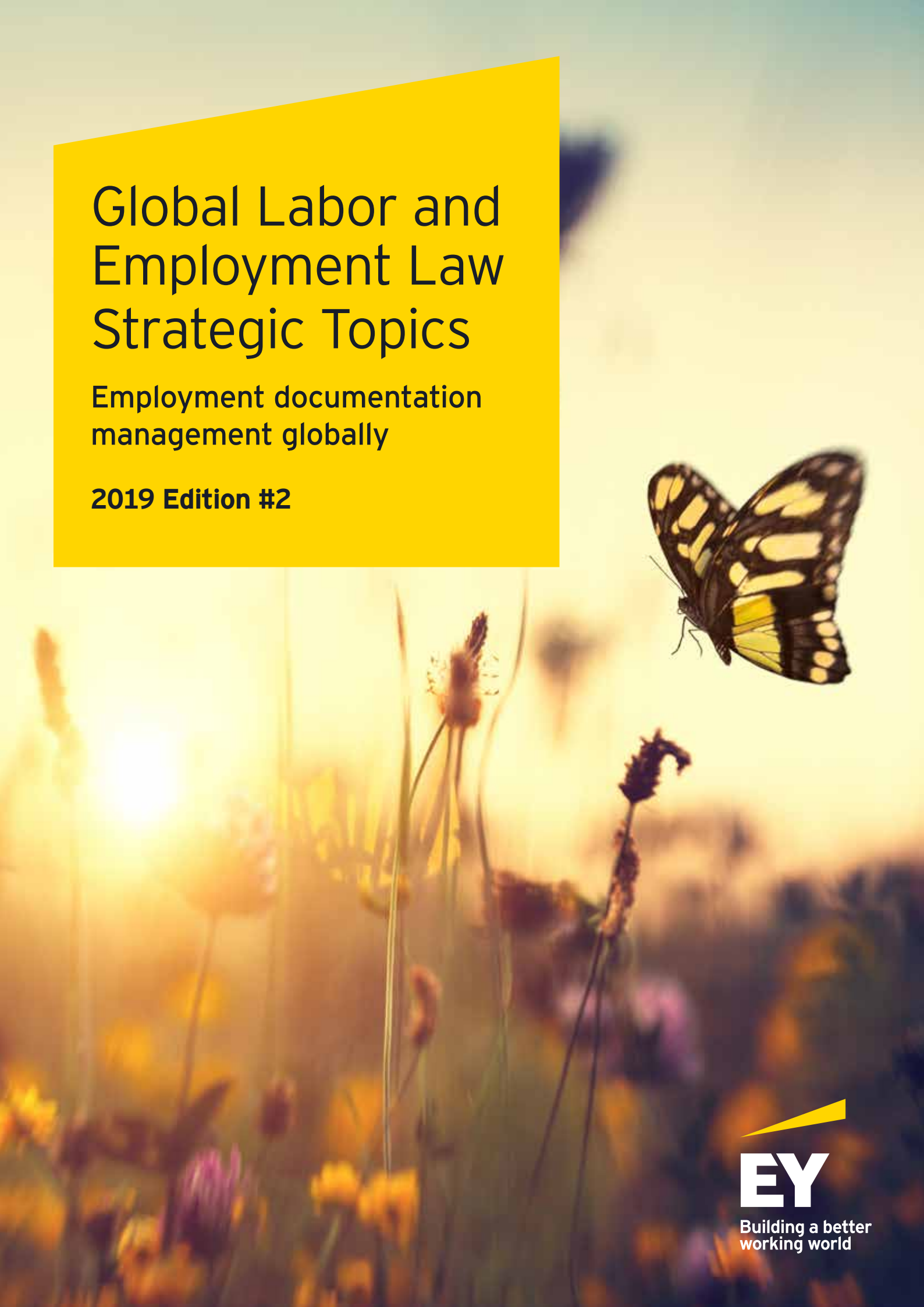

Building a better working world

In this issue, we focus on: employment documentation management globally

Editor's letter

Companies operating cross border with employees around the world are facing increased challenges to ensure compliance with the various labor and employment law documentation and retention requirements.

Global organizations often have difficulties ensuring that documentation is properly managed and retrievable by the right people at the right time and for the right reasons.

Moreover, the GDPR requires companies to allow employees access to the information and documents retained by the employer concerning them in order to verify the accuracy, and request correction or erasure.

In this edition of our EY Global Labor & Employment Law hot topics guide, we focus on the rules for employment documentation and management across 36 jurisdictions.

EY's legal advisory and managed services teams not only advise companies on compliance with these legal rules; we also assist companies in setting up systems to easily process, store and retrieve documentation in compliance with those rules.

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Albania

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Employment documentation management

As a general principle, personal data should be collected by employers at the amount needed to fulfill legal obligations imposed by the labor legislation and individual or collective contracts.

In addition to the personal data that is traditionally expected to be processed in the employer-employee relationship, such as contact details, salaries and leaves, employers also process data about their employees as part of their day-to-day working lives. In this respect, one of the main challenges that employers face while gathering and processing personal data is data management – i.e., keeping such data confidential and safe without exceeding timelines specified by the law.

Employers are obliged to protect the confidentiality of an employee's personal data and should not disclose such data unless required by the applicable legislation. Employers should implement an information security management system based on the identification, analysis and mitigation of potential risks imposed on the security of personal data.

Further, personal data should be held in private physical or electronic files. Special measures should be implemented for the security of sensitive personal data (i.e., race, ethnicity, health and sexual life). This includes keeping files separate and allowing access only to authorized persons.

However, in a fast-paced technological working world, where outsourcing and cloud computing of personal data are widely used – enhancing business agility and accelerating change for all industries worldwide – new challenges arise for employers as data controllers.

From a data-privacy perspective, the allocation of responsibilities, the applicable data-privacy obligations and rules for cross-border transfers of data remain major challenges. Pursuant to the Commissioner on Data Protection, the data controller cannot transfer personal data outside of Albania or to countries other than European Union Member States, in the cloud, without obtaining preliminary opinion from the Commissioner.

With respect to the retention period of personal data, generally such data should be retained until the termination of the employment relationship. Employers may process personal data in excess of such terms only upon consent of the employee.

However, certain personal data, such as salaries and other work-related benefits, personal income tax, social security and health contributions paid for employees, should be kept for a period of five years as a requirement of the tax legislation.

Regarding work-related accidents and illness, employers should keep a separate registry that should be kept for a period of five years. After the lapse of such term, the registry is archived at the Regional Directory of Social Security.

Employees have the right to be informed about their personal data being processed and to request from their employers the following:

- Information free of charge regarding the processing's scope, the categories of processed data and the data receivers
- Blocking, correcting or deleting his or her data, free of charge, whenever the employee becomes aware that such data is incorrect, untrue, incomplete or has been gathered or processed in violation of the law

In conclusion, personal data security is a very important aspect of modern human resources management and is certainly not to be taken lightly. Employers need to ensure they conduct adequate periodic due-diligence controls on the security, retention and erasure of data when it is no longer required. It is fundamental for ongoing compliance and reducing risk of exposure.

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Argentina

Employment documentation management

In Argentina, information backup is key to safeguarding employers from employee claims in labor courts. Thus, as established in section 143 of Employment Contract Law (ECL) No. 20,744, "The employer shall keep receipts and other payment vouchers during the term in which the statute of limitations is applicable for the relevant benefit." The statute of limitation is two years.

Regarding social-security matters, section 16 of Law No. 14,236 determines that "legal actions to collect employer contributions, employee contributions, fines and other obligations arising from social security laws will be statute-barred after 10 years." Section 24 of Law No. 23,660 establishes the same 10-year term for legal actions related to statutory health care organizations. Therefore, documentation should be kept for this period.

However, since these terms may be altered by the suspension or interruption of the statute of limitations (for example, an interruption of a labor court claim is possible during years of proceedings, provided they do not exceed the statute of limitations period), we believe that the term during which payroll documentation should be kept could be much longer than 10 years.

Even more, the term for an employee to claim payment of the applicable retirement fund or pension with the Argentine Government does not become statute-barred; therefore, employers should keep documentation related to pension fund contributions during the effective term of the employment relationship. Once it is concluded, the employer should provide the employee with the related documentation and certificates.

In our opinion, the salaries and wages book (section 52 of the ECL) should be kept indefinitely. The remaining labor and social-security documentation (signed pay slips and file documents, among others) should be kept indefinitely. However, should it not be possible, we believe that it would be reasonable to keep the documentation for 20 years considering the statute of limitations for social security purposes and the maximum term of a labor-claim interruption.

Regarding the place where such labor documentation should be kept, please note that employers performing their activities in more than one jurisdiction may opt to centralize official labor documentation in the entity's legal domicile or at its main place of business, provided that at least 20% of the company's personnel actually work in the jurisdiction. However, such centralization requires that the employer has at each place of work a certified copy of the documentation that, according to law, should be there.

Moreover, the Federal Public Revenue Agency (AFIP) deployed the digital wages and salaries book system to replace physical forms. This new tool provides safe information storage to avoid issues concerning information loss, destruction or theft, and the lack of physical space available to keep such documentation.

Finally, over the past few years, labor authorities allowed the preparation of pay slips digitally, replacing paper, which was gladly welcomed by many companies.

Yet, at the height of the 21st century, employers still need to keep labor documentation in physical format, incurring storage costs and hours of their own or third-party resources to manage these tasks. However, we are seeing that regulations are slowly moving toward an electronic document-management system to meet legal requirements.

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Australia

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Employment record-keeping obligations in Australia

In Australia, employment documentation management is primarily regulated under federal workplace laws. The Fair Work Act 2009 imposes significant record-keeping obligations on employers who engage employees under the national workplace relations system.

What types of employment records must be kept?

Under the act, employers must keep records for each employee with basic employment details, including pay, overtime hours, averaging arrangements, leave entitlements, superannuation contributions, termination of employment, individual flexibility arrangements and guarantees of annual earnings.

How must employment records be kept?

Employment records must be in English (preferably plain, simple English) and kept by the employer for seven years. Records may be held either physically or electronically in a location convenient to the employer. However, employers must ensure that a copy of an employee record can be made readily available in a legible form for inspection and copying if requested by a former or current employee, a Fair Work Inspector or an organization official (such as a trade union).

What employment records must employees be given access to?

Employers must provide employees access to pay slips in either hard copy or electronic form within one working day of paying an employee for the performance of work. Furthermore, former and current employees are entitled to request the employer to provide a copy of their employment records.

Where there is a transfer of business, the old employer must provide the new employer with employee records in relation to all transferring employees.

What record-keeping obligations are applicable to industrial instruments?

Industrial instruments are legal instruments that set out minimum entitlements for certain groups of employees. Employers need to be aware of any industrial instruments (i.e., modern awards or enterprise agreements) that are applicable to its workplace or employees. In addition to the record-keeping obligations under the act, industrial instruments will often prescribe additional record-keeping obligations. For example, modern awards, which cover employees within a specific industry or occupation, will generally impose an obligation on the employer to ensure copies of the award are available to all employees.

Conclusion

Employee record-keeping is a key compliance consideration for any employer engaging workers in Australia. Failure to comply with a record-keeping obligation under the act will subject employers to a risk of prosecution from the Fair Work Ombudsman (FWO) and, in the most serious cases, significant civil penalties up to $126,000 for an individual and $630,000 for corporations. Furthermore, in proceedings for contraventions of the act and industrial instruments, the onus of proof will be reversed, and the employer must prove the contravention did not occur.

