

**ACCOMPANYING DOCUMENT TO GDPR TEMPLATE: EMPLOYEE DATA RETENTION PROCESS – EXAMPLE RETENTION PERIODS**

**Setting the Retention Periods**

This document accompanies the **GDPR Template: Employee Data Retention Process**. It is designed to assist you in setting the Retention Periods for Employee and Job Applicant personal data, to be included as the Appendix to that document. (NB, the terms ‘Employee’ and ‘Job Applicant’ have the meanings given in that document.)

There is no ‘one size fits all’ when it comes to appropriate retention periods for GDPR compliance. When setting the Retention Periods, you should consider the Employee Data Retention Criteria and other factors and guidance set out in the GDPR Template: Employee Data Retention Process as they apply in the context of your own business requirements/operations.

You should also bear in mind that the Retention Periods that you set are intended to be generally applicable within your organisation, but there will be some circumstances in which it is appropriate for you to depart from them in practice.

**Statutory retention requirements**

For certain HR records, there is a legal requirement to keep the records for a minimum length of time, which you will want to reflect in the Retention Periods. We summarise some key examples below.

**Note:** This table is ***not*** a definitive list of all statutory retention requirements – in particular some employers will have to retain records to demonstrate compliance with specific health and safety risk assessment obligations if their Employees work with particular substances/chemicals.

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| **Employment records/data** | **Statutory retention period** | **Applicable statute** |
| Records demonstrating compliance with the Working Time Regulations limits/obligations in respect of:   * Maximum weekly working time - including record of workers who have opted-out * Daily (and weekly) working time limits for young workers and night workers * Obligation to offer free health assessment to every worker before transferring them from day to night shifts (and routinely thereafter) | Two years from relevant date/period to which records relate  (Obligation to keep record of worker’s opting out from maximum weekly working time could be kept by keeping copies of worker’s opt-out forms) | Working Time Regulations 1998 *(*reg 4, and 9) |
| Records to demonstrate every worker has been paid in compliance with National Minimum Wage requirements (i.e. records of hours worked and payments made) | Six years from the day the pay reference period immediately following that to which the records relate ends  (Records should be kept in a form that enables the information to be produced in a single document) | National Minimum Wage Act 1998 (Section 9)  National Minimum Wage Regulations 2015(reg 59)    National Minimum Wage (Amendment) Regulations 2021 (reg 2(5)) |
| Payroll and wage records | Six years from the end of the financial year in which payments were made | Finance Act 1998 (Schedule 18, paragraph 21) |
| PAYE records | Not less than three years after the end of the tax year to which they relate  (Note: It may be sensible to keep records for six years as they may fall within the definition of payroll and wages records that must be retained under the Finance Act – see above) | Income Tax (Pay As You Earn) Regulations 2003 (reg 97) |
| Any reportable accident, death or injury in connection with work | At least three years from the date the report was made | Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (reg 12) |
| Statutory Maternity Pay (SMP) records   * First date of absence from work due to pregnancy or confinement * Details of weeks in tax year in which statutory maternity pay was paid and amount paid in each week * Details of weeks in tax year within an employee’s maternity pay period for which **no** SMP was paid, and why * Medical certificates relating to employee’s EWC/baby’s birth (e.g. MAT B1) * Record of the date of the baby’s birth | Three years after the end of the tax year in which the maternity pay period ends | Statutory Maternity Pay (General) Regulations 1986 (reg 26) |
| Statutory Paternity Pay (SPP), Shared Parental Pay (ShPP), Adoption Pay (SAP) and Parental Bereavement Pay (SPBP) records   * Date the paternity, shared parental, adoption or parental bereavement pay period commenced * Evidence provided by employee in support of entitlement to SPP, ShPP, SAP, or SPBP * Weeks in the tax year in which SPP, ShPP, SAP, or SPBP were made, and amount paid in each week * Any week in that tax year which was within employee’s paternity, shared parental, adoption, or parental bereavement pay period for which no payment was made (and why) | Three years after the end of the tax year in which the paternity, shared parental, adoption, or parental bereavement pay period ends | Statutory Paternity Pay and Statutory Adoption Pay (administration) Regulations 2002 (reg 9)  Statutory Shared Parental Pay (Administration) Regulations 2014 (reg 9)  Statutory Parental Bereavement Pay (Administration) Regulations 2020, (reg 9) |
| Immigration checks | Two years after the termination of employment | Immigration, Asylum and Nationality Act 2006  Immigration (Restrictions on Employment) Order 2007 (article 6) |
| Furlough agreements and records of furlough leave and pay | Five years after furlough agreement is made (or subsequently varied)  (Note: It may be sensible to keep records of furlough pay for six years as they may fall within the definition of payroll and wages records that must be retained under the Finance Act – see above.) | The Coronavirus Act 2020 Functions of Her Majesty’s Revenue and Customs (Coronavirus Job  Retention Scheme) Directions |

