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## Data Retention of Personnel Records

Retention of personnel records is subject to three types of sometimes conflicting laws.

- \* Specific regulations set by tax authorities (not covered here),
- \* Those set by other operational branches of government and \* \* Those set under data protection/privacy laws.

The former two types of body usually set fairly long periods and the latter (Data Protection) fairly short periods. Compliance is therefore difficult to achieve - although Data Protection rules may be the easiest to defend for most personnel data and are a useful starting point.

A distinction should be made in assessing retention limits between minimum retention periods and maximum retention periods. Data protection rules usually relate to maximum periods, but the GDPR does allow for other statutory limits.

It should also be noted that in some jurisdictions there may not be fixed statutory rules, but rather retention periods must be chosen and set by employers and notified to employees in advance.

### DATA PROTECTION REQUIREMENTS (SELECTED COUNTRIES/REGIONS)

#### BELGIUM

The relevant measure is the Law on the protection of natural persons with regard to the processing of personal data, Chapter II, Art. 28: Personal data may be retained for a period not exceeding that necessary in light of the purpose for which it was collected; AND Art. 30: Except where the maximum duration of data retention is determined in European Union law or international agreement, the law, decree or ordinance shall determine the maximum period of its retention.

#### CHINA

Although the statute of limitation for employment disputes is only one year, the more general statute of limitations for civil disputes is for three years and therefore this sets a minimum retention period for most data.

There is no specific retention period stipulated under Chinese cybersecurity law. As such, in order to determine the appropriate maximum retention period, a data controller must assess each type of personal information collected and the purposes of the collection on a case-by-case basis. However, there is a stipulation that personal information must be deleted upon the expiry of the retention period of which the data subjects were notified when their personal information was collected. Moreover, there is a non-binding requirement that requires prior consent from data subjects to include the period for which data will be retained.



The National Information Security Standardization Technical Committee of China has issued a national standard in 2018, the [Personal Information Security Specification](#), which covers the collection, storage, transfer, and disclosure of personal information.

## EUROPEAN UNION

**GDPR:** Under the GDPR personal data may not be held 'for longer than necessary for the purposes for which the personal data are processed' (article 5(1)(e)). This means that employers must store personal data for the shortest time possible, after considering the reasons why they need to process the data, as well as any legal obligations to keep the data for a fixed period of time (for example national labour, tax or social security laws requiring employers to keep personal data about their employees for a defined period).

Under the GDPR, data controllers must disclose to employees and others (such as contractors) the period for which personal data will be stored or, if that is not possible, the criteria used to determine that period."

## GERMANY

The law does not specify a retention period – it only stipulates that personal data must kept for a period no longer than is necessary. See GDPR.

## HONG KONG

The Personal Data (Privacy) Ordinance only stipulates that personal data be not kept longer than is necessary to fulfil the purpose for which it was used (2<sup>nd</sup> principle). However, the Code of Practice of Human Resource Management stipulates that the retention period in relation to recruitment related data must be a maximum of two years commencing from the date of the applicant's rejection. The retention period for employment-related data must be a maximum of seven years from the date the employee in question leaves employment. Retention periods may only be longer than those stipulated above if the individual concerned has given express consent for the data to be retained for a longer period, or there is an ongoing reason that obliges the employer to retain the data for a longer period.

## ISRAEL

Although the Protection of Privacy Law, 5741 – 1981 does not explicitly mention the retention period, the Protection Privacy Authority and the Security Regulations state data retained as part of the pre-employment procedure and duration of employment must be discarded after the termination of employment.

## ITALY

Employers must expressly state in advance the storage period of personal data. Companies must therefore have an internal policy that is communicated to all data subjects. Moreover, technical measures must exist to delete or anonymise data on the expiry of the storage period.



## JAPAN

The [Personal Information Protection Commission](#) enacts regulations under the APPI, including on “details of the information required to be recorded, and the retention period for such information”: Its 2016 ‘Enforcement Rules for the Act on the Protection of Personal Information’ is available in English [here](#). See Articles 14 + 18

Japanese Act on Personal Data), Article 25(2) states that the [Personal Information Protection Commission](#) shall provide details on retention periods.