However, besides the significant sanctions for noncompliance, the courts have also emphasized the importance of record-keeping for the enforcement of workplace laws. To ensure compliance with record-keeping obligations, it is best practice for employers to maintain accurate and up-to-date records in the event of an inspection by the FWO and implement adequate systems (e.g., a physical document-management system, electronic database or cloud storage) so that employment records can be made readily available.

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Managing employment documentation

Introduction

Belgium has had legislation regarding employment documentation storage for decades.

Employment documents

The foundation of this legislation can be found in Royal Decree No. 5 (23 October 1978), referred to as the Law on Social Documents. This decree lays out which documents are considered to be social documents and therefore must be kept by the employer. Examples of social documents include the general and specific staff registers, individual accounts, the attendance register, the working-time register and specific employment contracts. Note that not all employee documentation and related obligations are covered in this decree. Specific documents, e.g., the overtime register and the control document for part-time employees, are not covered by the decree but are nonetheless documents that should be kept by the employer due to provisions in specific legislation. Specific provisions also apply to an employee's posting. Belgian employers working with personnel hired abroad but working in Belgium benefit from certain exemptions.

The decree and specific legislation prescribe the options as to where these documents must be kept. This can be at the address under which the employer is registered at the National Social Security Office (NSSO), at the employer's residence, or at the headquarters when the latter is in Belgium.

In general, social documents must be kept for a term of five years.

The employer can keep the social documents in any form of reproduction, provided they are clearly legible and that the form of reproduction used allows effective supervision.

A simplification of this legislation came into being via the decree on the introduction of an immediate declaration of employment (5 November 2002). This declaration, referred to as DIMONA, replaces several social documents and allows the employer to communicate all data on employment, wages and working hours to a single unified body for the collection of social-security contributions.

Later, the Law of 3 June 2007 gave legality to the sending and electronic archiving of certain social documents, such as individual accounts and pay slips. Employees must, at all times, be able to have access to the electronically archived documents. Contrarily, no legal text exists around the consultation of paper social documents by the employee. Yet we can assume that other forms of reproduction should be accessible as well.

It is crucial to note that, following the changes that the Law of 2007 implemented in the Law on Employment Contracts (3 July 1978), both employer and employee must agree that documents will be kept electronically. There is, therefore, a double element of voluntariness: the employer cannot be obliged to send documents electronically and the employee cannot be forced to use documents sent electronically. As a result, we can conclude that written documentation (or non-electronic documentation) remains the starting point.

Collective labor law

Collective labor law documents are less regulated.

The Law on Collective Bargaining Agreements and Joint Committees (5 December 1968) stipulates that every collective bargaining agreement (CBA) must contain a reference to its period of validity. Further elaboration on how long (or where) CBAs must be retained does not exist.

Social bodies, such as the works council and health and safety committee, do have the obligation to record meeting minutes. The law also states that the bodies themselves determine how archives should be retained in their internal house rules.

Thoughts and leadership

The introduction of the so-called DIMONA meant a big leap forward in simplifying employment-documentation obligations and facilitating digitalization. In 2007, new steps were taken. It can be considered a positive thing that digitalization must happen in mutual agreement. That way all employees have access in their preferred form. On the other hand, we can ask ourselves whether this slows down effective progress. Should electronic documentation be the default position?

In these rapidly changing times of the digital age, the constant need for updates is always around the corner.

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Employment documentation management

Legislation overview

In Brazil, employers are subject to comply with a series of obligations regarding employment contracts for both labor and social security purposes. Such compliance requires assessing the document's nature and purpose.

Employers are required to formalize and retain documentation of employee's payroll, ancillary obligations related to payroll taxes, health and safety issues in the workplace, and work shifts, among others.

Documents retention period

The period during which employment-related documents must be retained by a company varies in Brazil.

Documents related to labor obligations, such as a work-shift register, payment and benefits receipts, should be retained for five years. This is because the statute of limitations for queries is five years. The employee has a deadline of two years after the work contract is terminated to start a claim relating to labor rights. The five-year period also applies to union documents: collective bargaining agreements.

Some documents may require a 20-year period of retention, such as the Social Security Professional Profile (PPP) and Occupational Health Medical Control Program (PCMSO), both related to health and safety.

And finally, documents regarding severance fund (FGTS) payments must be kept by the employer for 30 years, according to the law. However, the Supreme Federal Court has decided that the statutes of limitation for queries regarding FGTS is five years.

If the employer does not keep employment contract documents retained for the necessary period, a penalty may be applied for the absence of the document itself. Additionally, the employer may not be able to demonstrate compliance with the obligation during either an administrative inspection or a judicial claim.

Digital age

Currently in Brazil there are some electronic ancillary obligations related to labor and social security compliance. In this sense, employers should retain delivery receipts. This is not only in case there is a query related to the delivery of some information; it will also enable the company to rectify information if necessary and deliver adjusted files to the Government.

The electronic reporting implemented by the Government starting in 2018 played an important role in how companies formalize and retain employment contract information. Some documents, which for years were kept only in paper, have now been inserted into a digital system. This has helped companies centralize and have better control of information. Yet there are several documents that are still not part of the electronic reporting so far.

In relation to where this information should be stored, there is no specific law. Companies may opt to store digital data in an internal server or in the cloud. It will depend on the internal data policy.

Paper documents are usually kept with specialized providers due to large volumes.

Conclusion

Considering the current scenario, in order to assure appropriate control and compliance with document-retention rules, it is important to establish processes to centralize and digitalize the information related to work contracts.

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Stricter regulation and new information-handling rules

A struggle between employment law and innovation

Upon conclusion of an employment agreement, an employer must keep files with all documents related to the position and its termination. Today documents are still kept primarily as hard copies. However, recent employment-law changes introduced in 2018 regulated in detail the option for an employer to keep documents in electronic form. The new regulation introduced measures that are partially stricter than the existing legal framework for electronic communication, such as stronger technical and authentication requirements and access rules. Irrespective of how documents are stored, employers must take appropriate measures to protect any employee-related information. In general, hard-copy documents must be stored on safe premises with limited access, while files stored in electronic form must comply with a number of requirements, such as electronic signature, specific system maintenance and restricted access. Any electronic system must also provide opportunities for generating reports and historical references for all actions related to the inclusion of documents in the employment file. Employers must provide employees with uninterrupted and cost-free access to their documents in both hard copy and electronic form, as applicable. If the employer opts for electronic handling of information, a number of formal steps must be covered to ensure the legality of the procedure. Moreover, all costs for handling and access to the system are the responsibility of the employer, including training employees on how to access and use the system.

No special provisions apply to storage location. However, the obligation of the employer to grant employees access to documents related to them should be considered when choosing the appropriate document-handling policy.

Regarding duration, different storage terms apply to different categories of documents. For example, payroll documents, materials not returned to employees, registers of labor books issued by the employer and copies of certain certificates issued must be stored for a period of 50 years. Medical certificates, bank account information and claims for compensation payment are stored for five years.

If the employer is liquidated before the respective storage periods have expired, the employee files must be handed over to the National Social Security Institute (NSSI) for storage. Even if the employer and the employee have agreed to communicate electronically, the employer is not allowed to refuse the delivery of hard-copy documents to the employee.

No special regulations apply for the storage of collective bargaining agreements and works council documents.

As a general trend, local employers are still struggling to put in place appropriate procedures to handle information in full compliance with the new General Data Protection Regulation (GDPR) requirements, considering the limited case law and market practice. Another challenge for them is to find the balance between technical standards that they need to meet to ensure safe communication and the GDPR. Moreover, certain safeguards previously used on a regular basis for employment relationships – such as data processing based on an explicit consent granted by the data subject – have been regulated differently, and the possibility to rely on consent regarding the personal data of employees has been limited considerably. The risk of personal-data violations and the related principles, such as storage limitation, data minimization and purpose limitation, must be constantly monitored. Existing policies must be regularly updated to reflect new markets, authorities and court practices, as well all legislative changes.

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Canada

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Employment documentation management

In today's global environment, employers and even individual employees often traverse multiple countries. As a result, we often receive questions on employers' obligations to store their employees' data in Canada.

Multiple jurisdictions

Most employment-related matters in Canada are individually governed by each of Canada's 14 jurisdictions — 10 provinces, three territories and the federal jurisdiction, if the employer is operating in an industry considered to be a federal undertaking, such as banking, marine shipping, air transport, railways, and radio and TV broadcasting. The relevant jurisdiction is largely determined by the location of the employee's work, unless the employer is federally regulated.

The following guidance will focus mostly on Ontario, Canada's most populous province. Accordingly, the specifics may vary if an employee works in other provinces.

Document types and storage periods

While there are many different documents that an employer may be required to store over the course of an employee's employment, the main categories of statutorily mandated stored documents and their respective minimum storage times are set out below. (These may differ by jurisdiction and if the company has a specific policy that involves a higher obligation.):

- Name, social insurance number (SIN), address and employment-commencement date must be kept for three years after the employee's end of employment.
- Records relating to daily, weekly and overtime hours worked, pay period, wage rate, overtime pay, gross and net wages, termination pay, deductions, amounts for room or board, vacation pay and time, statutorily protected leaves of absences, and health and safety training must be kept for three years after the information was given to the employee or after the period to which the record relates.
- Books and records relating to payroll — including tax, Canadian Employment Insurance and Canada Pension Plan deductions, as well as evidence of collecting an employee's SIN and his or her form TD1 — must be stored for a minimum of six years after the filing to which they relate. There are some exceptions to certain types of tax-related documents that may require indefinite storage.

Despite these minimum storage requirements, there may be instances where a claim by an employee regarding a record could arise after the minimum storage period expires. Given the relatively low cost of electronic storage, we typically recommend retaining documents for longer than the minimum periods (e.g., 10 years).

Privacy

Collection, storage, disclosure and destruction of employee documentation may be governed by applicable privacy legislation, depending on the jurisdiction. This means, among other things, that employees should be allowed access upon request to update information, and appropriate safeguards should be in place to ensure only those requiring access have it.

Location

While the requirements vary by jurisdiction, the highest standard requires that employee records be kept at the principal place of business within the jurisdiction (in the case of cloud storage, the location of the servers). However, those jurisdictions tend to focus largely on ensuring that the records are readily accessible locally (e.g., electronically). It is likely sufficient for documents stored centrally to be accessible from servers within the jurisdiction at hand.

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Employment documentation management in Colombia

In Colombia, certain labor documents must be retained for a specific period, according to regulatory provisions.

Employment documents that must be retained

Decree 1072 of 2015, in its article 2.2.4.6.13, establishes that the employer must keep records and documents that support the Occupational Health and Safety Management System (SG-SST), ensuring they are legible, easily identifiable, accessible and protected against damage, deterioration or loss. Conservation can be done electronically as long as the preservation of information is guaranteed.

The following documents and records must be kept for a minimum period of 20 years, counted from the moment the employment relationship ceases:

1. The employee's epidemiological profile
2. Periodic health examination assessments
3. Evaluations of the work environment as a result of programs to control hazards and risks in occupational safety and health
4. Records of training activities related to occupational safety and health
5. Registration of the supply of personal protection items and equipment

For other documents and records associated with the SG-SST, the employer must create a system of document retention in accordance with current regulations and internal policies.

Other employment documents

Although there is only express regulation on the obligation to preserve documents associated with the SG-SST, for some specialists, in accordance with commercial regulations, other employment documents should be kept for at least 10 years, during which there is an obligation to keep books and commercial documents on paper or in any technical, magnetic or electronic means that guarantees their exact reproduction. (See Article 28 of Law 962 of 2005 and Article 60 of the Commercial Code.)