**Where there is no statutory retention requirement**

The table below sets out examples of possible retention periods for certain employment-related records/personal data that an organisation might choose to set as the Retention Periods where no statutory retention period applies. Note that the table below is not exhaustive and you may hold other types of employment related-records/personal data that are not covered here. You will need to consider what retention period is appropriate in each case.

We have identified the below examples as ‘best practice’ retention periods based on the GDPR principle that personal data should not be retained for longer than necessary for the purpose of the processing. However, we are aware that implementing retention periods in practice can be administratively burdensome and that some employers may therefore prefer to take a broader brush approach.

In this regard, it is worth mentioning the ICO’s template record of processing activities, which includes a few, very broad categories of HR data and, for these categories, gives example retention periods (as, where possible, a record of processing should). In the ICO’s template, all of these are stated to have retention periods of at least 3 years (and, for most of the records, 6 years) post-employment. We find this approach surprising as it would almost certainly result in a breach of your obligation not to hold data for longer than you need it (e.g. you do not need to know that someone was off sick with a cold 12 years ago). It is possible that the ICO has not thought through these time limits since they are included in a template record of processing as opposed to detailed guidance on GDPR retention periods for employers. However, they may nonetheless provide some comfort to employers who have decided to take a broader brush approach to retention for administrative and resourcing reasons, since we think it is unlikely that the ICO would take enforcement action against an employer that had set its retention periods in reliance on the ICO’s own template documentation.

