

General Data Protection Regulations – Keeping records

As part of the General Data Protection Regulations coming into force on 25th May, employers will need to be able to show compliance and part of this will be showing that you do not keep data longer than is necessary – so you should have in place a data retention policy for your business setting how long you keep data for.

The basic rule is that employment records should only be kept for a particular purpose and should not be kept longer than is necessary for that purpose. How long is necessary is not always clear but it is balancing the risks and liabilities associated with keeping or destroying information.

For example, an employee generally has 3 months and occasionally 6 months to bring an employment tribunal claim, so looking at the risks, a decision may be made that most employment records are deleted six months or so after the termination of the employment, particularly those documents which could be described as mundane.

However, some information must be kept much longer – such as information relating to future personal injury claims for which a 6 year period may be appropriate although in some circumstances much longer may be advisable. Payroll and wage records must be kept for six years from the financial year end in which payment were made (Financial Act 1998) and immigration checks should be kept for two years after the termination of employment.

There are other set or advised retention periods. As indicated above, there may not necessarily be one set answer to “how long” but businesses should have a policy in place which sets out their practices.

Remember that when deleting data, it must go from all places where it is stored. If an email about a job applicant has been circulated around members of the business, then all recipients must be aware of the data retention policy and the date when it should be reviewed or deleted.

Basic Rule

Employment records should only be kept for a particular purpose and should not be kept longer than is necessary for that purpose. This includes information on job applicants

How long to keep?

You should not keep employment information “just in case it comes in handy” – but instead make a risk-based assessment of what needs be retained and for how long.

Consider how long is necessary

Guidelines on retention periods are set out in the table later in this document but as an employer you need to consider:

- What is the information used for?
- What is the current and future value of the information?
- What are the risks and liabilities associated with keeping or destroying it?

For example, an employee generally has 3 months and occasionally 6 months to bring an employment tribunal claim, so looking at the risks a decision made be made that most employment records are deleted six months or so after the termination of the employment record, particularly those documents which could be described as mundane. You may prefer to allow a slightly longer period because occasionally a claim could be made “out of time”. Various documents must be kept longer under specific legislation.

- How easy is it to keep the information accurate, up to date and secure?
- Are there any legal, regulatory or professional requirements as to the length of time the record is kept?
- Is the information relevant to future legal claims and what are the time limits?
Consider any special circumstances such as if an under 18 has had an accident or if an accident resulted in a head injury and whether is there an identifiable risk of a contractual or personal injury claim.

Procedures to have in place

Put in place a policy on the deletion of records – the time periods should vary according to the particular type of information

Put in place procedures where by the retention periods you decide upon are followed consistently and that no one retains information beyond these periods unless there is a compelling reason to do so

Put in place systems (ideally automatically for online data) for deleting information at the end of a retention period or flagging it up for review

Ensure that retention periods and criteria are communicated to employees in privacy notices – if it is not possible to specify a retention period for a particular type of claim, then state the criteria by reference to which the retention period will be determined. Further information and template privacy notices will be provided by the NTF in due course.

Guidance on retention periods

Type of Employment Record	Retention Period or Recommendation
Records to show compliance with the Working Time Regulations	Two years after the relevant period (Working Time Regulations)
Payroll and wage records for companies	Six years from the financial year end in which payments were made (Financial Act 1998)
PAYE records	At least three years after the end of the tax year to which they relate (Income Tax Regulations). However it may be sensible to keep them for six years as they may fall within pay roll and wage records.
Maternity Records	Three years after the end of the tax year in which the maternity pay period ends (SMP Regulations)
Any reportable accident, death or injury in connection with work	For at least three years from the date the report was made (Reporting of Injuries Regulations)
Records in relation to hours worked and payments to workers	Three years beginning with the day upon which the pay reference period immediately following that to which they relate ends (National Minimum Wage Regulations)
Immigration checks	Two years after the termination of employment (Immigration Asylum and Nationality Act)
When considering future legal claims from employees note that:	
Employment Tribunal claims	Most claims have to be brought within three months or occasionally six months
Workplace Injury Claims	Generally someone over 18 has a three year time limit (but for industrial diseases the time limit does not generally start until the individual knows they have the disease) But bear in mind special circumstances - anyone with head injury may be deemed to lack full litigation capacity so no restriction on time they can claim and the limitation period can be extended by the court so would suggest looking at keeping such records for 5 – 6 years and if under 18 or head injured / learning disabled for longer

Breach of contract claims	These have a six year time limit – whilst most employment records so pay, terms and conditions etc could potentially be relevant to a breach of contract claim, you should not keep information just in case
Paid sickness (more than four days) and Statutory Sick Pay	3 years after the end of the tax year to which they relate – this is a provision under The Statutory Sick Pay (General) Regulations 1982