It is important to keep in mind that the statute of limitations for labor actions is three years; it is five years for social security. For pension matters, however, there is no statute of limitations, so it is advisable to keep the labor history of employees for at least 100 years in physical or electronic form.

Data protection

Each employee must authorize the processing and preservation of their personal data according to the parameters established by Law 1581 of 2012, which regulates general provisions for the protection of personal data.

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Costa Rica

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Costa Rica does not have extensive legislation regarding an employer's obligation to keep personnel files or the way in which such files should be kept. However, a good practice is to document all aspects of the employment relationship. Costa Rican law states that if an employee files a claim before the labor courts, the employer has the burden of proof and should be able to produce the necessary documentation to defend its actions within the scope of the employment relationship.

To support this burden of proof, it is recommended that all stages of the employment relationship be properly documented — from the recruitment and selection process until the employee's termination.

These documents should be kept for the duration of the employment contract and at least a year after the employment termination took place. Yet, for social security purposes, the statute of limitations is 10 years, and in practice there have been inconsistencies with the information kept by authorities when employees are looking to file their request for retirement. Therefore, the recommendation would be for all employers to save a scanned copy of all the documents included in each employee's personal file.

What documents should an employer consider including? Under our view, the most essential document to include in personnel files is the employment contract.

In this regard, Article 23 of the Labor Code refers to the obligation of all employers to sign written employment contracts. Each party should have a signed copy of such agreements, given that this contract should serve as evidence of the agreed employment conditions.

If an employer does not have a copy of the contract, the Labor Ministry is entitled to file a claim before the court for breaches to labor and employment law. This judicial process will look to impose fines on employers who are not compliant with this obligation.

Also, the Labor Code defines that payment slips should be handed over to employees with the specific breakdown of all the components that sum up the employees' total salary. Therefore, such payment slips should indicate the period that is being covered, payment amount for each hour of overtime, the employee's base salary, whether commissions or bonuses were paid, how many vacation days were paid and used, and other important data.

In addition to the above, internal rulings or policies should also be communicated to personnel. The best way to ensure that employees understand and agree upon the terms of such internal policies is for each employee to sign an acceptance document and have them stored in their personal file.

Finally, it is crucial to document the cause of termination (e.g., dismissal with or without cause, resignation, mutual agreement or retirement). Based on the cause, the employer will calculate how much is owed to the employee for his or her labor liquidation. There should be no room for interpretation on the cause for termination. In cases of dismissal with cause, if the worker does not wish to sign the dismissal letter, a copy of the letter should be sent to the Labor Ministry within the next 10 calendar days. For a dismissal without cause, the document should be signed by two witnesses who may attest that the fired employee did not agree to sign the document.

Concerning the proper place for storage, the common practice is to keep personnel documents in a company's main offices in a physical personal file that is properly secured. Although having a digital copy of the file is practical — it can serve as assurance against the potential destruction of the physical file — the original version of certain documents, such as the employment contract, will always be the best proof.

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Employment documentation

Employers must process personal and payroll information. They are entitled to keep the personal files of employees, which may include only documents that are necessary for work performance (e.g., employment contracts, documents concerning education, professional training and fitness to work, as well as special permits if required). Only supervisors and some public authorities are allowed to inspect these personal files. The keeping of personal files is also subject to the EU General Data Protection Regulation (GDPR).

Form and location of keeping personal files

The Czech Labor Code (CLC) does not prescribe the form or the location where personal files can be kept.

Regarding the form, documents concerning the start, change and termination of an employment and salary statement (the "important documents") are required to be in written form. While there is a possibility to maintain the written form of legal acts by electronic means, permitting one to (i) keep its contents and (ii) determine the person who acted, the CLC also requires that the important documents be delivered into the concerned employee's own hands in compliance with the CLC.

Delivery of electronic documents is possible under the following CLC conditions: (i) the employee grants consent and provides an electronic mailing address; (ii) all the employer's documents delivered in electronic form are signed by a so-called recognized electronic signature that is in compliance with the EU regulation concerning electronic services (eIDAS); and (iii) the employee must confirm acceptance by the employee's recognized electronic signature within three days. Otherwise, the electronic documents will not carry any legal effects.

To have fully electronic personal files requires either (i) the ability to deliver the important documents under the above conditions or (ii) to have the paper documents converted into electronic documents by the contact centers of the public administration (Czech POINT), or by attorneys (converted electronic documents have the same legal effects as the paper originals).

Regarding the place where files are kept, such location may be outside of the Czech Republic or in cloud storage; in either case, storage of the files must be carried out in compliance with the GDPR.

Retention period

The CLC does not expressly prescribe the retention period for keeping personal files; therefore, it is recommended that the employee's file be kept for the term of employment and three months following termination unless a potential risk of a legal dispute arises. In such a case, the employer may keep the documents related to a prospective legal dispute for a statutory or contractually time-barred period.

The below retention periods for specific documents are set out in the legal regulation:

- 10 years after the date of termination of their validity for the internal rules stipulating employees' entitlements
- 30 years following the year to which such document pertains to a remuneration statement
- 5 years after termination of the work council's term for its documents
- 5 years after termination for collective agreements
- 3 years after termination of employment for a copy of a foreigner's residency

Employee's access to his or her personal file

Every employee has the right to inspect his or her personal file, to make extracts from it and to make copies of the documents contained therein, all at the employer's expense. Further rights on the side of the employee follow from the GDPR.

Best practice

The majority of employers keep a combination of physical and electronic personal files. Generally, copies are sufficient for an employer's usual agenda. It is possible to store the physical files outside of the employer's offices, provided such storage is compliant with the GDPR. It is also recommended that originals of the documents are accessible within, for example, five days in cases where the public authorities should require them regarding legal disputes, audits or inspections.

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e-Estonia and employee files

Digital governance

Estonia started to develop its information society and digital identity over 20 years ago to improve the competitiveness of Estonia and the well-being of its people. The aim was to implement a hassle-free governance. Starting from the development and launch of e-Governance in 1997, e-Tax in 2000 and digital identification (ID) in 2002, Estonia likely has become the only country in the world where 99% of public services are available and accessible online 24/7, and people can access their data, e.g., tax information or employment history, online wherever they are located.

Furthering its digital society developments, Estonia launched its e-Residency program in 2014, which is a transnational digital identity that provides e-residents government-issued digital IDs and full access to Estonia's public services. This also enables a way to establish trusted European Union businesses with all the tools needed to conduct business globally. The easy access and information-society services are attractive for both employers and employees. So let's have a look at what impact these digital services have on the employment relationship and filing.

General rules and practices

Using digital solutions in employment matters is very common in Estonia, including the confirmation of the employment contract, registering the employee in the employment register, reporting taxes and more; everything can be executed electronically and by using digital ID. Thus, employee files are mostly created electronically.

An employee's file may be electronic and maintained in a cloud as long as it is secured and the information is accessible and reproducible if needed. In accordance with data-protection rules, the employee has the right to demand information that is collected about him or her and request to amend information if it is incorrect.

Retainable documents

The statutory requirement mandates that the employment contract be in a written format and preserved during the term of the employment contract and for 10 years after its expiry.

The employer is obligated to organize and obtain the following consents and check-ups regarding the employment relationship in addition to the written employment contract:

1. Provide risk analysis for the position and notify the employee about the risks related to his or her tasks and position. File the information when the employee has been notified and obtain the confirmation from the employee.
2. Organize the employee's health check within four months of employment and conduct follow-up health checks in accordance with the laws. An employee file must include the information and confirmations received from the occupational health care doctor.
3. Provide the internal rules of the organization and obtain an employee's confirmation and acknowledgement of the rules.
4. Notify the employee about who is using the employee's data and on what terms. The employee file must include the employee's consent and acknowledgement of the data-protection rules of the company.
5. File information that is the basis for accounting entries, such as salary payments.

Work council and collective bargaining agreements are not widely used in Estonia, but if at any stage the council is established or a collective bargaining agreement is entered into, the documents and resolutions should be filed by the employer. The documents may be electronic as long as they are accessible and reproducible if needed.

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Finland

A fragmented data-retention regulation

In Finland, employers are only allowed to collect, process and keep recorded information concerning their employees that is necessary for the employment relationship. Such information must relate to each party's rights and obligations, the benefits offered by the employer and the special nature of certain work duties. As a main rule, employee information must be collected from employees themselves, and the employees generally need to give their explicit consent to employers to allow them to collect personal data elsewhere (see the Act on the Protection of Privacy in Working Life, 759/2004).

In addition to the EU General Data Protection Regulation (GDPR), the Finnish regulation on retaining employment data is widely spread across the legislation. Special provisions set out mandatory retention periods for employment data, whereas the data-protection regulation sets out restrictions for keeping such data. In general, all employment data can be stored in electronic form – i.e., no paper files are required as long as the records are easily accessible and readable. However, it is not possible to store all employment data for an unlimited time or for the same amount of time across the board.

According to the Working Hours Act (605/1996), the employer must keep records of working hours (e.g., work-shift lists and records of working-hours systems) at least during the related claim period – i.e., for two years after the end of the calendar year, during which the right for compensation has originated, or for two years from the end of the employment relationship. On request, an employee is entitled to a written clarification of the entries in work-shift lists and working-hours records concerning him or her. Similar retention rules and an employee's right for clarification apply to the records of annual holidays in accordance with the Annual Holidays Act.

According to the Employment Contracts Act (55/2001), the employee's right to claim wages due (and any other compensation due to the employment relationship) will lapse after five years while he or she is employed and in two years after the end of the employment relationship. Thus, the related documentation is to be kept for at least this length of time for both circumstances. However, a 10 years' retention time has been set for letters of references as well as for documentation that relates to compensation on damages due to personal injury.

Keeping employees' health information has been peculiarly restricted by laws. Concerning information on employees' health, the data may only be processed by persons who prepare, make or implement decisions concerning employment relationships based on such information. In addition, employers must store any information in their possession concerning employees' health separately from any other personal data that has been collected.

For foreign employees, employers must keep records on current and past foreign employees and the grounds of their right to work easily available at the workplace. This information must be stored for four years beyond the termination of employment (see the Aliens Act, 301/2004).

In addition to the examples presented above, it is important to remember the retention times for payroll accounts and accounting material, which generally should be kept for 10 years after the end of the financial year.

As a final note, while employers should be aware of the regulation that sets out mandatory retention times, it is equally important to set up functioning and dynamic processes for data storage and to keep records up-to-date.

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Employment documentation management

Most multinational organizations must manage more and more data related to their employees.

As a result, employers need to implement solid management employment documentation systems.

French law and authorities provide a complete set of recommendations.

Which documentation should be retained by the employer

French employers should notably retain for each employee:

- The employment contract and its successive amendments if any
- All documents related to employees' working conditions, in particular working time performed
- Payslips
- Disciplinary file if any

Documents related to collective status and relations with employee representatives should also be kept by the employer.

For how long?

The French Labor Code only provides for a few mandatory retention periods (e.g., the CV of a candidate who is not hired cannot be kept for more than two years).

However, employers need to retain employment documentation to defend themselves in case of litigation Therefore, recommended retention periods are generally based on the applicable statute-of-limitations period, for example:

- One year to challenge a dismissal
- Two years for claims related to the execution of the employment contract
- Three years for salary claims or social security contributions payment
- Five years for discrimination claims.

Specific higher retention periods also may exist (e.g., the French Labor Code provides that pay slips in electronic format must be kept for 50 years!).

Paper or digital?

French law does not impose paper or digital format. The digitalization is however more and more encouraged by the French Government and the administration (e.g., regarding proof of professional expenses). The digital format is highly regulated technically to guarantee the integrity of the document.

Where?

There is no obligation to keep documentation in the country of origin of the data.