The 2016 rules provides for different retention periods ranging from 1 to 3 years. The general norm is three years.

Business operators governed by the Act on the Protection of Personal Information must “endeavour to delete personal data without delay when its use is no longer required.”

See section below for effective limits in respect to employment records.

## RUSSIAN FEDERATION

Article 5 of the Data Protection Act No.152-FZ stipulates that “Personal data storage should be for no longer than required for the purposes of their processing, and they are to be destroyed upon attainment of the processing purposes or in case their attainment becomes unnecessary” According to data localisation law, effective as of 1 September 2015, Russian and foreign companies that collect the personal data of Russian nationals must ensure that the databases used to record, systemise, accumulate, store, amend, update and retrieve it are located in Russia. The law applies to personal data collected both online and offline, whether from employees, customers or third-party individuals, provided that the personal data subjects are Russian nationals.”

The data on job candidates may be retained as long as there are legitimate purposes for its processing. If a candidate is not hired their data must be destroyed within 30 days, except for certain cases related to the personal data of civil servants.

## SOUTH KOREA

“The personal information processor shall inform the data subject of the duration of data retention when obtaining consent for processing as well as make efforts to process personal information in anonymity, if possible.”

## UAE

Article 8(1e) of the Data Protection Law (DIFC Law No.1 of 2007) stipulates that personal data must be kept “no longer than is necessary for the purposes for which the Personal Data was collected or for which they are further processed.”

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## OTHER LAWS

### BELGIUM

Social documents - 5 years

Tests for recruitment/promotion - 10 years

### CHINA

Measures on the administration of accounting records were introduced in 2016. These are broad and include payroll data. Ledgers, journals and other account books must now be kept for 30 years. Bank statements and monthly reports for 10 years.

When records are destroyed a detailed log must be made of their content and date of destruction.

### FRANCE

Commercial code sets 10-year retention period for all company data. Otherwise GDPR rules apply.

### GERMANY

Certain statutes (tax laws and trade laws) provide for retention periods of 6-10 years in relation to business documents.

### ISRAEL

There are no other restrictions except those imposed for tax purposes. It is common practice to hold records of employee expenses for 7 years and other personnel records indefinitely.

### JAPAN

The Act of 10th January 2018 sets down a minimum of 10 years for retaining employment records (down from 50 years) - but only in respect to data collected after 1st January 2019. Data relating to before the 1st of January 1999 shall still have to be retained for at least 50 years and data between then and the end of 2010 for 50 years from the date when the employee leaves the company. Shorter periods may be allowed with official permission.

Employers must inform employees about these changes and especially when changing from manual to digital forms of retention.

### RUSSIAN FEDERATION

Russia restricts specific retention requirements to documentation in hard copy, and the specific retention period depends on the type of document. For instance, the most important HR documents, e.g. employment agreements and internal HR orders, should be kept for 75 years from the date of their creation, and employees' payroll documents should be kept for five years. Russian law does not contain special retention requirements for personal data and documents stored electronically.



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## **SOUTH KOREA**

The general statute of limitations is 5 years, but 10 years if there has been suspected fraud.  
An employer must keep a copy of any employment contract until 3 years after it came to an end.

## **UAE**

Retention should apply while employment continues (for a maximum period of seven years, unless there is an occupational health reason for retaining the record for a longer period), and for seven years after employment ceases.

## **UNITED KINGDOM**

Working Time Records - 2 years after relevant period

National minimum wage records - 3 years

Maternity records - 3 years

Accident book records - 3 years after last entry

Retirement Benefit records - 6 years after relevant events

Wages and hours records - 6 years

Records of juveniles - until age 21

Asbestos exposure records - 4 years

Lead exposure records - 40 years

Records of ionizing radiation - Age 75 or 50 years