

# 7 REASONS WHY YOU NEED AN EFFECTIVE RECORDS RETENTION PROGRAM

Insights

Jun 16, 2023

It's not uncommon for some employers to ask *"Why do I even need a records retention program? It's relatively cheap and easy to store everything electronically – and we won't have to deal with the headache of determining the retention period for every document we have."* But while it might seem easier to just keep every document, the benefits of an effective records retention program far outweigh the effort needed to categorize and store records appropriately. This Insight provides you seven reasons why you need a records retention program and explores some of the benefits and business efficiencies you can gain.

## First Things First: What Laws Apply?

First, it is important to recognize that you are required to maintain several types of records for precise time periods under federal, state, and/or local laws and regulations. Failure to maintain records for at least the minimum period of time required can subject you to fines and potentially adverse inferences. Depending on a number of factors, including the nature of your business and your size, some laws and regulations to consider include:

- **Age Discrimination in Employment Act – The ADEA** requires many employment records be maintained for one year, but specifically requires keeping payroll records for four years.
- **Equal Employment Opportunity – EEO** requires that employers keep all personnel or employment records for one year. If an employee is involuntarily terminated, their

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personnel records must be retained for one year from the date of termination.

- Employee Retirement Income Security Act – ERISA requires benefit plan information be maintained for six years.
- Fair Labor Standards Act – Under the FLSA, employers must retain payroll records, collective bargaining agreements, sales, and purchase records for three years.
- Family and Medical Leave Act – Requests for leave, company responses, physician certifications, and other FMLA-related documents must be maintained for three years after the leave ends.
- Occupational Safety and Health Act – OSHA records must be kept for five years following the end of the year to which they relate and 30 years for medical exams or employee exposure records.
- California Consumer Privacy Act – The CCPA requires that businesses maintain records of consumer requests made pursuant to the CCPA and how it responded to the requests for at least two years.

This is by no means an exhaustive list. Other agencies with record retention requirements include the Internal Revenue Service (IRS), the Environmental Protection Agency (EPA), and state taxing authorities.

It is important to conduct the appropriate analysis to determine which laws and regulations apply to your business and operations. In addition, you should take other factors into consideration such as any applicable statutes of limitation and industry-specific requirements (such as licensing retention obligations).

## **7 Reasons to Adopt A Robust Records Retention Program**

Knowing what data and records you have in your possession – including with whom it is held – and for how long it needs to be retained, is critical for remaining in compliance with applicable laws. It is also a best practice. Here are seven reasons why you shouldn't ignore records retention laws and practices.

### **1. Retaining Documents Too Long Could Come Back to Haunt You During Litigation**

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Records retention programs provide employers with an efficient system to manage company records which includes the ability to destroy records that are not legally required to be maintained. Ask most management employment attorneys and they will have horror stories of dealing with potentially damaging records which should have been destroyed years earlier if the company had only implemented an effective records retention program.

The lack of an effective records retention program can also increase discovery costs exponentially. Lawyers will need to expend hours reviewing your individual laptops, hard drives, company servers and cloud service providers, in addition to physical documentation, to locate relevant records. If these records are maintained in chronological order, the attorneys will need to spend even more time searching for the proverbial needle in a haystack. Moreover, if a document is somehow discovered by opposing counsel after you claimed it did not exist, you could also face with significant sanctions.

## **2. Enables Best Information Security Practices**

Businesses often collect large amounts of data, some of which may be considered sensitive. Improper management and data governance practices can create security concerns and increase risk and exposure to data breaches or other security and privacy related issues. Understanding the type and amount of data held is critical to ensuring compliance with your legal obligations to implement and maintain the requisite security measures.

Maintaining consistent and compliant practices for retention and storage also helps ensure access is limited to those with a "need to know." And it can provide a paper trail of who may have accessed confidential and proprietary information. An effective records retention program also includes the proper destruction of records at the appropriate time.

## **3. Limits Storage Capacity**

The lack of an effective records retention program can result in duplicating storage of the same records in numerous places. This can increase costs and the administrative burden to track the various locations of where records may be stored.

## **4. Introduces Cost Savings and Operational Efficiency**

Destroying unnecessary records and data will reduce costs otherwise devoted to storage, and proper organization of documents will reduce the amount of time it may take to find relevant records – thereby leading to operational efficiencies. You must consider the records that are necessary for effective business processes and activities, including oversight of simple matters such as document version control.

## **5. Helps With Effective Decision-Making**

Document retention supports efficient decision-making, especially when older records are needed to inform new policies and plans, or previous assessments and determinations need to be efficiently recalled to review the rationale for a prior initiative or corporate directive. In the absence of an effective indexing and storage system, your “institutional memory” can be essentially lost – even though all the records may exist in one form or another.

Effective records management also enhances consistency between your various operational locations in addition to historical consistency. Employees in one location can access business records generated at a different location to assist in decision making at their operational unit supporting company-wide uniformity.

## **6. Boosts Legal Compliance**

As noted above, all businesses have mandatory record retention requirements. Failure to comply with the requirements can result in penalties and fines. In the absence of an effective records management system, your organization cannot ensure proper compliance with its obligations. Considerations also include the ability to comply with a document request by an enforcement agency or in litigation.

## **7. Supports Your Remote Work Environment**

The above considerations are magnified by the remote work environment. The absence of a well-enforced records retention program leaves many employees with no direction regarding retention requirements. Employees working with limited management supervision may be deleting documents that need to be retained under federal law or pursuant to a legal hold, storing records permanently on their laptops. Or worse yet, printing and storing company

records in personal filing cabinets. A well-designed records retention program can provide clear parameters for the creation, storage, and destruction of company records – especially in remote work settings.

## **Conclusion**

A well-run records retention program can not only save money and promote efficiencies, but also mitigate risk. If you have questions regarding best practices for developing and implementing a records retention program, please reach out to your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [Corporate Compliance and Governance Practice Group](#). Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information on this and other employment topics directly to your inbox.