However, data transfer is geographically limited by national and European regulations, notably the General Data Protection Regulation (GDPR). Data transfer is authorized within the European Union and with countries considered as providing the same level of guarantee as in the EU countries.

For other countries, it must be ensured that minimum guarantees are provided.

In this context, employers need to be careful when they use a cloud or a Software-as-a-Service mode, as servers can be located in various countries, including places where guarantees are not compliant with EU law.

Can the employee have access?

Employees have the right to access their personal data if they desire, to rectify the data if needed, or to erase it. Employers need to inform their employees about these rights.

Conclusion

Effective global management of documentation is paramount.

The GDPR promotes the empowerment of individuals regarding their personal data and imposes liabilities on employers.

Sanctions provided by the GDPR are very high (e.g., a fine of 4% of the global turnover or EUR 20 million) – this empowerment may also give rise to new forms of litigation around the management of HR documentation, including employees' personal data.

On a final note, documents should not be retained longer than necessary, specifically because employee access rights can provide fertile ground for employee to have "de facto" discovery in employment litigation.

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Georgia

Employment documentation management in Georgia

The global tendency of individual privacy has urged employers to resort to higher standards of documentation management.

Employment documentation management in Georgia must safeguard the balance between the legitimate interests of the employer and the rights of the employee. Such balance is achieved via general regulations related to documents created in the ordinary course of business, laws on personal data protection and regulations existing in the public sector.

In general, the laws of Georgia lack specifics in terms of required documents that the employer must retain. There is no explicit list for private-sector companies. In contrast, a more precise approach is elaborated in the public sector. The Law of Georgia on Public Service lists that the job application form, together with the candidate's CV, certificates of education, identification documents, and medical and narcotic inspection notes, among others, must be kept by the public-sector employer.

Any document related to the employee and managed by the employer to some extent consists of personal data. Normally, as proven above, such documents range from identity documents and biographies to certificates of education and financial information, depending on the type of employment.

Pursuant to applicable laws of Georgia, the employer must keep the data, consider the character of the work involved and observe principles of adequacy.

There are no specific regulations in Georgia as to what form the employment documentation should be held. Therefore, both public and private companies are free to tailor their own methods of documentation management.

The current legislation does not explicitly state whether employment-related documentation must be kept in Georgia or abroad. Employers are free to keep documents in cloud systems and transfer the personal data to other countries without further administrative procedures, considering that they provide sufficient safety guarantees.

The Law of Georgia on Personal Data Protection, however, requires employers to adopt certain organizational and technical security measures to secure employee information. More specifically, they must ensure only designated personnel have access to this type of data, with guaranteed confidentiality.

Employers are also free to retain physical copies of documents. However, if the employer opts for the electronic system, access must be secured with password authorization. Access is granted only to a limited number of persons. To ensure the efficiency of documentation management, employers are obliged to create a filing system with a subsequent catalogue.

This supports easier control from the perspective of state authorities as well as overall better management at the employer's level.

The time period for holding documents is directly regulated, with specific requirements for every possible document that may be created in the work process. Depending on the type of document, periods will vary from one year up to several decades. Personal data must be kept for as long as required by the duration and nature of the employment relationship.

As a rule, employees must have full access to their employment documentation, subject to certain limitations provided by the law.

Overall, the general framework on employment documentation management is rather pliant and unmethodical, with room for some discretion by the employer.

The issue of personal data protection, however, offers more certainty. This is particularly true for security requirements, retention periods and employee access to employment documents, and the personal data given therein. Changes in regulations are further anticipated, potentially introducing more clarity.

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Employment documentation management globally

Personnel files

There are few legal obligations for employers to retain documents relating to the employment of employees. However, it is recommended to retain additional documents in an employee's personnel file, especially the employment contract. If there is no written employment contract, the essential contractual conditions of an employment relationship must be set out in writing. This is necessary because of legal requirements for the notification of conditions governing an employment relationship and as an evidence in cases of legal disputes. Application documents with the employee's certificates and qualifications, pay slips and possible warning letters are also usually kept in the personnel file.

Generally, employers can freely choose the form in which the information may be held (physical or electronic). If an employer chooses the electronic form for the personnel file, the co-determination right of the works council (if existing) in issues regarding the use of technical equipment to monitor the behavior or performance of employees must be considered.

The employer is free to choose where to keep the personnel file. Employers may retain the physical documents in a secure personnel office so not everyone has access to the documents for data-protection reasons.

There are different legal retention periods for documents – e.g., application documents must be retained for three years after the end of the employment relationship; pay slips should be kept for 10 years after. Documents ideally should be held as long as claims can be asserted, according to the limitation period. The statutory limitation period generally amounts to three years after the end of the employment relationship. Employment contracts, works council agreements or collective bargaining agreements, however, can determine a shorter cut-off period of at least three months.

Every employee has the right to access his or her complete personnel file by law at any time, without naming a reason. A member of the works council can accompany the employee.

Labor guidance in Germany

Employers are obliged to display laws that are important for the employment relationship, such as the Working Time Act, the General Equal Treatment Act, the Works Constitution Act and the Act on Part-Time Work and Fixed-Term Employment, as well as all relevant health and safety regulations. Furthermore, works council agreements and collective bargaining agreements must be displayed by the employer.

The documents need to be freely available, either in physical or electronic form.

If the employer wants to hold the documents in physical form, the location must be generally and freely accessible, such as in break rooms, in canteens, on a notice board, or in the reception or the office of the works council. Work agreements and collective-bargaining agreements can also be held in the personnel office if an employee is given access upon request. It is important that all employees have access to the documents. Also, all effective documents need to be kept up-to-date.

Conclusion

Depending on the situation in the company, the physical form of the stored documents can be preferred – e.g., in cases where employees do not work with computers and would not be able to easily access the documents in an electronic form. In general, the electronic form will be preferred by the employer, as it is easier in practice. In this case, it is important to consider co-determination rights of the works council as well as data-protection issues if, for example, only a specific group of people has access to personal data.

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Employment documentation management in Greece

Despite the technological advancements made over the years, many businesses in Greece are still relying on outdated methods for document management. Although change is a common business goal, paperwork seems here to stay.

Greek legislation outlines a wide range of documentation that should be available in physical form at the place of work and be made available in case of a random labor audit. The most basic required documents include:

- The official chart of personnel and working hours, including information on all direct employees and their respective working schedules, which should be kept for at least 10 years. It should be noted that this is the most crucial document; if an employee is not included in the official chart, the labor auditor may proceed immediately with a fine for non-declared or illegal employment of €10,500.
- Documents pertaining to the working conditions provided to employees
- In the event of part-time employment, a copy of the respective employment agreement, which should be kept for five years following termination of employment
- Pay slips of the last three months in physical form. Pay slips should be kept for five years following termination of employment.
- The official chart of seconded employees, their employment agreements and respective pay slips, which should be kept for two years following the lapse of the secondment
- In the event of employment through a contractor, the contractor's personnel should have the contractor's official chart available at the place of employment. In addition, the contractor is obliged on a monthly basis to send the employer proof of salary payment, social-security contributions and any termination indemnities due.
- In relation to health and safety issues, the health technician and physician should have their recommendations for the improvement of working conditions documented and available.

For private-employment issues, the law is quite strict on the form and period during which these documents should be available. The same does not apply for documentation related to collective labor issues, such as collective labor agreements.

Despite the fact that the law may provide different holding periods for certain documents, currently there is a 20-year lapse period for Greece's social-security organization to review the calculation and payment of social-security contributions for employment. This leads to the unorthodox result of retaining records for this significant length of time.

Regarding digital content, employers are obligated to report online to the Greek Ministry of Employment crucial employment information (hiring, termination, overtime, annual leave). Employees, as per recent legal provisions, must also have access to their information on this online system.

Regarding document storage and duration, it is clear that the management of employment documentation in Greece represents a challenge. The gravity of this issue becomes clearer if we think about gig employment, its characteristics and how it will become more popular in the years to come. The goal for the Greek administration clearly should be to try to adapt its requirements digitally – ideally in a way that will enable cloud management.

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Guatemala

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Documents required for employment

The Guatemalan Labor Code does not specify which documents must be included in the personal file of each employee; the files' contents are left to the internal policy of each employer.

It is a customary practice for employers to require the following documents for applicants and future employees:

a. Résumé

b. Police and criminal records certificate

c. Copy of identity document

d. Copy of tax registration

e. Copy of Social Security identification

f. Copy of public services receipt

g. Recommendation letters

h. Copy of junior high school certificate or college certificate

i. Annual City Hall tax

Historically, employers required physical documents, but due to our current digital-access era and a concern about voluminous files and storage, many employers use specific email accounts to request all of these documents electronically.

Documents required during the employment relationship

In accordance with labor department protocol, when a corporation is audited by a labor inspector, the following are the main documents that must be shown in original form to prove the work relationship and support compliance requirements:

a. Monthly salary payment receipts

b. Labor agreement

c. Vacations granted

d. Vacation payment receipts

e. Christmas bonus payment receipts

f. Annual bonus payment receipts

g. Payroll books

h. Proof of training required for the position

i. Offenses or wrongful conduct that violates labor regulations or obligations

In Guatemala today, many documents can be obtained by electronic means: criminal records, the annual City Hall tax, Social Security payrolls and certifications of civil records. These electronic documents have legal validity and can be kept electronically.

Best practices for Guatemala

Based on our analysis and best practices within the Guatemalan jurisdiction, it is necessary to identify the terms required by law to keep employment documents — mainly those that prove the employer's compliance before employees and labor authorities.

The documents with original signatures from all parties must be kept physically, and documents that could be authenticated by electronic means on the issuer's systems can be kept electronically.

In both cases (electronic and physical documents), it is important to emphasize that all employees' personal documents and those not related to Social Security must be kept physically during the employment relationship and at least two years after its termination.

In the case of Social Security documents, the recommendation is to keep them indefinitely. Because the Social Security history of an employee is built through his or her entire working life, evidence to prove payment of the Social Security fee is essential.

In cases of eventual inspections, audits or labor claims, this practice will avoid the potential risk of not having the necessary documents to support facts that will keep the employer safe from contingency consequences.

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Honduras

The lack of employment documentation management

The world is advancing at a speed that makes it difficult for developing countries to catch up. Technological advancement and scientific breakthroughs make each day beyond our reach as a country, which has major difficulties in fundamental areas, such as medicine and education.

Our country, as a developing nation, does not yet take advantage of all that technology provides. In our workforce, the documentation management made by employers is minimal, therefore they do not use materials or tools that the digital age offers. Legally, our labor law does not require sustained documentation concerning employees other than the employment contract and his or her payroll. Regarding the employment contract, it is necessary to have the original contract in a physical form, or at least have a physical identical copy (employees or any other subjects of the contract also receive a copy). The contract needs to be held at the corporate office in case the legal work authority requires it. There is no use of technology in this matter. Nonetheless, some technology is incorporated for payroll, such as Excel and other affiliated programs. Payroll documents are kept in both physical and digital form. The physical form is for accounting purposes, including requirements made by the tax and work authorities if any situation concerning an employee arises. Digital forms are used to simplify the process when possible.

Both documents need to be held for as long as the working relationship between the employee and employer exists. Once it ceases, the employee no longer has the obligation to hold or manage the documentation mentioned. It is relevant to mention that any modification made to both documents needs to be registered. The employee must have access to these documents to ensure his rights as an employee, whether the documents are physical or digital. As mentioned before, the employee must have a physical copy of the employment contract. However, in reality, that does not happen.

The employee has the right to access his payroll anytime he or she requires it. These actions are to avoid any violations to rights established in the labor law and in the employment contract, and to ensure there is no discrepancy in the documents.

