

ARMA METRO NYC ANNUAL SPRING CONFERENCE

RIM & IG for Today & Tomorrow



TUESDAY, MARCH 7, 2017

**8:00 am - 5:00 pm with
Reception immediately following**

New York Executive Conference Center
1601 Broadway, New York, NY 10019

http://armanyc.org/2017_Spring_Conference

RETENTION OF COMMONLY ENCOUNTERED BUSINESS RECORDS

Presented by: William Saffady

Introduction

- Background to presentation
- Selected record series related to common business functions:
 - Human Resources
 - Payroll
 - Fiscal
 - Legal

Basis for Retention Guidance

- Legal considerations: recordkeeping laws and regulations plus statutes of limitations for disputes, other matters
- Operational requirements: business need
- Archival value: for organizational history and scholarly research
- Benchmarking consensus: based on set of 20 retention schedules issued by state archival agencies

HR: Hiring Records—Applicants Not Hired

- Legal considerations: federal law specifies 1 year from date of personnel action in private companies and 2 years in political jurisdiction, but statute of limitations for civil lawsuits for human rights violations are longer--1 to 6 years
- Operational requirements: may want to keep records for unsuccessful applications “on file” for other job openings or if terminated hiring process is restarted

HR: Hiring Records—Applicants Not Hired

- Archival value: unlikely
- Benchmarking consensus: 1 to 7 years, but 3 years or less in 75 percent of schedules
- Reasonable practice: retention period harmonized with statute of limitations for human rights litigation, which vary by state and locality

HR: Employment Advertisements

- Legal considerations: federal law specifies 1 year from date of personnel action but these records may be relevant for human rights litigation
- Operational requirements: may be consulted when previously advertised position or similar position becomes vacant
- Archival value: unlikely; information possibly available from publications, web sites, other sources

HR: Employment Advertisements

- Benchmarking consensus: 1 to 10 years
- Reasonable practice: minimum retention period based on statute of limitations for human rights litigation; possibly a few more additional years for reference when preparing future advertisements

HR: Job Descriptions

- Legal considerations: federal law specifies 2-year minimum retention period; 2- or 3-year statute of limitations for complaints under Equal Pay Act, beginning with latest discriminatory paycheck; also relevant for civil litigation
- Operational requirements: consulted to evaluate employee performance, for compensation planning, to analyze job functions, when planning staff reorganizations

HR: Job Descriptions

- Archival value: none
- Benchmarking consensus: 1 to 7 years after superseded or discontinued
- Reasonable practice: minimum acceptable period is 2 years after superseded or discontinued, but statute of limitations for human rights violations may require longer retention

HR: Personnel Records

- Legal considerations:
 - Federal law specifies 1 year minimum for basic information, 3 years for employment contracts or written memoranda related to duties
 - Some state laws mandate 3-year retention
 - Statutes of limitations for wrongful termination range from 90 days to 6 years; longer limitation period if written contract is breached

HR: Personnel Records

- Operational requirements:
 - Consulted regularly for active employees when issues or questions arise about specific matters
 - For former employees: to fulfill requests for employment verification, for information about prior performance and problems when former employee is considered for rehiring

HR: Personnel Records

- Archival value: research value for historians, genealogists, biographers, labor economists, others but significant data protection and privacy issues; some archival agencies permit access after 100 years
- Benchmarking consensus: 5 to 75 years after termination, depending on need for pension verification; 7 years or less in more than half of schedules

HR: Personnel Records

- Reasonable practice:
 - 3 years following termination is minimum acceptable retention period but 5 to 7 years is more reasonable
 - Longer retention may be necessary to verify pension benefits if payroll records are not available
 - Archival retention poses significant problems of privacy and volume

HR: Employee Payroll Records

- Legal considerations:
 - Federal law specifies 3-year minimum for basic employee information; 2 years for additions to or deductions from wages; 4 years for records related to payroll tax payments
 - Some state laws specify longer retention period—6 years in New York and New Jersey
 - Statutes of limitations for unpaid wage disputes—2 or 3 years for federal complaints; 2 to 6 years for civil litigation

HR: Employee Payroll Records

- Operational requirements: consulted to confirm correct payment of wages and to address employee's questions; also useful for payroll tax payments; may be needed to verify retirement benefits.
- Archival value: possible but data protection and privacy issues are complications.
- Benchmarking consensus: Range is 4 to 75 years, but 50 to 75 years in half of the schedules for pension verification