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| **Type of employment record** | **Example retention period** | **Reason for suggested example retention period** |
| **Recruitment** | | |
| CVs/application forms, interview notes, written references from previous employers and copies of qualification certificates (NB: you are unlikely to have collected references or copies of qualifications for unsuccessful Job Applicants) | 6 months from:   * date of appointment; * date successful Job Applicant turns down job offer; or * confirmation that application unsuccessful | Sufficient time for purposes of verification re appointment of successful Job Applicants and takes account of limitation period for potential discrimination claims from unsuccessful Job Applicants - three months (plus margin for Early Conciliation or possible extension of time limit)  *Note*: Job Applicants need to be informed at the point they make an application of proposed retention period for any personal data supplied as part of their application. |
| CVs/application forms of speculative Job Applicants, successful Job Applicants who turn down a job offer, or unsuccessful Job Applicants, kept to inform them of future vacancies | 12 months from date CV/application submitted | Data likely to become out of date after 12 months as Job Applicant will have gained greater experience, new skills, etc.  *Note:* Job Applicants must be informed at the point they make an application if you propose to retain their details for this reason, and should be asked for their explicit consent. For consent to be valid under the GDPR, formalities must be observed and Job Applicants must still be able to apply for specific job even if they refuse consent to retention of their data for this additional purpose |
| Copies of qualifications (where qualification required for performance of the role) | Retain whilst required for employment and if valid/current | Certificates only relevant whilst valid/current |
| Contract of employment/statement of terms and conditions | Duration of employment under applicable terms plus 6 months  If employer on notice of possible dispute relating to equal pay/breach of employment contract - then retain for up to 6 years from date of alleged breach) | Detail of current terms required for on-going operation of employment contract, and employment tribunal claim limitation period (plus 3 month leeway to allow for early conciliation/extension of limitation period)  Limitation period for breach of contract claims and equal pay claims is 6 years from date of purported breach |
| **Absence/sickness** | | |
| Holiday records | 2 ½years from end of holiday year in which holiday taken | Employees with variable pay elements may currently have claims in relation to holiday pay. Employers will need details of holiday taken to defend holiday pay claims. The Deduction from Wages (Limitation) Regulations 2014 currently provide for a 2 year backstop in relation to holiday pay claims. Retention period allows for leeway re potential employment tribunal claim, early conciliation/ extension of time limitation period).  Note: The 2 year backstop to holiday pay claims may be subject to challenge in the courts. Some employers might decide to keep holiday pay records for a longer period, if they believe they are at risk of lengthy back pay claims should the current legal challenge be successful. (For example, if variable pay has not historically been included in holiday pay). |
| Records relating to sickness absences (not pay), including   * self- certification form * return-to-work interview/forms * GP Fit Notes * sickness absence management records | If no action taken further to attendance review procedure within your attendance management policy, hold from date of receipt to end of applicable rolling reference period to which your attendance review procedure triggers apply (*e.g. 12 months)*  If under your attendance review procedure caution(s) given, then 6 months from the expiration date of the most recent caution (which could be cumulative if attendance does not improve).  If managing long term sickness absence or absence due to an underlying medical condition outside of attendance management triggers, then 6 months from the expiration date of the most recent caution (if applicable), or 12 months after return to work, or 6 months following termination of employment, if applicable  If relevant to an accident at work, or otherwise on notice of a potential a PI claim, 3½ years from date of incident/occurrence (or longer on a case by case basis if identified risk of delayed onset) | Required for operation of attendance management policy and to defend against claims arising from operation of attendance management processes – including unfair dismissal and disability discrimination (3 month limitation period for employment tribunal claims, plus margin for early conciliation/claims out of time).  PI limitation period, plus margin for extension of time |
| SSP records | 3 years after end of tax year in which sickness occurred and SSP payments made | Although there is no longer a statutory requirement to keep SSP records – this was removed by the Statutory Sick Pay (Maintenance of Records) (Revocation) Regulations 2014 – HMRC still have the right to check whether employers are paying SSP correctly, and impose fines for SSP failings |
| Medical/OHP reports | Assess on case by case basis.  Up to 3½ years from date of receipt, depending on the nature of condition in relation to which the report was obtained, whether the report is still up to date, and the action taken on the basis of the report. Also if circumstances are such that there is a genuine risk of a PI claim. | PI limitation period, plus margin for extension of time  (For some industrial diseases there can be delayed onset, so in some specific circumstances, a longer period may be appropriate. There are also specific statutory H&S retention requirements for certain chemical/substance-related industrial diseases). |
| Records of Covid-19 related absence which is not furlough\* or sickness absence, e.g.   * self-isolation (when Employee is Covid positive but does not have symptoms such that they would take normal sick leave OR when Employee is self-isolating as a contact) * emergency dependant’s leave * other unpaid leave, etc.   \*For furlough, see ‘Statutory retention requirements’ table, above. | If self-isolation absence is dealt with under attendance management policy, retain in accordance with that policy (see sickness absence, above).  Otherwise, 12 months following return to work from relevant absence (or 6 months following termination of employment).  If SSP has been paid during self-isolation, some self-isolation data may form part of your SSP records – on which, see above. | Required for management of any disputes over terms of leave, or legal claims, e.g. of detriment or unfair dismissal for having taken leave, or discrimination claims.  6 month period post-termination based on 3 month limitation period for discrimination or unfair dismissal claim (plus allowing period for Early Conciliation and possible extension of statutory limitation period). |