Even though the law does not mention the management of any other documents, companies do require other documents to obtain a job, such as the candidate's CV, personal references, ID, college degree if applicable, criminal background, and any other documents the company requires (not all companies require these documents).

It is necessary to take advantage of the digital age to progress as a country, and our legislation needs to be updated to reflect this. Employers in more developed countries with digital documentation management are able to move more efficiently. While we must acknowledge that the digital age can affect older generations who have not adapted to new technology, we know progress is inevitable — and ultimately the path forward for our country.

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Hong Kong

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Employment documentation in Hong Kong

In the Hong Kong Special Administrative Region of China, under section 49A of the Employment Ordinance (Cap. 57), an employer must keep a record that sets out the wage and employment history of each employee, covering the period of his or her employment during the preceding 12 months. This is applicable to full-time, part-time, permanent, casual and substitute workers.

To comply with the requirements, the record should contain the following information of each employee:

- Name and identity card number
- Employment start date
- Job title
- Wages paid in respect to each wage period
- Wage period
- Periods of annual leave, sick leave, maternity leave, paternity leave and statutory holidays entitled and taken, together with details of payments made in respect to such periods
- Amount of any end-of-year payment and the period to which it relates (if applicable)
- Period of notice required for termination of contract
- Date of termination of employment (if applicable)

Additionally, if the statutory minimum wage applies to the employee, and wages payable to the employee for that wage period are less than $15,300 per month (as amended from time to time), the employer must keep a record of the total number of hours worked by that particular employee covering his or her employment during the preceding 12 months. Further documentations are required for student interns under the Minimum Wage Ordinance (Cap. 608).

The wage record must be kept at the employer's place of business or at the place where the employee is employed. It should be kept for a period of no less than six months after the employee ceases to be employed.

An employer who fails to keep the wage and employment record as required may be liable to prosecution and, upon conviction, to a fine of $10,000 as stipulated under section 63D of the Employment Ordinance.

Payroll records

Apart from the wage record, an employer must also maintain payroll records of its employees for at least seven years, as required by the Inland Revenue Ordinance (Cap. 112). The records may be kept by using the traditional paper-based method or by using a computer. However, if records are kept on computer, source documents such as check stubs, invoices, bank-deposit slips and bank statements, must still be kept to substantiate the employer's income and expenses.

It is an offense not to keep adequate records, for which an employer may be fined up to $100,000.

Contract of employment

Under the Employment Ordinance, a contract of employment can be made either orally or in writing. However, as a matter of best practice, employers are advised to provide a written employment contract to its employees as it may help employees to better understand the terms of their employment, minimize unnecessary labor disputes and protect the interests of both contracting parties.

If the contract of employment is in writing, the employer must give one copy of the written contract to the employee for retention and reference. If the employer fails to do so, the company may be liable to prosecution and, upon conviction, to a fine of $10,000.

Personal data privacy compliance

In addition to the above, a former employee's personal data may be retained for a period of up to seven years from the date the former employee ceases employment. The data may be retained for a longer period if there is a subsisting reason that obliges the employer to do so, or if the former employee has given prescribed consent for the data to be retained beyond seven years.

As a matter of good practice, the employer should take steps at the earliest opportunity upon the departure of the employee to ensure that only relevant information of the employee is retained to satisfy its retention requirement.

Other requirements

In Hong Kong, there is no collective bargaining legislation, and collective agreements are not common (except for the airline industry). Work councils are also not required in Hong Kong.

Conclusion

As a final note, apart from complying with the requirements set out in the Employment Ordinance, employers are reminded to keep personal and employment records of employees in safe custody and should not disclose the records to outside or unauthorized parties.

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India

Managing employee documentation

Information to be collected

In India, employers are facing challenges with employee record-keeping requirements given numerous labor legislations that govern employee record-keeping and retention. Employers, as part of the hiring process, collect information such as health, medical and financial records for the purpose of payroll processing, candidate screening and more. It must be noted that these types of information are treated as sensitive personal data under the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011, therefore, an employer must be aware of the obligations under these IT rules, including the application of reasonable security practices and procedures for the protection of such information from unauthorized access.

Maintenance of employee records and registers

An employer is required to maintain a variety of registers under the labor statutes, such as a list of employees, their wages and attendance. For the ease of employers and to expedite record-keeping compliance, the Ministry of Labor and Employment announced the Ease of Compliance to Maintain Registers Under Various Labor Laws Rules, 2017, which permit the maintenance of combined registers to satisfy different law requirements. The 2017 rules further allow the maintenance of combined registers in electronic form. However, in respect to labor statutes that are not covered under the rules, employers – even if they choose to maintain data in electronic format – will be required to maintain physical copies of the registers and other records for inspection and documentation purposes. The preservation period for such registers generally ranges between three to six years, and it may differ based on a specific labor statute.

The Government has developed, for easier compliance, a portal in which the employer can maintain the combined registers that is easily accessible by the Government as well as the employer.

Regarding collective bargaining agreements entered between an employer and a trade union representing the worker, the same needs to be in writing and is binding, as per Section 18 of the Industrial Disputes Act, 1947. In the absence of any specific provision dealing with the preservation of documents relating to collective bargaining agreements, an employer may preserve the agreements in the same way it preserves other employee-related records.

Admissibility of electronic records

Section 4 of the Information Technology Act, 2000 grants legal recognition to information maintained by an establishment in electronic mode, provided such information is accessible for subsequent reference. The registers and records that are maintained by an employer in electronic format can be stored in an online data-storage platform, however, they must be easily accessible at all times from the workplace. Accordingly, registers and records allowed under law to be maintained by the employer in electronic form are admissible as evidence. For other registers and records, however, the employer is required to maintain physical copies.

Rights of an employee

An employer is required to provide a reasonable opportunity, if an employee desires, to see his or her information in the registers maintained by the employer. Such access must be provided to the employee at least once a month. Further, employees reserve the right to seek modification to information in the employer's database and to withdraw his or her consent regarding any sensitive personal data. Employers must ensure adequate protection of the information supplied by employees from any unauthorized disclosure.

Best practices

Managing employee documentation can be challenging for employers. In the wake of digitization, it has become important to move toward a regime of online maintenance of employment-related records. The need of the hour is for the Government to amend all labor statutes to allow record maintenance in electronic form and ease the complexity in compliance due to different record-keeping requirements under various Indian laws. This would enable employers to move toward the digitization of records, enabling easier compliance and reducing operating costs.

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Employees' document retention

Italian labor law does not provide general rules on timing and modalities for the retention of all labor law documents.

For instance, employment contracts must be kept by the employer for at least five years from the termination date of the employment relationship. A conservation issue could arise in the event of litigation and, in particular, when the employer needs to prove facts and circumstances. In these cases, the retention obligation becomes a real conservation burden for the employer, which could go beyond the five-year limit, and it is usually around 10 years for many documents related to the execution and termination of the employment relationship.

Moreover, starting in March 2008, the transmission of mandatory communications regarding employment relationships in Italy takes place exclusively through telematic channels. All communications made by online procedures are collected by the public administration in a database, which allows the employer to have rapid access and be able to extract any data in the case of inspections. Thus, there is no obligation for the employer to keep this documentation physically when the wet signature of the parties is not required.

Libro unico del lavoro

The so-called *Libro unico del lavoro* (LUL) allows inspectors to have at their disposal precise documentation on the personnel of a company. All employers are required to keep the LUL, in which they have to register all employees, collaborators, temporary workers and even seconded employees (particularly, their presence at work and their salary remuneration). The current legislation provides that it must be kept for five years from the date of the last recording at the registered office of the employer or, alternatively, at the office of the employment consultants.

Secondment

Decree No. 136/2016 introduced the obligation to keep, for the entire duration of the secondment and for two years following its termination, copies of the employment contracts, pay slips and any related documents. The listed documentation must be kept by the home company, which has to designate a person who resides in Italy – as referent – who has the power to send and receive documents in accordance with the express provisions of the law.

Employees' privacy

As a general rule, in accordance with the EU's General Data Protection Regulation, those who retain labor law documents must respect the principles of privacy, including: (i) purpose limitation, (ii) data minimization and (iii) storage limitation. They must be collected for specified, explicit and legitimate purposes and not be further processed in an incompatible way with those purposes. They must also be kept in a form that permits identification of data subjects for no longer than the purposes for which they are processed.

Conclusion

In a nutshell, despite the absence of a general regulation on the retention of employee documents, it is often necessary to keep the relevant documentation for several years. In any case, from an Italian labor law perspective it would be advisable to have a single regulation to be considered in terms of conservation times and methods for labor law documents.

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Lithuania

No strict rules for managing employment documentation

Employment-related documents

The national laws of Lithuania do not set strict rules on how employment documentation must be managed. However, there are plenty of recommendations and guidelines on how employers should obtain, keep and process employees' information.

The Labor Code of the Republic of Lithuania explicitly obliges employers to retain employment contracts and working-time records only. However, if we look at other national legal acts and guidelines, an employer's obligation for employment documentation management goes much further. The employer must keep an employee's personal file documents, annual leave schedules, reports on secondments, payroll records and more. An employer may also obtain other employee-related data (the employee's driver's license or passport details, medical certificates, data about criminal convictions, etc.) when laws require obtaining such information for certain positions. Although the national laws do not set an exhaustive list of information the employer may collect, the principal of data minimization set by the General Data Protection Regulation (GDPR) should be followed, so only adequate, relevant data that is necessary for employment may be stored.

The Labor Code sets a general rule that documents submitted by one party of the employment contract to the other party must be presented in writing. Cases where data is transmitted via standard IT tools (email, mobile devices, etc.) are considered legitimate as well. The only exception is that the employment contract and other agreements with the employee must be concluded in writing and stored in a hard copy. Thus, all other documents besides employment contracts and their related agreements may be kept in whichever form best suits the employer as long as those are kept safely and protected from unauthorized access. The employer is free to choose whether to store soft or hard copies of the documents, to keep them in the cloud or use archive storage services.

In terms of time limits for keeping employees' information, the employer must follow storage-limitation principles (established in the GDPR) and keep the data in a form that permits identification of the employee for no longer than is necessary. However, private entities may follow the Index of Terms of General Documents Storage as a guideline to determine how long the employment-related documents may be stored. For example, the Index establishes that the employment contract should be stored for no less than 50 years after employment termination; for personal files, it is 10 years after employment termination; CVs and other submitted documents by prospective employees who were not hired must be held one year after the end of the recruitment process; payroll records should be kept for 10 years.

Labor law documents

The same rules and recommendations (with a few exceptions) apply to labor law documents as well. The Labor Code establishes that the employer must adopt various local regulatory acts, such as rules of procedure, job standards, the remuneration system, the policy for protection of the employee's personal data and other legal acts relevant to the social and economic position of employees. Work council documentation should be stored for three years after the end of work council activity; collective agreements must be held 10 years from their termination. Correspondence regarding staff matters should be stored for three years, and documents from commissions that resolve collective labor disputes need to be stored for three years after the adoption of the decision.

Conclusion

Although there are not many strict rules employers need to follow in terms of employment management and labor documentation, employers should pay the most attention to setting appropriate document-storage time limits (which also do not exceed periods set by the laws). They also must make sure all local regulatory acts are adopted and their files are kept up-to-date.

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The challenges of the digital age are ruled by outdated laws.

As the digital age continues transforming the way we interact, practical problems emerge in the labor market: how to store and manage the information and documents of employees? Moreover, what are the implications of concentrating such information outside of the employee's home country or through a third-party vendor?

