

Records retention: What to keep, what to toss

Small business owners usually aren't human resources professionals. Figuring out how to effectively — and legally — manage your personnel records is often a daunting task. But, developing a records retention schedule will ensure that a small business keeps the records it needs for operational, legal, fiscal or historical reasons, and then destroys them when they're no longer useful. You may base your records retention schedule on your own experience and research of legal mandates or on what other companies are doing.

Whatever your method, use your retention schedule as a guide, not as an executioner. Retain records longer if litigation, a government investigation or an audit seems likely. In the event that a legal action does transpire, immediately cease all disposal activities.

You have to know what you have and how long to keep it — legally and for your own business purposes — before you can establish an efficient records management system. That's why it's important to inventory your records and draw up a company retention schedule.

Don't forget to look into state and local statutes of limitations, as well as regulations of government agencies that pertain to your business. State retention statutes vary widely on tax, unemployment and workers' compensation records, as well as on environmental and other requirements. As an extra safeguard, have your CPA and your attorney review your records retention timetable before putting it into practice.

Timetable Tips

- Don't be a "just in case" hoarder; store records only for legal, operational or archival reasons.
- Retain and destroy documents systematically.
- Segment records according to a retention timetable.
- Don't retain unscheduled temporary materials, such as drafts, reminder notes, work sheets or extra copies.
- Don't hang onto documents just for their sentimental or public relations value. Information must earn its keep, like any other asset. A comprehensive record of the past that fosters a "company memory" can be an asset, but be sure to minimize your legal liability while doing so.

When No Requirements Exist . . .

What can you do if a law does not state a specific retention period? This is not uncommon. There may not be a stated legal requirement for certain records, or the requirement may not include a specific retention period.

How do you deal with this quandary? Under the Uniform Preservation of Private Business Records Act (UPPBRA), whenever a law does not specify a retention period, businesses should keep their records for three years. If you destroy them sooner, you risk subjecting your organization to legal problems. However, only eight states have adopted this act or something equivalent.

How long should you keep records if you cannot locate any legal requirements referring to them?

Assuming your legal research was thorough, it is best to maintain the records for three years. You must, however, document your search effort and the assumptions you used to set the three-year period. 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.