HR: Employee Payroll Records

- Reasonable practice:
 - Retention complicated by various legal considerations – 6 years may be prudent minimum
 - Multi-decade retention may be necessary to verify pension benefits based on years of service
 - Archival retention poses significant problems of privacy and quantity

HR: Employee Timekeeping Records

- Legal considerations: federal law specifies 2-year minimum; some state laws specify longer retention—6 years in NY and NJ; statutes of limitations for unpaid wage disputes—2 or 3 years for federal complaints; 2 to 6 years for civil litigation
- Operational requirements: consulted to confirm correct payment of wages and to address employee's questions; subject to examination by internal auditors, government auditors for contracts and grants, and fraud investigators

HR: Employee Timekeeping Records

- Archival value: unlikely
- Benchmarking consensus: Range 3 to 10 years, but 6 years or less in over 90 percent of schedules
- Reasonable practice: 3 to 6 years, depending on local statutes of limitations

HR: Payroll Deduction Records

- Legal considerations: federal law specifies 2-year minimum, but NY is 6 years after termination of employment for written authorizations for voluntary deductions; statutes of limitations for federal complaints—2 or 3 years; 2 to 6 years for statutes of limitations for civil litigation
- Operational requirements: consulted when questions arise; subject to review by auditors to detect improper deductions

HR: Payroll Deduction Records

- Archival value: unlikely
- Benchmarking consensus: Range 0 to 10 years after deduction is no longer in effect
- Reasonable practice: retention based on statute of limitations for wage disputes except in NY, where written authorizations for voluntary deductions must be kept for 6 years after termination

HR: Payroll-Related Tax Records

- Legal considerations: IRS requirement is 4 years for Form W-4 and undelivered copies of Form W-2, 3 years from due date of return for Forms W-2, W-9, and 1099; longer retention may be required for some state payroll-related tax forms—example: 6 years in Michigan
- Operational requirements: consulted when questions arise about tax matters or when employee or contractor requests a copy of previously issued tax form

HR: Payroll-Related Tax Records

- Archival value: unlikely
- Benchmarking consensus: Range 3 to 7 years after deduction is no longer in effect
- Reasonable practice: 4 years will satisfy legal requirements and business needs in most states, but 4 years is an unusual retention period

Fiscal: Accounting Ledgers and Journals

- Legal considerations: Minimum retention period based on limitation period for income tax assessment and collection—3 years after return is filed or due, 6 years where income is understated; sector-specific regulations specify longer retention
- Operational requirements: basis for balance sheets, income statements, other financial records; consulted during financial audits to verify accounting practices, internal controls, financial performance

Fiscal: Accounting Ledgers and Journals

- Archival value: possibly, especially for general ledger but mainly older examples
- Benchmarking consensus: Permanent for general ledger in half of the schedules, otherwise 3 to 10 years
- Reasonable practice: Apart from specific sectors, minimum retention is determined by limitation period for tax assessment, but ledgers and journals may record transactions that have tax significance for longer period

Fiscal: Budget Preparation Records

- Legal considerations: Retention requirements limited to sector-specific regulations
- Operational requirements: provide financial framework for analysis and decision-making; consulted to estimate income, allocate resources, establish performance objectives, monitor revenue and expenses against allocated amounts; useful when preparing budgets for future years

Fiscal: Budget Preparation Records

- Archival value: cited in some studies by policy analysts and economists
- Benchmarking consensus: Permanent in half of the schedules, otherwise 2 to 10 years
- Reasonable practice: Regulatory retention requirements not significant for most organizations; budgets from prior years lose value after a short time; 3 years will satisfy most operational requirements.

Fiscal: Banking Transaction Records

- Legal considerations: Retention requirements limited to sector-specific regulations; statute of limitations for tax assessment up to 6 years; statute of limitations for disputes related to bank errors—60 days for EFT, shorter for non-EFT; statutes of limitations for breach of contract—3 to 15 years.
- Operational requirements: used to verify organization's assets, financial stability, creditworthiness; subject to examination by auditors and fraud investigators; may be consulted when questions arise about specific payments

Fiscal: Banking Transaction Records

- Archival value: cited in some historical studies, but quantity poses preservation problems
- Benchmarking consensus: 3 to 10 years
- Reasonable practice: Retention period determined by sector-specific regulations or statute of limitations for tax assessments and civil disputes related to banking transactions, 6 to 10 years in most states