All those challenges become more complex when the legal framework seems to be behind the digital transformation wave.

In Mexico, there are two main legal bodies that govern the way in which companies must collect, secure and manage employees' information: the federal labor law (FLL) and the federal data privacy law.

Per the FLL, employers are required to keep the following personnel documentation within its files: (i) individual employment agreements; (ii) payroll receipts; (iii) assistance records and (iv) benefits-payment receipts.

In the event of litigation or audit by the Ministry of Employment, a company must submit all of the above documentation. Failure to do so will trigger penalties and liabilities relating to the claims filed either by the authority or the employee in court.

The discrepancy between legal practice and digital-age reality comes exactly when the company needs to produce evidence.

The FLL indicates that documentation evidence can be submitted in electronic form. However, if the evidence is challenged, a forensic diligence must be conducted to confirm that the information exists and that the system that contained it prevents the ability to alter the information; it cannot be vulnerable.

The implications that surround the forensic analysis (complexity, costs, system access to a third party) is the real obstacle that limits the ability to produce sufficient and adequate evidence when hard copies of the information have not been collected.

According to the FLL, employee information must be kept during the labor relationship and up to one year after the contract is terminated.

Now, from a data-privacy standpoint, all the information instrumental for the execution of contracted work can be collected by the employer without restriction, but specific arrangements must be done to disclose the information to a third party.

There are, however, other pieces of information that companies collect based on internal regulations, such as (i) an official identification card or immigration permit; (ii) social security number; (iii) proof of residency; (iv) proof of credential conferred; (v) taxpayer number; (vi) bank account and (vii) resumé, among others.

To be able to secure such information, the company must obtain the employee's written consent.

If such information will be shared with a third party (i.e., payroll company, cloud services), the employer must also obtain authorization from the employee to do so.

Per the statute, the entity that will receive the information assumes the obligations and must fulfill the technical requirements set forth in Mexican law regarding the storage of information.

What's new?

Mexican labor provisions are facing a radical change. The FLL was amended in May 2019 to comply with the renewed commercial agreement with Canada and the United States (USMCA) and some international conventions issued by the International Labor Organization. The reform was based principally on non-discrimination, collective relationships and labor justice. On top of this, the Mexican Congress is seeking to pass a bill regarding outsourcing schemes. Legislative discussion on this topic is expected to occur in late 2019.

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Required employment documents

Every employer is required to save a copy of the employee's identification documents in the payroll administration register. Moreover, Dutch tax authorities require specific personal information from new employees to arrange income tax and national insurance contributions deducted by the employer.

There are restrictions regarding the storage of documents and certain data, including information relating to an employee's medical and criminal history.

An employee from outside the European Economic Area or Switzerland must be in possession of a combined permit for residence and employment. It is highly recommended that employers with this type of employee supervise the possession of the permits. Dutch law forbids the employment of a such an employee without the required permit.

Storage requirements: form

There are no requirements as to the form of storage for documents relating to employment – i.e., this can be either physical or electronic.

Pursuant to the General Data Protection Regulation (GDPR) and Dutch data-protection rules, a certain level of protection for both physical and electronic employment documents is required. For example, the employer must make sure only certain people have access to the files. Also, any transfer of physical employment files to electronic files must take place with due observance of sufficient protective measures.

Storage requirements: location

All employment documentation must be stored in a secured place that has limited accessibility. Any transfer of personal data, especially outside of the European Union, must comply with the GDPR and Dutch data-protection rules.

Legal retention period

The employer has the duty to store an employee's personal data, including name, address, residence and civil status, up to a maximum of 10 years. The legal retention period of a copy of an employee's identification documents is five years after the end of employment.

All employers are required to store documents containing data of tax importance up to seven years after employment ends.

The employer is required to delete any data from the moment the legal retention period expires.

Other documents concerning employment, such as employment agreements, performance assessments and correspondence concerning appointment or dismissal, may be stored up to two years after termination of employment. This period can be extended in case a conflict arises between the employer and the employee. However, the employer is required to delete the data from the moment storage is no longer necessary.

Providing employee access

If requested, any employee must in principle be given access to any personal data and documents that have been compiled about him or her. The employer should grant the employee access within one month after receiving the employee's request. The GDPR and Dutch data-protection rules specify limited grounds to reject such a request and refuse access.

Works council documents

No obligation exists for the works council to store its documentation. It is up to the works council itself to archive its documents.

Collective labor agreements

The Dutch Ministry of Social Affairs and Employment has published all collective labor agreements on a website for consultation. There is no obligation for the employer to store collective labor agreements.

Overall, there are limited requirements regarding employment documentation in Dutch labor and employment law. But with growing public interest in data privacy, it is important for employers to stay on top of future regulation changes.

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New Zealand

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New Zealand rules on employment documentation

All employers should be doing employment documentation properly, but in reality they don't – despite exposing themselves to significant penalties.

What's required to be kept and for how long?

Up-to-date, accurate and detailed records underpin a "good faith" relationship and assist with correctly calculating an employee's pay and leave entitlements. Employers must keep a record of the following for at least six years from termination of employment:

- Employee name, postal address and age (if under 20 years old)
- A signed employment agreement containing specific information (including a description of the employee's role, pay, terms and conditions) and any subsequent variations to that agreement
- Offer letter (if there is no signed employment agreement)
- Immigration visa showing eligibility to work in New Zealand, if relevant
- Employee-completed tax code declaration (IR330)
- Details of wage payments
- Employment start date
- Leave and holiday entitlement anniversary dates

Employees enrolled in KiwiSaver impose additional record-keeping obligations, with employers having to retain the following additional records for at least seven years:

- An employee's contribution rate (at least 3% of salary or wages, and possibly higher)
- Any requests by the employee to suspend or opt out of contributing
- An employee's compulsory and employer's voluntary contributions
- The amount of the employer's superannuation contribution tax deducted from any employer cash contributions made

Form and location

Records can be kept electronically or on paper, and should ideally be in English. Employers have some flexibility over what format records take, but they must be in an easily accessible form and readily able to be printed.

Employee records must be secured and kept confidential. They should not be disclosed without a good and lawful business reason (such as sharing wage information with the person who pays the wages). The Privacy Act reiterates that employers can only collect personal information about employees for valid work purposes or when directed to by the law. Employers must protect the privacy of personal information and not disclose or use it for any other purpose.

Must employees be given access to these documents?

Employers have a legal obligation to make all employment records available to employees upon request. Employers must also make these records available to an employee's union or other representative if requested by the employee. Labor inspectors and immigration officers also have a right to access employment records to verify an employer's legal compliance.

Breaches

If employers fail to keep accurate wage and time records, then the Employment Relations Authority or a labor inspector may issue them a penalty of up to $50,000 for an individual; it could also be $100,000 or three times the amount of financial gain the company made from the breach – whichever is greater.

How long is too long?

While there are legislatively imposed minimum time periods for how long certain documents must be retained, the Privacy Act mandates that personal information must not be retained for longer than is legally necessary. Therefore, employers need to have a document management policy that ensures personal information is destroyed in a timely manner after those minimum time periods are met.

Conclusion

Putting aside the exposure to penalties, the advantages to employers for proper compliance are considerable.

Good records ensure that an employee's role is well-defined and prevents misunderstanding between parties as to rights and entitlements.

It also allows for quicker dispute resolution with employees and prevents the double-handling of remediation required to bring inadequate records up to standard. This has proven beneficial for many employers that have had to remedy holiday-pay miscalculations, particularly when those employees have since left.

Even employers with fully computerized or outsourced payroll software should check them regularly to ensure they generate and retain accurate records.

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Employment documentation management

General legal framework

In Peru, the requirement of conserving labor documents has been established by different laws for three main reasons: (i) to ensure compliance with conditions indicated in the employment agreement; (ii) to prove the execution of all payments that correspond to the employee; and (iii) to conserve information regarding beneficiaries of the employee's social security.

Since companies have a considerable volume of documents related to the above issues, labor legislation allows these documents to be digitized and held in reserve for a specific period.

Conservation of documents required by local law

According to Peruvian laws, labor documents that a company is required to retain are payrolls, pay slips and evidence of having paid the salaries and labor benefits to its employees. The obligation of preserving these documents subsists for five years. This period of five years must be counted from the date of first employee payment.

After this five-year period, the information contained in the payrolls must be delivered to the Social Security Bureau (ONP) in physical form. For the other documents, after this period the employer will be allowed to keep them (digitized in the cloud) or destroy them.

Documents of foreign employees

For foreign employees, the company must keep their labor agreements and documents (degrees, certificates) proving the level of knowledge and expertise of the foreign employee inside their labor files, without a specific retaining period. These documents must be held in physical or electronic form. The company is free to determine if this information is kept in the cloud, hard drives or in paper files.

Protection of the employee's personal labor data

Personal data of an employee can only be processed by the company with prior and informed consent of its owner (except for authoritative concerns) from the beginning until the end of the work relationship.

In the case of sensitive personal data (such as social security information or pension plans), the consent for its treatment must be made in writing. For sensitive and nonsensitive personal data, the holder may revoke consent at any time.

Best practices

Companies are keeping the work documents of their employees electronically, even after the five-year period established by law.

It is recommended to keep the information digitized for an additional period of time in case an employee decides to bring a labor lawsuit against the company in the future or if an authority requests past documentation.

For data-protection purposes, it will be necessary for the company to obtain the consent of the employee to keep his or her information for a long-term period.

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Employment documentation management

Documents relating to all or some employees do not have special requirements regarding their storage methods.

Documents kept

Employee records are divided into personal files and documentation on matters related to the employment relationship.

Personal files consist of:

- Statements or documents collected when applying for employment
- Statements or documents relating to the employment relationship
- Statements or documents related to termination or expiration of the employment relationship
- A notice of discipline and other documents related to the employee's liability

Form of documents

Starting 1 January 2019, records can be kept in both paper and electronic form.

In accordance with the interpretations of the competent national authorities, it is possible to differentiate the form of storing employee records, with some in paper and the other electronic – as long as the integrity of records is kept.

Place of storage

Employee records should be kept in a place where the employer can provide them with the best possible storage conditions.

The way employee records (in paper form) are kept must meet the conditions (including proper temperature and humidity) specified in the Regulation on Storing Personal and Payroll Records of Employees. The exact storage location of documents (cabinets, safes, etc.) must meet the requirements of data security resulting from the General Data Protection Regulation (GDPR) and the Personal Data Protection Act.

Employee records stored in electronic form should be kept and stored in a system that ensures its protection against damage, loss and unauthorized access, as well as the integrity of the documentation.

Period of storage

Starting in January 2019, the retention period for employee documents was reduced from 50 years to 10 years; this retention period applies for persons employed after that date.

In the case of employment relationships established after 31 December 1998 and before 1 January 2019, the shortening of the retention period of employee records depends on the submission of information reports by the employer to the Social Insurance Institution.

Employee's access

The obligation to provide the employee with access to his or her records results from the GDPR and the Personal Data Protection Act: employee records constitute personal data, to which the employee must be granted access upon request.

Conclusion

As of today, employers are still adapting to the new regulations on employee records. State authorities are issuing interpretations on the correct application of the new provisions.

There is a lot of doubt around this topic; the practice may evolve with time, particularly regarding documentation in electronic form.

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Portugal

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On the verge of something new – new trends in employment record-keeping

In Portugal, employment record-keeping has for years been considered by most as a burdensome regulatory duty with little added value, more prone to questions of cost-saving and office-space management than to any sort of strategic HR planning.

