

Global Requirements for Personnel Records

William Saffady

www.saffady.com

wsaffady@saffady.com

Introduction

- ◎ Summarizes findings from a study prepared for the ARMA International Educational Foundation (AIEF)
- ◎ Report will be available at www.armaedfoundation.org.
- ◎ A companion piece to a previous study of global retention requirements for accounting records.
- ◎ Like accounting records, personnel records are created and maintained by virtually all organizations in every location where they operate.
- ◎ Focus on legal and regulatory requirements for personnel records—operational requirements not considered



Audience

- Multi-national organizations – HQ in one country with branches or subsidiaries with employees in other countries
- Transnational organizations – Autonomous operations with employees in multiple countries
- May be corporations, partnerships, universities, cultural institutions, scientific and medical research organizations, scholarly and professional associations, charities, religious groups



Definition

- ⦿ Any records that employers maintain about individual employees
- ⦿ May contain information about one employee or multiple employees, provided they are individually identified
- ⦿ May contain personal or job-related information.
- ⦿ Includes personnel files—i.e., records saved in paper or electronic folders
- ⦿ Also databases, registers, notebooks, disciplinary reports
- ⦿ Omits pension records, workplace injury or illness records
- ⦿ Limited to employer records—omits government agencies, employment agencies, labor unions



A Global Study

- ◎ Estimates of the number of countries range from 193(U.N. members) to 249 (ISO 3166)
- ◎ Report covers 194 sovereign states
 - 192 U.N. members, omits Democratic People's Republic of Korea
 - Omits Holy See, which has noncommercial economy
- ◎ Also covers 8 dependent territories: Bermuda, Cayman Islands, Gibraltar, Guernsey, Hong Kong, Isle of Man, Jersey, and Macau
- ◎ Total of 202 countries and dependent territories



Unitary vs. Federated Countries

- Unitary state
 - Central government issues national laws that apply to entire country or dependent territory
 - Authority of subnational jurisdictions limited to administrative matters
 - 176 of 202 countries and dependent territories
- Federated country
 - Central government shares legislative power with subnational jurisdictions – states, provinces, territories
 - Examples: U.S.A., Canada, Mexico, India, Australia
 - Study limited to national laws
 - Subnational jurisdictions may specify additional requirements



Legal Sources

- ◎ Employment legislation—all countries
 - Unified labor code
 - Principal source for recordkeeping requirements
 - Relatively easy to identify
 - May be supplemented by rules or regulations that guide implementation
 - Recordkeeping requirements scattered in multiple sources
 - 6 to 8 relevant laws and regulations typical, but some countries have more than a dozen
 - Must be identified and individual examined—may need to consult secondary sources



Legal Sources

- ◎ Electronic recordkeeping laws – two-thirds of countries
 - May be called electronic transactions laws, electronic document laws, or electronic commerce laws
 - Address legal status of electronic records
 - Apply to personnel records unless overridden by other laws
 - Address ability of electronic records to satisfy retention requirements
 - Also address admissibility of electronic records in evidence
 - Electronic signature laws have more limited scope—evidentiary issues only



Legal Sources

● Civil codes

- Specify statutes of limitations (periods of prescription) for legal actions
- Labor laws typically specify statutes of limitations for claims related to violations of employment laws
- But may need to consult civil code in some countries



Legal Sources

- Privacy and data protection laws – two-thirds of countries
 - Specify requirements and restrictions for collection, retention, and disclosure of personal information
 - Apply to personnel records that contain personally identifiable information about employees
 - Models
 - EU Directive 95/46/EC
 - General Data Protection Regulation



Country Information

- Content of personnel records
- Retention of personnel records
- Format / storage medium for personnel records
- Storage locations for personnel records
- Access to and disclosure of personnel information
- Time limits for dispute resolution



Content Requirements

- Employers must document employment relationship with individual workers
- Laws and regulations specify the types of information to be created, collected, and maintained about each employee
 - Personal information: name, address, date of birth, gender, nationality
 - Job information: job title, description of duties, education or qualifications, working hours, work location, leave entitlement, remuneration, starting date, termination date



Content Requirements

- 28 countries require employers to maintain a separate file for each employee—typical of Middle Eastern countries, also Eastern Europe
- Most countries require a register, notebook, or other record
 - Employer's register
 - Register of working hours, including overtime, leave taken, and wages paid on specific dates
 - Separate registers for underage employees



