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SPRING 2006

EMPLOYMENT LAW SEMINAR
AT THE HOUSTONIAN
Tuesday, April 25

The Houston office of Gordon & Rees LLP is pleased to announce its upcoming employment law seminar to be held on Tuesday, April 25, 2006, from 1:30 p.m. to 4:30 p.m. at the Houstonian. Cutting edge presentations will be given, including the following:

Employment Cases at the Courthouse:
What are the Recent Trends?

- Learn about the most common employment claims
- Current verdicts and judgments against employers
- Procedural trends in limiting liability for employers

How to Prevent Wrongful Termination Claims

- Overview of wrongful termination claims
- Evaluate your exposure
- Tips to avoid liability

Noncompete Agreements: What You Need to Know

- Learn why you need Non-Compete Agreements for your Employees
- Are your Non-Compete Agreements enforceable?
- Learn how to handle hiring employees with prior Non-compete Agreements

Sexual Harassment Update

- Find out the latest in this evolving area of the law
- Learn how to protect yourself and your company from harassment charges and lawsuits

There is no charge for this seminar; however, space is limited and reservations are required. Please contact our Office Manager, Alissa Brackin at 713/961-3366 to reserve a spot today!

***CPE Credit hours have been requested for
CPAs in attendance.***

WHAT IS YOUR COMPANY'S RECORDS RETENTION POLICY?

WHAT DO YOU MEAN YOU DON'T HAVE ONE??

By Ellen Tagtmeier



It goes without saying that in business, good record keeping is essential to the success of the company. While there are varying required retention periods for certain categories of records, businesses must determine the extent to which they can and should retain records beyond these periods of limitation.

No matter the size of the company, it is important for you to formulate a records retention policy.

This article will include some general principles to consider in developing a records retention policy, and it will cover some of the statutes of limitation for major categories of documents, such as certain employment records and Internal Revenue Service records.

In fashioning a records retention policy, you may start by examining your records storage procedures, what you have and what you need. Then determine if there is a legal requirement to keep any particular records and find out what you can discard. Then, ask yourself if the information contained in the document has already served its purpose. Has it been updated or superseded? Is it stored somewhere else, such as a CD, disk or tape?

Many records custodians have found it helpful to evaluate records retention based on the "Half-life" model. This model may be used where there is no specific legal requirement as to the length of time the record must be kept. Each record typically displays a value in each of four categories:

- **HISTORIC:** Will the document be a valuable resource years from now or is it of little historic value?
- **ADMINISTRATIVE:** How often do you actually use the material? What is the value of the information to your daily operation? At what point would not having the material available cease to be a serious hardship?

- **LEGAL:** Is this document related to a contract with a problem or a dispute? Are there any external requirements to maintain the information, whether by statute, from government rule or regulation, or from the parties to a contract? Does the record help to prevent any legal liability? Does the record perhaps pose a liability, even after the administrative value has disappeared?
- **FISCAL:** Is the information necessary for tax or audit purposes of any kind? Is it helpful in future budget and fiscal planning?

If documents are viewed using this model, in most cases one will have a good idea of how long the records should be kept.

CORPORATE RECORDS

While there is no single rule that applies to all records, some generalizations can be made. In that regard, the suggested record retention for various corporate records is as follows:

ACCOUNTING RECORDS

Accounts Payable.....	7 years
Accounts Receivable/Notes Receivable.....	7 years
Audit Reports.....	Permanently
Charts of Accounts.....	Permanently
Depreciation Schedules.....	Permanently
Expense Records.....	7 years
Financial statements (annual).....	Permanently
Fixed asset purchases.....	Permanently
General Ledger.....	Permanently
Inventory records.....	7 years
Loan payment schedules.....	7 years
Purchase orders (1 copy).....	7 years
Sales records.....	7 years
Tax returns.....	Permanently
Journals.....	Permanently
Time books.....	7 years
Voucher registers.....	7 years
Invoices (to customers and from vendors).....	7 years
Petty cash vouchers.....	3 years

Bank Records

Bank reconciliation.....	2 years
Bank statements.....	3 years
Cancelled checks..... (permanently for important..... payments as taxes	
Purchase of property/special contracts, etc.....	7 years
Electronic payment records.....	7 years

Other Corporate Records

Minute books - Directors, Stockholders, Bylaws, etc. Permanently

Business licenses Permanently

Contracts-major Permanently

Contracts-minor Life of Contract+ 4 years

Insurance policies Life+3 years

Leases/mortgages Permanently

Patents/trademarks Permanently

Shareholder records..... Permanently

Stock registers and stock/bond certificates..... Permanently

Stock Transactions Permanently

Copyrights Permanently

Real Property Records

Construction records Permanently

Leasehold improvements..... Permanently

Lease payment records Life + 4 years

Real estate purchases..... Permanently

Deeds, mortgage and bills of sale..... Permanently

Property appraisal..... Permanently

Blueprints and plans Permanently

Miscellaneous Records

Correspondence-Customers, vendors and general2 years

Correspondence Legal and important matters.... Permanently

Inherited property records and valuations Permanently

Miscellaneous Records (cont'd)

Insurance records accident reports and claims ... Permanently

Internal reports 3 years

Trade mark registration Permanently

Training manuals..... Permanently

IRS RECORDS

IRS rules mandate that the following be retained for seven (7) years:

Records of income and expense7 years

Tax Records 7 years

EMPLOYEE RECORDS

Employee records can be substantial and some of the most critical in determining the outcome of a lawsuit. Employment-related statutes have differing requirements as the *minimal* time required for records to be kept. These records requirements apply to records kept in computer form, as well as hard copies. See 29 C.F.R. § 825.500(b).

