

Saying Goodbye to the File Cabinet:



Creation, Storage and Destruction Procedures for Employment Records when “Going Green”

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Generation upon generation of businesses have relied upon the file cabinet as the resting place for documents. However, the advancement in the digital world as well as environmental concerns are now leading companies to reevaluate document retention procedures and methods. Certainly, there are obvious benefits of going paperless, including helping the environment, cutting down on operating costs, reclaiming valuable storage space, and better retrieval and search processes. Interestingly, approximately 95 percent of all information is created in electronic form and less than three percent of that is ever converted to paper. Thus, it would appear that “going green” should be easy. However, “going green” is not without its challenges – especially for HR departments tasked with maintaining employee records in compliance with state and federal laws.

Want to “go green”? Here are valuable tips to help make the transition:

First Considerations – The Basic Requirements

Any electronic recordkeeping system must take into account the following:

- **Safety.** The record-keeping system must have reasonable controls to ensure the integrity, accuracy, authenticity and reliability of the records kept in electronic form.
- **Accessibility.** The electronic records must be maintained in reasonable order, in a safe and accessible place and in such manner that they may be readily inspected or examined. The electronic records must be readily converted into legible and readable paper copies as may be needed to satisfy reporting and disclosure requirements or any other obligation under Title I of the Employee Retirement Income Security Act (ERISA) or in conjunction with an agency audit.
- **Privacy.** Adequate records management practices must be established and implemented, such as following procedures for labeling electronically maintained records; providing a secure storage environment; creating backup electronic copies and selecting an off-site storage location; observing a quality assurance program and conducting regular audits of the system; and retaining paper copies of any records that cannot be clearly or completely transferred to the electronic record keeping system.

Adequate recordkeeping is important to ensure legal compliance and to maintain evidence if called upon to defend against legal actions. The so-called “paper trail” is necessary to document businesses decisions when those decisions are challenged.

Second Considerations – Planning

Once a decision is made to go paperless, a team should be established to plan and consider the following transition issues:

- **The Team.** Make the paperless transition process a collaborative effort and be sure to include, senior management, IT, record management employees, human resources, affected departments and legal counsel.
- **Scope.** Define records and types of records that will be maintained electronically. This will require you to assess company operations (what records are created, how created, by who, what do you need, etc.). From this comprehensive list, determine what is to be included and excluded. In some instances, such as arbitration agreements, you may want to maintain original documents as well as the electronic copies.
- **Legal Retention Requirements.** Of the list of documents you select to be maintained electronically, evaluate legal retention requirements to ensure that electronic records are allowed under federal, state and local laws. Document retention laws vary; however, an easy rule of thumb to ensure compliance is to keep employment records for the duration of employment plus five years. Two exceptions to this rule are pension and welfare benefit plan records, which must be kept for six years following employment, and safety and toxic chemical exposure records, which require retention for 30 years following employment.

Third Considerations – Implementation

In implementing an electronic document retention policy, consider the following best practices:

- Create a formal protocol for the saving and destruction of company records.
- Establish, communicate and enforce protocols.
- Consider scanning original documents into electronic form in color to retain as much information about the document as possible.
- Establish a procedure under which the scanning of relevant documents ceases immediately if a lawsuit is filed. You will have a legal duty to maintain relevant documents in their original form and suspend their destruction or alteration as soon as you learn that litigation is imminent and until the lawsuit is resolved.
- Account for ease of retrieval and searches when designing and implementing electronic document creation and storage protocols. For instance, the ability to search both content and metadata will be highly useful, and a uniform file-naming and foldering convention should be adopted.
- Establish security protocols so that only authorized individuals can access each electronically maintained file. That includes creating a secure and reliable electronic storage environment, including off-site backup, and complete and

secure destruction protocols for unneeded hard copies. Also, consider procedures to maintain the integrity of electronic records, such as “read only” to avoid alterations in storage, passwords and encryption.

- Consider creating a quality assurance program that includes regular evaluations and checks of the electronic record-keeping system.
- Retain paper copies of any records that cannot be clearly, accurately, or completely transferred to an electronic record-keeping system (not just workers' compensation and I-9 documentation).
- Determine proper electronic destruction (deleting does not always mean deleting permanently)
- Consider utilizing outside vendors to transfer the data as this is not an easy process.
- Consider temporary storage locations for original documents until you are certain the electronic storage transition worked.

The Black and White on Going Green

Thanks to emerging paperless technologies, business owners can avoid substantial headaches while decreasing their environmental footprint at the same time. Going paperless not only clears clutter from your office environment, but it also saves you money and is a great PR message for potential customers and partners. Breaking tradition and saying goodbye to the file cabinet may seem like a daunting task but it is possible to maintain most personnel documents in electronic form. Prior to doing so, HR teams and corporate managers should consult with their legal counsel to carefully examine each type of document commonly found in employee files and ensure it can be electronically maintained in compliance with various agency regulations. Companies should also account for the need to recreate as much information about a hard-copy original as possible and suspend document scanning in the event of litigation.

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