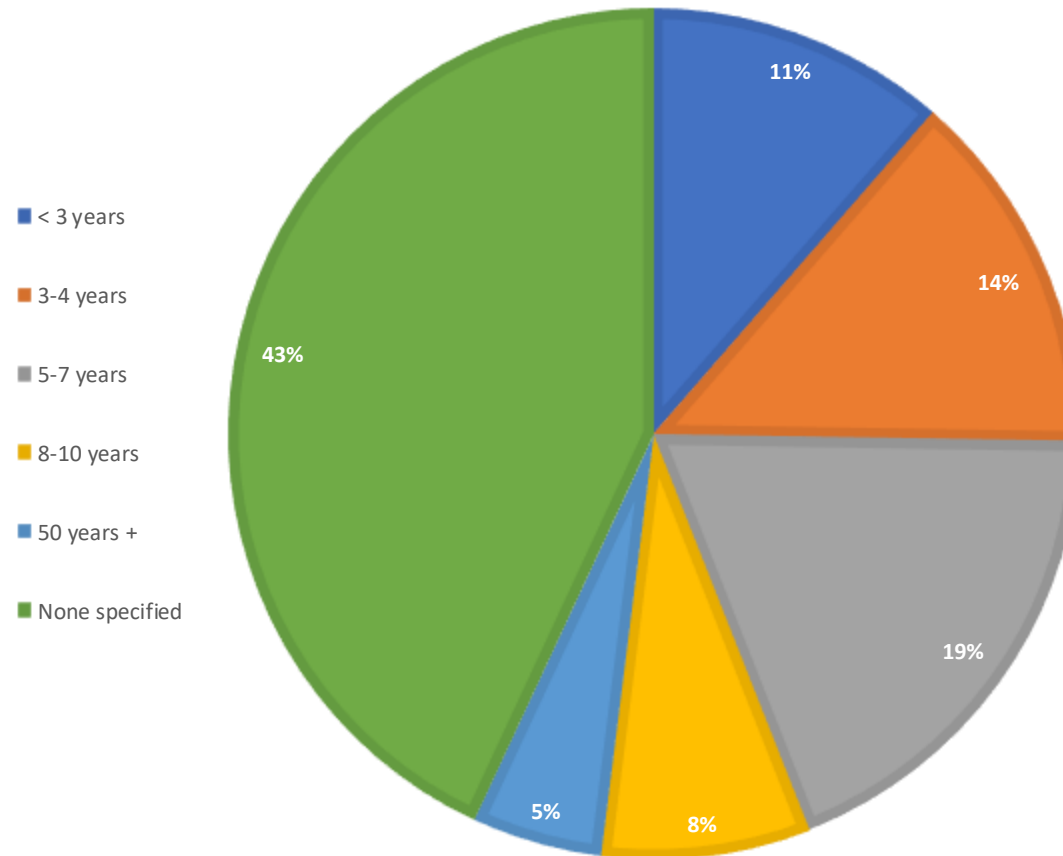
Content Requirements

- ◎ Content of written employment contracts specified, but less than one-third of countries require employers to keep copies of signed contracts
- ◎ Personal information
 - Data protection law: must be relevant and necessary for purpose for which it is collected
 - Some labor laws prohibit collection of information about political or religious affiliation
- ◎ Employment record book – collected by employer but returned to employee – a personal record not a personnel record



Retention Requirements

RETENTION PERIODS FOR PERSONNEL RECORDS IN 202 COUNTRIES



Retention Requirements

- Labor laws and regulations in 87 of 202 countries and dependent territories do not specify retention requirements for personnel records
- But 49 of those have data protection law that prohibits continued retention of personal information that is no longer needed and gives employees the right to request destruction of obsolete information



Retention Requirements

- Labor laws and regulations in 10 countries specify a retention period of 50 years or longer for personnel records.
- Permanent retention is required in 7 countries.
- But 5 of those countries have a data protection law that prohibits excessive retention of personal information.
- Exceptions are provided for historical and scientific research, but not clear whether they are applicable.



Retention Requirements

- ◎ Non-permanent retention periods range from 3 years to 10 years
- ◎ Correspond to the period of time that personnel records are subject to examination by labor inspectors
- ◎ Difficult to generalize because trigger events vary by record type
 - For personnel information in registers or logs, retention period starts with last entry—may be years after first entry depending on number of pages
 - For personnel files, employment contracts, other records about a given employee, retention period begins with termination of employment relationship.



Retention Requirements

⦿ Possible uniform retention rule

- 10 years after termination of employment for personnel files or other records related to individual employees
- 10 years after final entry for registers, logbooks, other records that contain information about multiple employees
- Possible over-retention in some countries may violate data protection laws
- Shorter retention period: 7 years



Format Requirements

- A few labor laws and regulations specify format for personnel records—Example: bound volume without blank pages or in ink without erasures
- Most labor laws and regulations impose no format requirements or restrictions but may be written in a way that implies paper records
- Some labor laws and regulations specify that electronic records are acceptable, but generally limited to a subset of personnel records