Employment records can serve as powerful evidence and provide the basis for statistical data to obliterate claims of illegal discrimination. Therefore, unless the minimum required period is longer, and notwithstanding the minimum lengths of time specified below, it is recommended that employment records be retained for at least the duration of the employment of the employee and for four (4) years thereafter.

Required minimum retention times for various statutes pertaining to employment records are as follows:

Age Discrimination in Employment Act (20+ employees) (29 C.F.R. § 1627.3)

Payroll documents must be kept with name, address, date of birth, occupation, rate of pay and compensation earned each week3 years

Job applications, resumes, documents relating to hiring, firing, promotion, demotion, transfer, employment test results, job ads, job orders and training records.....1 year

All documents relevant to an enforcement action1 year after final resolution

Employee Retirement Income Security Act (ERISA) (where employer has in existence a pension or welfare benefit plan)

All Plan and Report documents and all supporting material6 years after the filing of the documents

Employee and beneficiary records relevant to benefits Duration of the plan

Executive Order 11246 (Affirmative Action) (\$50,000 in gov't contracts and 50 employees) (41 C.F.R. § 60-1.12)

Test records and results, job group analysis, affirmative action program evaluation.....2 years

Written affirmative action program while in effect.....+2 years

Fair Labor Standards Act (FLSA) and Equal Pay Act (EPA) (29 C.F.R. § 16.6)

Workweek definition, hours worked, pay rates and deductions, date of payment and pay period covered, proof of exempt status for exempt employees collective bargaining agreements and total wages.....3 years

Name, address, payroll information, wages, overtime, daily and weekly hours worked, pay rates, total daily and weekly rates, deductions, collective bargaining agreements and employment contracts3 years

Time cards and other earning records, wage rate tables including all tables or schedules which provide rates used in computing straight time earnings, wages or overtime compensation, seniority systems records2 years (Note that although 2 years is all that is required, 3 years is recommended since there can be a 3-year statute of limitations if a violation of the statute is found to be willful)

Family and Medical Leave Act (FMLA) (50+ employees) (29 C.F.R. § 825.500)

Dates FMLA leave taken- (record of hours taken if less than 1 full day), leave notices, copies of FMLA notices given by employer to employees, premium payments, certifications, records of any disputes, fitness for duty certificates3 years

Immigration Reform and Control Act (All employers)
(8 C.F.R. § 274a.2(b)(2)(i)(A); 8 U.S.C. § 1324(a)(1)(b)(3))
I-9 Forms 3 years from date of hire OR 1 year after termination, whichever is longer

Occupational Safety and Health Act (OSHA)
(11 + employees) (29 C.F.R. § 1904.1)
OSHA Form 200 and OSHA Form 100 5 years following actual year of occurrence

Legally required medical exam records Duration of Employment +30 years

Records to monitor exposure to hazardous materials 30 years

Title VII of the Civil Rights Act of 1964 (Title VII) and Americans with Disabilities Act (ADA) (15+ employees) (29 C.F.R. § 1602.14)
Personnel records, resumes, applications, records on hiring, promotions, demotions, transfers, layoffs, termination, compensation, requests for accommodation under the ADA, and selection for training or apprenticeship 1 year

EEOC charges, records of persons making the charge, records of all similarly situated employees, all documents relevant to the Charge Until Final Resolution

Toxic Substances Control Act (Manufacturers or distributors of any chemical substance)
Records of employees' significant adverse reactions to health or environment 30 years from the date such adverse reaction was reported or known

Any other records of such adverse reactions, including consumer allegations of personal injury or harm to health, injury to environment, or occupational injury 5 years from the date first reported or known

Walsh-Healey Act (applies to employers with governments contract to manufacture or supply in excess of \$10,000)
Basic employment and wage/hour records, minimum wage and overtime hour 2 years from last entry

Employee information wage/hour records of employees under 19 years of age 3 years from last entry

IMPACT OF THE SARBANES-OXLEY ACT ON YOUR DOCUMENTS RETENTION POLICY

By Donna Smith Cude



Besides saving space and eliminating confusion, a records retention policy helps to ensure consistency and uniformity in treatment of your records. Although there are legal requirements of record retention for specific periods of time, as set forth in this article, and other suggested periods for other records, in considering a records retention policy, all record retention is also now subject to the Sarbanes-Oxley Act.

You will recall that Sarbanes-Oxley was passed in response to the Enron debacle of 2001. A major part of the Act deals with document destruction and handling. The Act contains two sections relating to document retention. First, it prohibits the destruction, alteration or concealment of a document with the intent to impair the document's integrity or availability for use in an official proceeding. The second prohibition broadly proscribes the alteration, destruction, concealment or falsification of any document with the intent to impede, obstruct or influence the investigation or administration of any matter within the jurisdiction of the federal government. A violation of either of these portions of the Sarbanes-Oxley Act is punishable by fine and/or up to 20 years' imprisonment.

In light of this Act, it is imperative that your records retention policy specifically include the prohibitions found in the Sarbanes-Oxley Act, and provide for strict punitive measures to be taken against any employee found to be in violation of the Act. In addition, the records retention policy you adopt should be expressly subject to the Sarbanes-Oxley Act. Specifically, all records retention policies should state that when a government investigation of any nature is expected, or ongoing, no documents relating in any way to the subject matter of the investigation may be destroyed or altered in any way, even if the time given under the records retention policy for their retention is about to expire or has expired.

Gordon & Rees LLP has 11 offices nationwide:

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