Under Portuguese labor law, extensive and detailed employee records are required, the main purpose of which is to verify and demonstrate compliance with mandatory legal standards. Starting with recruitment procedures, companies must keep a record of every job opening and how it was filled, including direct invitations, advertisements, applications received, screenings, applicants interviewed and tests performed. This information is to be kept with statistics by sex (to allow detection of any discrimination) and for a minimum period of five years.

Work time records are also mandatory, which must detail the beginning and end of every working period, as well as any interruptions, and must be kept for five years. It is also required to keep an overtime record detailing the specific date, beginning and end of every period of overtime, the reasons for it, and the signature of the employee after every occurrence. The minimum conservation period is also five years.

These work time records are required even if the employees work mainly out of office or on different work sites and must be deposited in the official workplace on a regular basis. If there is no electronic or biometric log from which the relevant information can be extracted, a specific paper form is required for the overtime record.

As any claims for payment of outstanding overtime work performed more than five years ago must be proven by appropriate company records, there is good reason to implement strict record conservation policies while also not keeping any such records for longer than necessary.

Pay slips and documents regarding payroll are to be kept for a minimum of 10 years.

All relevant documentation regarding terms and conditions of employment – notably agreements, amendments, appraisals, absences and justifications – are to be kept for a minimum period of 10 years, which is also the period of conservation for the mandatory company professional-training plan, which specify the training hours per year and the employee. (There is a duty to grant 35 hours per year of professional training to each employee.)

A specific record of disciplinary sanctions applied to employees must also be kept for a period of 10 years.

For occupational health and safety, multiple records are required, depending on the specific activity in question.

Most of these records can be kept in electronic format and accessible to authorities and employees (when access does not compromise ongoing procedures, such as audits).

What seems to be changing is that all these records represent a substantial source of information about the workforce, labor relations and the organization itself. Tools to extract this useful information from the records – tools that are easy and accessible, that is – have finally became available in the market.

Some of these tools combine the power to efficiently organize the information (in dashboards or spreadsheets) with artificial intelligence resources, allowing the user to seek for unknown or uncharted patterns and causal relations within the information.

As a result, the initiative to invest in the organization and functionalization of employee records is now on the radar of several groups, allowing us to believe we may be on the verge of something new.

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Russia

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Employment documentation management globally

The last few years in Russia have seen a consistent development of electronic document flow encouraged both by business and controlling authorities. The law now accepts electronic signatures, electronic contracts, electronic VAT invoices, electronic accounting source documents and other items. But for all that, electronic document flow is mostly conducted on a voluntary basis, and the actual degree of document digitalization varies depending on the parties involved and the area concerned.

Document flow in employment and labor law remains conservative in terms of digitalization. Under the Labor Code, employment agreements must still be concluded in writing (except for remote workers, with whom it is possible to conclude an agreement electronically, i.e., using electronic digital signatures). Further, the Labor Code requires employees to confirm their work-related documents, which generally document any "work life" event in Russia (such as hiring, relocation, remuneration and termination), with a handwritten signature. Again, exceptions apply only to remote workers, who may process work-related documents through electronic exchange. The law keeps silent on labor law documents (i.e., work council documentation and collective bargaining agreements), however, it is recommended to execute them in hard (paper) copies as well.

Employment documentation executed in hard copies is generally kept in the same format during the lifetime of the employment relationship. Upon the employee's request, the employer is obliged to issue copies of employment-related documents. The law requires such copies to be duly certified, which in practice means that they are also provided in written form.

Upon termination of employment, an employer continues to be responsible for the storage of employment-related documents. The employer's respective obligations derive not only from labor law and legislation on archiving but also from tax and accounting law (with documents related to company payment obligations to state authorities). The storage period varies from four years (for documents required for the calculation, withholding and remittance of tax) to 50 years (for records on personnel).

The general law requirement is to arrange storage that prevents unauthorized access to the respective documents, which may result in unlawful destruction, alteration, blocking or the dissemination of personal data. The documents can be stored not only in hard copy but also electronically. Further, the documents can be kept on company premises, or they can be transferred for storage to the state archive on a contract basis.

The legislation on archiving provides some specific requirements. In particular, all documents must be kept in special rooms constructed or adapted for storage purposes; temperature, light and humidity requirements should be respected.

Electronic employment and labor document flow in Russia is far from being introduced in full, but its obvious advantages seem to be noted by major Russian players and lawmakers. Certain steps are being taken toward digitalization. A package of draft laws being prepared for the State Duma's autumn session would introduce electronic employment books in Russia from 2020; electronic data that employers submit to the Russian Pension Fund will be the primary source for employment information and length of service. From 1 January 2021, employers will maintain paper employment books only for employees who apply in writing by the end of 2020. Those who do not submit written applications will be given their employment books, and their employment information will be maintained for them electronically.

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Serbia

Employment documentation management

According to applicable Serbian regulations, an employer is obligated to keep the following records for each employee individually:

1. Records that contain data on each employee, such as name, PIN, address, date of employment, date of termination, profession and level of professional education, place of work, working time and type of employment (for a definite or indefinite period).

   This record must be continuously updated, from the day that employment commences through termination.

   Additionally, the employee is obliged to inform the employer of any changes to personal data that is contained in this record within eight days from the date of change. This record is kept permanently.

2. A record on employee earnings that contains the possible number of full-time and part-time working hours, total hours worked, total hours that are not completed, total non-working hours for which salary compensation is received (annual leave, public holidays, etc.), gross earnings (for full-time and part-time work and overtime work), net earnings (for full-time and part-time work, overtime work), compensation (paid-leave benefits) and allowances.

   Records on earnings must be updated throughout employment.

   Additionally, the employer is obliged to submit regular reports to the Pension and Disability Insurance Fund in connection to this record. This record is kept permanently.

3. A record on employee assignment to work abroad must be kept only if the employer has assigned at least one employee to work abroad.

4. The record on employed foreigners and employees with no citizenship is to be kept only if the employer has at least one employee who is foreign or a person with no citizenship.

5. A record that contains data on disabled employees performing work and data about employees for whom an imminent threat of disability is determined.

All mentioned records can be kept in digital, physical or both forms. The employer may authorize another legal entity or individual to archive these records.

Finally, all of these records must be kept in accordance with the Serbian Personal Data Protection Law. The law also entitles the employee to have access to every file that contains his or her personal data and to request from the employer changes to incorrect data or to delete data that is collected contrary to the applicable law.

In addition to the above-mentioned records, Serbian employers are obliged to permanently keep employment contracts (and all annexes to the employment contract) of each employee and pay slips in connection to paid earnings.

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Singapore

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Managing employment documentation in the digital age

In April 2016, comprehensive laws relating to the maintenance and retention of employee records were introduced under Singapore's Employment Act to improve transparency in the employer-employee relationship and to minimize disputes and misunderstanding.

Under the Employment (Employment Records, Key Employment Terms and Pay Slips) Regulations 2016 (ER), employers must maintain employee records and itemized pay slips. More specifically, employee records should include the employees' personal information, salary and working hours. Employers must also maintain a written record of the key employment terms (KET) prescribed for workers employed for no less than 14 consecutive days.

In addition to employment documentation with individuals, collective agreements may be negotiated between employers and recognized trade unions. Once successfully negotiated, the memorandum of terms must be made in writing, then signed and delivered to the registrar for subsequent certification by the courts.

Under the ER, employers must retain employment records of current workers going back two years, and former employees require an additional minimum period of one year after their last day. Employee records, KETs and itemized pay slips may be kept in hard copy or digitally. However, employers should ensure electronic records of itemized pay slips and KETs are provided in a way that enables the information to be accessible and usable by the employee for references. Employee records should be freely and easily accessible by the employee.

Employers should be aware that the personal data of employees is additionally accorded protection under the Personal Data Protection Act (PDPA). Under the PDPA, employees have the right to access their personal data in the employer's possession and ask for information regarding the ways in which their personal data has been or may have been used or disclosed within a year prior to the date of the request. (An employer does not need to provide "opinion data" kept solely for evaluative purposes, such as the way an employee is graded.) Further, the employer must cease to retain personal data once it is reasonable to assume that the purpose for which that data was collected is no longer valid, and retention is no longer necessary for legal or business purposes. Since an employee generally has six years to bring an action against an employer, an employer may wish to retain records for up to seven years from the employees' last day of employment, or longer if any investigation or legal proceedings commence during that period.

Practice and trends

In May 2019, the Ministry of Manpower convened the HR Industry Transformation Advisory Panel to develop the HR services sector and support HR professionals in adopting technology. With government incentives promoting digitization, such as the Productivity Solutions Grant, companies can obtain funding support for digital solutions, including HR management systems. As outsourcing becomes more widely available, employers may benefit by outsourcing basic HR functions and focusing its manpower on core functions.

Companies seeking to improve efficiency may onboard HR technologies to automate administrative tasks and enable HR professionals to focus on strategic work. However, as new methods of data retention and storage become available (including cloud solutions, where personal data is stored offshore), employers will face new challenges in an era of data privacy. Moving forward, employers will need to balance digitization with their obligations under the PDPA in respect to employee personal data.

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Slovakia

Every employer in Slovakia is required to keep and retain employee files containing relevant documentation related to their employment. It is kept in written or electronic form, though it is a combination of both depending on the size, nature and technical maturity of the particular employer.

Employment documents that must be retained

Slovak law and the state archive established under the Ministry of the Interior of the Slovak Republic stipulates the list of documents to be held by a company. Specifically, in employment matters, the employer is obliged to keep documents regarding the payroll and HR agenda related to the establishment, duration and termination of employment. Generally, the list of documents to be kept in the personal file contains an employment application, CV, employment contract with its amendments, company car agreement, wage deductions, material liability, agreement on upgrading qualifications, notice of breach of work due to discipline issues, termination, output sheet and employment certificate (or working review).

In general, in light of the data minimization principle under the GDPR, the extent of data held by the employer about the employee is highly debatable. The employer is entitled to keep only the documents that are necessary for the performance of work as well as personal data related to the employee's qualifications and professional experience.

Form of document retention

The Slovak archiving legislation recognizes both paper and electronic files. When changing the format of retention, the employer is obliged to ensure the authenticity of the electronic registry record, integrity of the content, readability of the electronic registry and security of the format-change process. The employer must prove its authenticity by the identification data of the person who changed the format, the date of its execution and the time stamp.

A cloud-based document storage solution is the standard on the market, but it is necessary to select a credible cloud service provider and ensure adequate security and data protection.

Time of retention of documentation

The state archive provides a retention period for archived documents. Again, in terms of the data-privacy legislation, data retention minimization principles should apply – i.e., the employer should keep documents only for as long as necessary under the law or for (internal) legitimate purposes. The generally accepted and recommended period for archiving an employee file is until the respective employee reaches age 70.

Place of document retention

The Slovak archiving legislation does not allow permanent export of physical documents outside of the territory of the Slovak Republic. A temporary export is possible for no more than 12 months and with the approval of the Ministry of the Interior.

Employee access to documents

Labor law in Slovakia allows an employee to access documents held by the employer. The employee has the right to inspect his or her personal file and to make extracts, transcripts and photocopies. Access to the documents must also be given based on the right to access personal data according to the data-privacy legislation.

Conclusion

Employers should comply with their obligation to retain employment documentation for every employee for the statutory period and, after completing this period, to discard it in a legal manner.

If choosing an external provider for archive administration or a cloud service provider of electronic files, employers must impose adequate security obligations and contractual safeguards.

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Spain

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Overview

Correct global document management is essential for businesses to function properly. The following are key elements that companies should consider.