Format Requirements

- ◎ Electronic transaction laws apply in two-thirds of countries
- ◎ Electronic records are acceptable where certain conditions are satisfied.
 - Must be readable throughout retention period
 - Integrity maintained—protected from unauthorized modification
 - Saved in form that it was sent or received
 - Date and time of sending or receipt is preserved
- ◎ Electronic records have same probative value as paper documents



Storage Location

- 27 countries require storage of personnel records at the place of employment or employer's place of business
- Makes records available for unannounced visits by labor inspectors
- Cross-border transfer limited by data protection laws—may constrain the implementation of enterprise-wide HRIS or other global recordkeeping systems



Access and Disclosure

- Most labor laws require employers to make personnel records available for examination by labor inspectors
- A few labor laws give employees access to selected information maintained about them
- Data protection laws provide broader access rights and disclosure restrictions
 - Employees have access to their personal information
 - Disclosure limited to purposes for which personal information was originally collected



Dispute Resolution

- Labor disputes may relate to unfair dismissal, unpaid wages, unpaid leave, discrimination, other employment matters
- May be adjudicated by a civil court, industrial tribunal, or labor mediation or arbitration authority
- Some countries require parties to attempt amicable resolution
- 193 countries have time limits for legal proceedings
- Significance for record retention



Dispute Resolution

- ⦿ Limitation periods range from 21 days to 10 years
- ⦿ 3 years or less in three-quarters of countries
- ⦿ Short limitation periods have limited impact on retention decisions
- ⦿ But variations in starting point cause complications
 - Unfair dismissal begins with termination
 - Other disputes usually begin with cause of action but some countries have termination of employment as starting point for all claims
 - Supports a uniform retention period of 10 years after termination



Sample Entry: USA

Content: Employers must keep records of each employee's name, address, date of birth, occupation, rate of pay, and weekly compensation. Employers must keep records related to promotion, demotion, transfer, selection for training, recall, or discharge of an employee; records for aptitude or other employment tests associated with personnel actions; and the results of any physical examination that is used by the employer for a personnel action. Employers must keep certain employment contracts and written memoranda covered by Section 7 of the Fair Labor Standards Act.



Sample Entry: USA

Retention: In general, employers must retain employee records for a minimum of 1 year from the date of the making of the record or the personnel action involved. Records of each employee's name, address, date of birth, occupation, rate of pay, and weekly compensation must be retained for a minimum of 3 years. Employment contracts and written memoranda covered by the Fair Labor Standards Act must be retained for 3 years. In the case of involuntary termination of employment, the terminated employee's personnel records must be retained for 1 year from the date of termination or until final disposition of any charge or action related to employment discrimination.



Sample Entry: USA

Format: Federal labor laws and regulations do not specify format requirements for employee records.

Location: Federal labor laws and regulations do not specify storage locations for employee information.

Access and Disclosure: Employment records must be available for examination by government officials.
Federal labor laws and regulations do not specify other requirements or restrictions for access to or disclosure of employee records.



Sample Entry: USA

Labor Disputes: The United States does not have a national statute of limitations for civil litigation related to employment disputes, but there is a limitation period of 180 days from the cause of action for filing an employment discrimination complaint with the Equal Employment Opportunity Commission. The statute of limitations for discrimination complaints under the Equal Pay Act is 2 years or, for willful violations, 3 years



Sample Entry: France

Content: Employers must keep a single personnel register that contains the name, nationality, date of birth, gender, dates of employment, and other information for each employee in chronological order by the date of hiring. Names and surnames of interns and volunteers in civic service must be entered in order of arrival in a specific part of the register. Employers must maintain a register of hours worked by each employee.



Sample Entry: France

Retention: The following information about an employee is not to be retained beyond the period of employment unless other laws or regulations require a different retention period: names, photographs, date and place of birth, nationality, and other data that identifies an employee; emergency contact information; dates of employment; job titles; data about occupational illness and injuries; performance assessments; and training information. Information contained in the single personnel register must be retained for 5 years following an employee's termination of employment. Records related to hours worked by individual employees must be retained for 1 year. The maximum retention period is 5 years for data relating to reasons for an employee's absences. The maximum retention period for information about an employee's salary is 5 years after termination of employment.



Sample Entry: France

Format: Employment records can be maintained electronically. Electronic records have the same probative value as paper records.

Location: Labor laws and regulations do not specify storage locations for employee information. According to data protection law, international transfer of employee records that contain personal information is limited to countries with an adequate level of data protection, subject to specified exceptions.



Sample Entry: France

Access and Disclosure: Employment records must be available for examination by government officials. According to data protection law, employees have access to personal information maintained about them. Disclosure of employee records that contain personal information must be compatible with the purpose for which the information was originally collected.

Labor Disputes: The statute of limitations for claims related to unfair dismissal or other employment matters is 5 years from the cause of action.



Questions?

Contact me directly at wsaffady@saffady.com

