

# It's time to review (or create) your document retention policy

Worried that your company might not have a particular document on hand if the IRS conducted an audit? Scared that producing relevant evidence in a former employee's wrongful termination lawsuit would be difficult because written warnings and performance appraisals are buried among mounds of other paperwork?

Smart businesses ease such concerns with proactive measures. They create a document retention policy that clarifies what needs to be saved, where, and for how long. Sticking to a set record retention policy eliminates guesswork and promotes efficiency. People can find what they want when they need it without hassle.

Defining what types of documents your organization must keep as a record, their retention period, and their destruction policy also gives your organization credibility in the eyes of outsiders. Courts and government agencies frown upon individual employees selectively keeping or tossing important documents. Such action raises concern about cover-ups. When you can show a thoughtful, standardized records management procedure to a relevant third party such as a lawyer or auditor, it backs up your decisions.

Businesses and nonprofits of all sizes should possess a written-out document retention policy. As you construct or perfect yours, take the following into consideration.

## **The importance of a records retention policy team**

Developing recordkeeping requirements and retention schedules is far from a one-person endeavor. Creating an effective documentation retention policy involves reviewing company and human resources requirements, state law, federal law, industry and governmental regulatory requirements, and insurance policies. Assembling a team that approaches the process from different angles and spheres of expertise can prove valuable.

Input from senior management, human resources, and the record-keeping department is a must. Likewise, with the number of electronic records kept nowadays, include representatives from the IT department. They can address concerns related to storage, automation, security, back-ups, and destruction of documents. As financial statements, tax returns, and similar types of records will be a concern for all organizations, including your CPA or a similar accounting professional on the team is a smart move.

Legal consult proves especially helpful in matters involving the organization's litigation hold policy. Their advice places a legal hold on physical and electronic records that should not be deleted because of potential future use. This forward-thinking measure may, for instance, preserve records pertaining to an employee who has expressed concern about harassment in case he or she later takes the matter to court.

## **Document retention requirements for common business records**

Each business and nonprofit needs to look at its own situation to develop accurate document retention schedules. Factors such as industry and the state in which the organization is located can come into play.

When constructing your policy, examine legal and regulatory guidelines. They provide a good foundation for establishing what types of records you need to keep and for how long. Always research rather than assume. Requirements may prove surprising.

As a starting point, consider what these organizations say about some major types of records to keep and for what length of time:

### **Per the [Internal Revenue Service](#):**

The length of time you should keep a document depends on the action, expense, or event which the document records. Generally, you must keep your records that support an item of income, deduction or credit shown on your tax return until the [period of limitations](#) for that tax return runs out. The period of limitations is the period of time in which you can amend your tax return to claim a credit or refund, or the IRS can assess additional tax.

Keep records relating to property until the period of limitations expires for the year in which you dispose of the property. You must keep these records to figure any depreciation, amortization, or depletion deduction, and to figure your basis for computing gain or loss when you sell or otherwise dispose of the property.

If you have employees, you must keep all [employment tax records](#) for at least 4 years after the date the tax becomes due or is paid, whichever is later.

Keep copies of your filed tax returns permanently.

### **Per [U.S. Citizenship and Immigration Services](#)**

Never dispose of a current employee's Form I-9; you must keep it for as long as the employee works for you, and for a certain amount of time after they stop working for you. This requirement applies even if the employee ends employment shortly after you hired them. Only when an employee stops working for you should you calculate how much longer you must keep their Form I-9. Federal regulations state you must retain a Form I-9 for each person you hire for three years after the date of hire, or one year after the date employment ends, whichever is later.

### **Per the [U.S. Department of Labor](#)**

Employers covered by the [Family and Medical Leave Act](#) (FMLA) are required to make, keep and preserve certain records pertaining to their obligations under the law. (See website for specifics.) Employers must keep the records specified by FMLA regulations for no less than three years and make them available for inspection, copying and transcription by DOL representatives upon request.

Under the [Fair Labor Standards Act](#) (FLSA), every covered employer must keep certain records for each non-exempt worker (see site for specifics). The Act requires no particular form for the records, but does require that the records include certain identifying information about the employee and data about the hours worked and the wages earned. Each employer shall preserve for at least three years payroll records, collective bargaining agreements, sales and purchase records. Records on which wage computations are based should be retained for two years, i.e., time cards and piece work tickets, wage rate tables, work and time schedules, and records of additions to or deductions from wages.

### **Per the [U.S. Equal Employment Opportunity Commission](#)**

All Personnel and Employment Records made or used (including, but not limited to, requests for reasonable accommodation, application forms submitted by applicants, and records dealing with hiring, promotion, demotion, transfer, lay-off or termination, rates of pay, compensation, tenure, selection for training or apprenticeship, or other terms of employment) must be preserved for the following periods:

- Private employers must retain such records for one year from the date of making the record or the personnel action involved, whichever occurs later, but in the case of involuntary termination of an employee, they must retain the terminated employee's personnel or employment records for one year from the date of termination.
- Educational Institutions and State and Local Governments must retain such records for two years from the date of the making of the record or the personnel action involved, whichever occurs later, but in the case of involuntary termination of an employee, they must retain the terminated employee's personnel or employment records for two years from the date of termination.

Where a charge of discrimination has been filed under Title VII, the ADA, or GINA, or where a civil action has been brought by the Commission or the Attorney General, the respondent private employer, state or local government employer, educational institution employer, labor union, or apprenticeship committee must retain all records related to the charge or action until final disposition of the charge or action.

Plenty of other factors will influence your document retention policy, too. Know how the [Sarbanes-Oxley Act](#) affects the recordkeeping of publicly traded companies. Become familiar with [Occupational Safety and Health Administration](#) (OSHA) recordkeeping requirements as they pertain to your organization. Figure out what documents need to be kept for potential insurance claims. Identify items to archive for permanent retention, such as licenses, incorporation records, permits, patents, charters, training manuals, and annual reports.

For further assistance in thinking about which records to keep and for how long, see Business Management Daily's [Record Retention Schedule Guidelines for Every Office Document](#).

## **The Uniform Preservation of Private Business Records Act (UPPBRA)**

Even the most diligent document retention policy teams may end up with some records for which they are unsure of the period of time to keep. When this happens, the Uniform Preservation of Private Business Records Act serves as a guideline.

UPPBRA basically states that businesses should keep records not covered under statute-specific retention periods for at least three years. Document your search efforts to find the pertinent legal requirement, and note that you invoked this three-year retention period when unable to obtain an answer. Then, if you missed a legal requirement during your search, you have documentation to show the judge or regulatory agency that your organization had made a good-faith effort to comply with the law.

## **Other considerations**

Do not go through all the trouble of creating a document retention policy only to bury it somewhere. Problems can arise when employees are left to their own devices when handling records. They may keep everything for fear of inadvertently destroying something that should be retained. Or, they may be too quick to dispose of something that to the untrained eye looks old or unnecessary.

Do not expect employees to inherently know what stays and what goes. A good company records policy defines what your organization considers a business record. Basically, the term refers to evidence of business-related activities, such as events, transactions, discussions, and communications. Some types of business records, such as tax forms and legal documents, are relatively easy to spot. Others, such as emails and social media posts, are not so obvious. Be certain employees know not only your organization's precise definition of a business record but also the various forms such records may take.

Finally, realize that document retention policies may need revision over time. Members of your policy team should stay aware of new laws or other changes that impact what you keep and for what length of time.