Employment documentation

According to article 21 of Spain's labor infringement law, companies must store the documentation, records or computer media in which employee data has been transmitted. This data includes: fulfillment of employers' obligations; documents related to employees' affiliation; registration/de-registrations or variations in the social security system; contribution documents and supporting receipts for the payment of the employees' salaries; and the deferred payment of benefits. Companies must store this documentation for a period of four years. Not doing so could be considered a minor infraction in the case of labor inspection, and a sanction up to €625 could be imposed.

However, there is important labor documentation that is not included in article 21, which generates many queries to employers regarding conservation. This includes employment contracts, minutes of employee-representative meetings and records of imposed disciplinary sanctions, among others.

Many companies keep documents within the general statutes of limitation associated with them (labor infringement is three years). However, such assumption is incorrect.

From a data-protection perspective, personal data information cannot be maintained for an indefinite period. In fact, personal data cannot be kept longer than necessary for the purposes for which the data is processed, unless there is a different legal, mandatory period of conservation.

Furthermore, article 30 of the Spanish commercial code indicates that documentation must be stored for a minimum period of six years (business-related documentation, specifically).

Considering the above, the abundant regulations oblige companies to retain documentation for different periods of time. Therefore, even if the prescription for labor infractions is three years, we recommend keeping the supporting documentation for at least six years, as indicated by the commercial code.

Please note that the latest obligations to store documentation refer to the monthly summaries of employee's working day records, which must be stored for a period of four years (per article 34 of the Workers' Statute) and, according to inspection criteria, must be found physically in the place of employment. This requirement responds to the need that the registry be accessible to prevent any modifications of the data since the moment it is requested by inspection. If companies do not comply with this requirement, it could be considered a serious infraction, with a fine up to €6,250.

Additionally, there is a new regulation that imposes on certain large companies and corporate groups the obligation to perform a report on the status of nonfinancial information and information on diversity. This report must be easily accessible on the company's website within six months after the end of the financial year and for a period of five years.

Regarding work health and safety documentation, article 23 of the labor infringement law indicates that companies will need to store documentation so it is available immediately to labor authorities, if requested.

Documentation form

Today the trend is to reduce paper use. Documents can be kept in electronic format as long as companies can guarantee the authenticity of their origin and the legibility of all their contents.

Location

Employers can store documentation in electronically scanned copies or in an IT server, provided that the company can prove its authenticity and can easily access the documentation.

From a data-protection perspective, the electronically scanned copies of specific documentation can be stored in an IT server located in a foreign country under certain conditions, which are outlined in the General Data Protection Regulation.

Employees or employee representatives

Employees must have access to documentation regarding their employment relationship. However, even if the employee keeps the documentation stored, this does not absolve the employer from keeping copies of the documentation.

Conclusion

All in all, it is important to efficiently manage all of this information to have it available at any time, especially in cases of labor inspections.

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Employment documentation management

An employer retaining data on its employees is responsible for processing personal data in accordance with the General Data Protection Regulation (GDPR).

Employers are required by law to retain certain records relating to their workforce, some of which are detailed below.

Documents kept

Payroll records
An employer must retain records showing what an employee is paid and any salary deductions, tax-code notices or taxable benefits, as well as any employee leave (e.g., vacation or sick leave).

Pension and insurance
Any personal details, gross earnings, pension contributions and insurance premiums payable by the employer must be retained to ensure compliance with legal or contractual obligations.

Working-time regulations
An employer should retain records showing whether the rules on average working time, night work and rest periods are being complied with, pursuant to the Swedish Working Hours Act.

Health and safety obligations
Under the Work Environment Act, an employer must also retain information for purposes of fulfilling its health and safety obligations, such as details of injuries, accidents and any occurrence of illness in the workplace, which all need to be reported to the Swedish Work Environment Authority.

Form and storage of documents

There are no particular legal requirements regarding the format, location or way that the employee documents are stored.

An employer must, however, inform an employee of the ways in which his or her personal data may be processed, including any third party to which the personal data may be transferred. If an external party, i.e., a company outside the company group, stores the data, the name of that company must be provided to the employee.

As such, the employee will be notified if someone other than the employer will have access to personal data or if the central resource is located in a country that does not observe the same data-protection standards. This is usually done by way of a data-protection policy or an employee privacy notice.

Employee access

An employee has a right to access the personal information held by his or her employer. The information must be given free of charge and in a readily available format.

Retention periods

Employers should have a process in place to review employee data on a regular basis, including procedures for deleting data after a specific time period.

Under the GDPR, an employee has "the right to be forgotten," implying that upon the employee's request, the employer must delete any such personal data relating to the employee.

Such a request can be made if the data processing is no longer necessary, if it has been unlawfully processed, or if the employee objects to the processing and the employer cannot show overriding legitimate grounds to continue the processing of personal data (in circumstances where the processing is based on a "legitimate interest" analysis).

While an employer's legitimate interest to process data on an employee generally ceases post-termination, in some cases personal data may be processed even after the employment has ended, e.g., when an employee has been terminated due to redundancy and has a legal right to re-employment. In such cases, the employer may retain information on the employee for the purpose of fulfilling its legal obligations.

Any salary details and bonus calculations may be retained up to 10 years until potential claims are time-barred.

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Employment documentation management

Personal file data

Every employer is obliged to record personal files, which should at least consist of the employee's (i) personal data, (ii) work and residence permits, (iii) application data, (iv) contracts and agreements, (v) qualifications and education, (vi) performance reviews, (vii) reference letters, (viii) vacation and absences, (ix) payroll data, (x) relevant correspondences and (xi) sanctions and disciplinary measures.

Safekeeping and access

Since no specific statutory regulations apply for personal file retention, such data may be maintained both in hard copy and electronic form. To mitigate increased evidence risks related to sole electronic-file safekeeping, it is strongly recommended to adhere to the same formal requirements existing for the proper retention of accounting records. Thus, all electronic file data should be complete, accurate, available and readable, and all changes should be trackable at any time. To ensure the data's full integrity and authenticity, the procedure of digitalization should be documented accordingly (e.g., with a detailed documentation of the scanning process). The employer further must comply with all applicable data-protection and information security regulations since personal files consist of highly sensitive data.

Respecting these safekeeping and data-protection principles, the employer may also store files abroad with a third-party or on a foreign cloud server, provided that the host country has an adequate data-protection level.

Regarding the safekeeping period, no statutory deadlines exist. However, the interests of data protection (no longer than required) and legal certainty (10 years for the statutory limitation of employee claims) must be balanced. In practice, it is advisable to classify and cluster documents and ascertain different safekeeping periods accordingly. As a rule, a five-year period for all personal data should be appropriate, subject to payroll data, which must be kept for a minimum of 10 years. During these periods, the employee has a legal right of access to his or her personal file at any time (without cause).

Complete digitalization

Digital personal files, which in the end consist of qualified scans of each original document, are becoming fairly standard. Employers are, however, looking more and more for a digitalization not only of the personal file but also of the entire employment document life cycle. Such a holistic implementation is often still hindered by outdated legal regulations or missing technical solutions required to overcome statutory formal requirements. For protection, specific conditions of the employment contract (e.g., overtime, probation period, intellectual property rights, non-competition clause) require handwritten signatures or equivalent, qualified electronic signatures. Since not all employee candidates are able to meet respective requirements for software (e.g., a certified key) or hardware (e.g., electronic pen), digitalization of the entire employment life cycle often stops at the hiring stage.

Conclusion

Digitalization of personal files is feasible, and certain reservations are limited. The future, however, clearly belongs to fully digitalized employment document management. Yet its legally compliant implementation, in principle, still requires either law or (more likely) technical changes, unless respective legal risks have been carefully evaluated and mitigated in advance.

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Employee documentation management

All employers are obliged to collect certain pieces of data relating to their employees for statutory purposes and to demonstrate compliance with legislative obligations, including (but not limited to):

- Working hours
- Tax/national insurance
- Annual leave and pay
- Remuneration
- Sick pay
- Accident, injuries and dangerous occurrences

Other employee data, such as employment contracts, should be kept by employers as a matter of good practice. Keeping and maintaining this employee data will not only assist employers with the day-to-day running of the business — it will also act as evidence in the event of a potential dispute, claim or investigation. However, collecting and maintaining information about employees will often involve processing their personal data, which is defined under the General Data Protection Regulation 2018 (GDPR) as information that relates to an identified or identifiable individual. Personal data could be as simple as a name or number.

In processing employees' personal data, employers must act in accordance with the European Union's GDPR and the UK's Data Protection Act 2018 (DPA), which implements the GDPR in the UK. Employers will be acting as data controllers (defined under the GDPR) and must therefore comply with the prescribed data-protection principles as set out in the GDPR. The protection afforded by this legislation covers employees, job applicants (successful and unsuccessful), agency workers, casual workers, and volunteers and interns.

There is no prescribed form in which HR records or employee documents must be held under UK law. These documents can be held in either paper or electronic form, or both. There is also no requirement for employers to store documents in a certain location. However, the data-protection principles dictate that employers should ensure they securely store employees' personal data. Therefore, whether stored electronically or physically, employers should make sure there are adequate technical and organizational measures in place to safeguard employee personal data.

Under the GDPR and the DPA, employees have the right to make a subject access request (SAR) to gain access to any of their personal information held by their employer. An employer is obliged to act on the SAR without undue delay and, in any event, provide the information requested under an SAR within one month of receipt of the request (subject to a possible extension of a further two months if the request is complex). Under the GDPR, employers are no longer entitled to charge a fee for dealing with an SAR unless the request is manifestly unfounded or excessive, or if the employee requests further copies. Neither the GDPR nor the DPA prescribe any retention periods for employee personal data, however, the GDPR's data-protection principles state employers should retain personal data for no longer than is necessary for the purposes for which the data is processed (subject only to limited exceptions). Therefore, employers must determine their own time limit for retaining such documents, subject to the data-protection principles and within the constraints of any other specific legislative and best-practice requirements. If it is not possible for employers to determine a specific period for which employee personal data will be kept, they must be able to demonstrate the criteria used to determine how long the personal data will be retained and the reasons for continuing to do so. Employers should consider business needs and use a risk-analysis approach when retaining and deleting records relating to employees. It is recommended that employers appoint an individual responsible for managing the retention of employment records and conducting regular audits to ensure no personal data is retained longer than is necessary.

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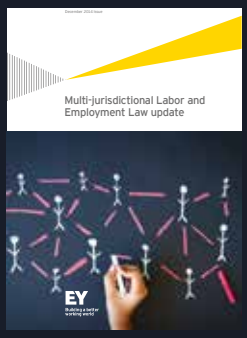

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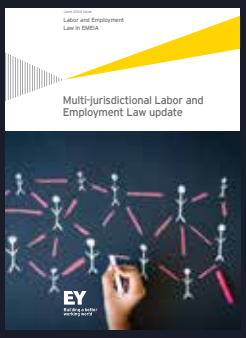

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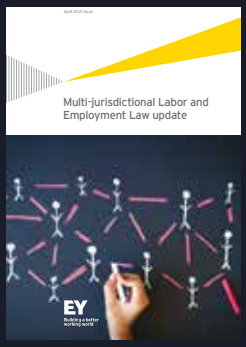

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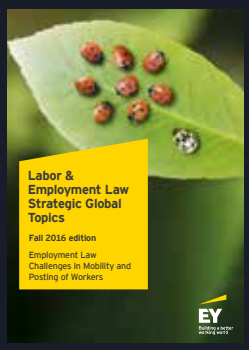

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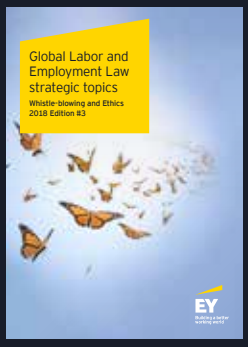

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