Fiscal: Purchasing Records

- Legal considerations: federal requirement--3 years for total volume of goods purchased, for grant recipients, 3 years following final report of final disposition of property; some sector-specific requirements; statute of limitations for civil litigation related to contracts, 3 to 15 years; statute of limitations up to 6 years for tax assessments.
- Operational requirements: consulted when questions arise about prior procurements for replacement, warranties; subject to examination by auditors and fraud investigators

Fiscal: Purchasing Records

- Archival value: cited in scholarly studies by historians, economists, social scientists examining military spending, medical spending, consumer behavior, other topics
- Benchmarking consensus: 3 to 10 years
- Reasonable practice: Retention period determined by sector-specific regulations or statute of limitations for tax assessments and civil disputes related to procurement, 6 to 10 years in most states

Fiscal: Income Tax Records

- Legal considerations: IRS as long as relevant for tax assessments—3 or 6 years after return is filed or due; for returns related to disposal of property, limitation period begins when disposal occurs; some longer limitation periods for state tax
- Operational requirements: consulted for tax planning, preparation of future returns, amended returns, when property is sold, when unused deductions and credits are carried forward, due diligence for mergers and acquisitions

Fiscal: Income Tax Records

- Archival value: cited in scholarly studies by historians, economists, social scientists, public policy analysts, other researchers; Form 990 used in studies of charitable giving fundraising effectiveness, finances of non-profits
- Benchmarking consensus: not applicable
- Reasonable practice: Until all audits are completed and issues resolved; 6 years is advisable minimum but longer retention is warranted for real estate or other complications

Legal: Contracts and Agreements

- Legal considerations: statute of limitations for contract claims—3 to 15 years from date of breach, may be shorter for warranty coverage; maximum 10 years for False Claims Act
- Operational requirements: consulted to clarify terms and conditions; useful as model for future contracts and agreements with same or different party

Legal: Contracts and Agreements

- Archival value: cited in scholarly studies by historians, legal theorists, social scientists, other researchers
- Benchmarking consensus: 3 to 10 years, permanent for historically significant contracts and agreements
- Reasonable practice: Statute of limitations is most important consideration—6 to 10 years after completion, expiration, cancellation or other termination; complex contracts and agreements may remain in effect for years with extensions

Legal: Case Records

- Legal considerations: ABA informal opinion—retain until all statutes of limitations expire; for specific matters—2 to 15 years; for breach of fiduciary duty—2 to 6 years
- Operational requirements: consulted when questions arise about prior cases or when new case involves the same parties, similar legal issues, similar legal theories; some case documents may be useful as models for preparation of new documents

Legal: Case Records

- Archival value: cited in scholarly studies by historians, legal theorists, social scientists, policy analysts, other researchers
- Benchmarking consensus: 1 to 10 years, permanent for historically significant cases
- Reasonable practice: Statute of limitations is most important consideration—6 to 10 years following final resolution of all issues without possibility of appeal or future litigation

Legal: Legal Opinions

- Legal considerations: Statute of limitations for breach of fiduciary duty—2 to 6 years
- Operational requirements: consulted when questions arise about matters to which they pertain; remain operationally relevant until withdrawn or matters to which they pertain are discontinued; older opinions useful for preparation of opinions about related matters

Legal: Legal Opinions

- Archival value: cited in scholarly studies by historians, legal theorists, social scientists, policy analysts, other researchers
- Benchmarking consensus: discard when no longer current in half of schedules, several schedules specify permanent retention, 10 years in others.
- Reasonable practice: Minimum of 6 years after withdrawn or superseded based on limitation period for breach of fiduciary duty; permanent for opinions dealing with significant matters

Legal: Third-Party Subpoenas

- Legal considerations: Non-party can be held in contempt for failure to comply fully; need to document compliant response; complicating factor—cannot base retention on resolution of case
- Operational requirements: rarely consulted once fully compliant response is submitted and deadline for response has passed

Legal: Third-Party Subpoenas

- Archival value: unlikely
- Benchmarking consensus: 0 to 1 year after response, but only mentioned in 10 percent of schedules
- Reasonable practice: 1 to 3 years after court-ordered deadline for compliance. If motion is filed to quash or modify subpoena, treat like other legal case records for retention purposes