| **Day to day management** | | |
| Appraisals documentation | 2 years from date of completed appraisal | Required for performance comparison purposes (including, if applicable, decisions that are linked to appraisals, such as redundancy selection and internal promotions - 2 years is likely to be the maximum period on which it would be fair to base such assessments) |
| Performance improvement documentation (further to the company’s formal performance improvement procedures) | For the period during which performance is being assessed, plus 6 months thereafter | Employment tribunal claim limitation period (plus 3 month leeway to allow for early conciliation/extension of limitation period, or relapse in performance) |
| Work-related training records | Dependent on nature/reason for training    If training required to demonstrate wider statutory/legal compliance (such as H&S obligation or proper financial regulation) keep record of training for as long as necessary to demonstrate legal compliance.  (If required further to operation of formal performance improvement, then as above) | Required to demonstrate compliance with wider legal obligation |
| Records of disciplinary investigations and procedures where no further action taken | Delete once Employee informed that no further action to be taken | No basis to retain and detrimental to Employee to do so |
| Records of disciplinary investigations and procedures where further action taken/sanction imposed | During currency of sanction and then 6 months from date sanction becomes spent (or if sanction is dismissal – 6 months from dismissal) | 6 month period based on 3 month limitation period for discrimination or unfair dismissal claim (plus allowing period for Early Conciliation (EC) and possible extension of statutory period) |
| Grievances – letters/investigations/ process and outcomes | 6 months from date of completion of grievance procedure (or 6 years if grievance relates to pay/contract terms) | 6 month period based on 3 month limitation period for discrimination or constructive unfair dismissal claim (plus allowing period for EC and possible extension of statutory period).  Dispute re pay/contract terms – limitation period for Equal Pay claims  Note: Some employers may decide to retain a brief record/note of the fact that a grievance was made and the final outcome for longer than their retention period for the full documentation relating to a grievance – to guard against ‘serial’ grievance raisers) |
| Subject access requests/exercise of other individual GDPR rights | 12 months from date of request/exercise of right | Data controllers can refuse to comply with data subjects’ requests if the nature of the request is ‘manifestly unfounded or excessive’ – which may be the case if the nature of the requests is repetitive |
| Redundancy - details of selection scores for those not selected for redundancy | 6 months from date of termination of those selected for redundancy | 6 month period, based on 3 month limitation period for discrimination or unfair dismissal claims in relation to redundancy selection (plus allowing period for EC and possible extension of statutory period) |
| **Family leave** | | |
| Flexible working requests | 12 months from date of request | Employer only obliged to consider one statutory flexible working request during each 12 month period |
| Record of family leave taken – maternity, paternity, adoption, shared parental, parental bereavement (other than those re pay/as required by statute – see above) | 12 months following return to work from applicable leave | To ensure employer complies with obligation not to treat individuals less favourably/subject them to a detriment by virtue of their having exercised their right to take statutory leave |
| Record relating to parental leave | During employment, keep record of amount of parental leave taken until the child in respect of whom leave is taken turns 18  (Correspondence relating to applications for and confirmation of parental leave do not need to be retained beyond the specific period of parental leave in question)  After employment ends, 6 months post-termination | Statutory maximum entitlement is 18 weeks’ parental leave per child, to be taken before relevant child turns 18  During employment, employers will clearly be able to establish a need to retain parental leave records until the relevant child turns 18. However, employers are unlikely to wish to maintain such records after employment ends. There is no statutory requirement for them to do so, and it may be considered excessive for them to keep records – potentially for almost 18 years, if an individual leaves when their child is still very young – simply in order to be able to provide these to a subsequent employer should the the individual request it.  If an employer decides that it will not retain parental leave records for a significant period after employment ends, it should make this clear, for example in its parental leave policy. It could make provision in its policy putting the onus on individuals to keep their own records, which the employer could then confirm in writing if an individual requests it within a specified number of months of leaving employment. |
| **Termination** | | |
| * Letters of resignation/ dismissal * Notes of exit interviews * Record/audits of return of company property * Personnel file (other than records/personal data being retained post-termination in accordance with a statutory obligation or a specifically identified post-termination retention requirement in retention policy) | 6 months post-termination | Employment tribunal limitation period is typically 3 months (plus leeway for early conciliation or extension of limitation period) |
| Information to enable you to answer reference requests about ex-Employees, e.g. name/date of employment/position etc. | On request by the Employee/2 years from date of termination | An employer and Employee may agree to an employer keeping some minimal record of employment post-termination, such as name, date of employment and position in order that they can respond to future reference requests. This data retention, and the time for which such a record will be kept, could be agreed with an Employee upon their departure. |