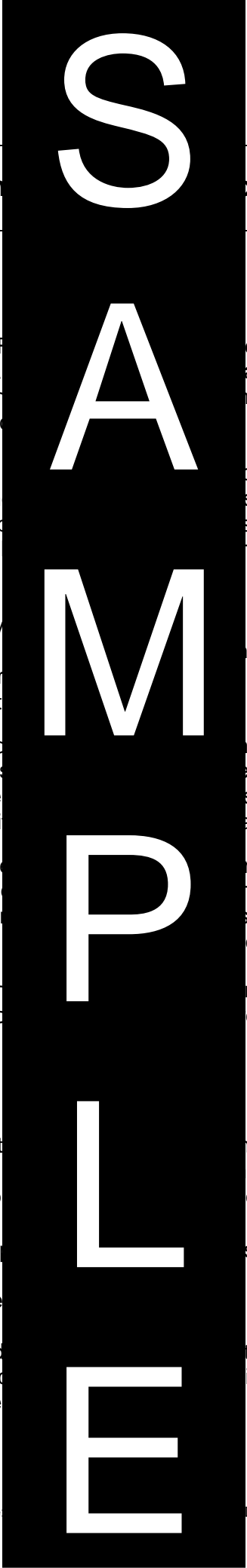


Guidance Note: Management of Employee Data



Introduction

The General Data Protection Regulation (GDPR) came into effect on 25 May 2018. Under the GDPR, employers are required to be transparent about their data retention policies and procedures and the requirements for compliance are much greater than was the case under the Data Protection Act 1998.

Under the GDPR, the requirements for the retention of personal data are very similar to those which applied under the Data Protection Act 1998. Before, it is a key requirement that there is a clear business need for the data (beyond shredding) after that period has passed.

Employers must provide employees with information about the personal data they collect from them, giving details of what information must include the purpose for which it will be stored, or if that is not possible, the criteria used to determine that purpose.

Employers can retain personal data for a certain period only if one of the specified legal bases for processing is met. For example, retention of data for a certain period may be justified if it is necessary in order to comply with a legal obligation.

Former employees can ask the employer for information about their personal data. This is known as the 'right to be forgotten'. The employer must comply with the request if the data is no longer necessary in relation to the purposes for which it was processed.

Employers should ensure that they have a clear retention policy which sets out the employer's obligations and the best practice for managing employee data.

Minimum retention times

For many types of HR records, the retention period is up to the employer to decide how long to retain the data for. They must consider what a necessary retention period is for them, depending on the type of data.

Employers should ensure that they have a clear retention policy which sets out the employer's obligations and the best practice for managing employee data.

Minimum retention times for employee records:

1. Salary Records and Details

Employers must keep records of what they pay their employees and include a record of employee leave and sickness absence.

Records to be retained

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Retention period: Three years from the end of the tax year to which the records relate. If full records are not available HMRC may estimate what the employer should have had and impose a penalty of up to £3,000.

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2. Incapacity for Work

Records to be retained: Records of all periods of incapacity for work (calculations, certificates, etc.); all sickness periods lasting at least four days; statutory sick pay records; and weeks for which SSP was not paid and why.

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Retention period: The Statutory (Revocation) Regulations require employers to keep these records for at least 3 months after the end of the period of sick leave. However if there were to be a contract of employment it may be safer to keep records for longer.

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3. Working Time

Records to be retained: Records of working time requirements of the Working Time Regulations; limits on weekly working hours; and night work.

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Retention period: Two years from the end of the period to which the records were made.

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4. National Minimum Wage

Records to be retained: Records of the National Minimum Wage; whether every worker is being, or has been, paid at least equal to the National Minimum Wage.

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Retention period: Three years from the end of the pay reference period immediately following the end of the period to which the records relate.

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5. Absence during Pregnancy

Records to be retained:

Maternity Pay (SMP)

- the date of an employee's absence from work, wholly or partly because of pregnancy; and, if the absence is of more than one day, the date of the first day when such absence begins;
- the weeks in that period for which Maternity Pay (SMP) was paid to that employee and the amount paid each week;
- any week in that period for which no payment was made (and the reasons why); and
- any medical certificates or other documents relating to the employee's absence from work.

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Retention period: Three years from the end of the tax year in which the employee's maternity pay

of the tax year in which the

6. Statutory Paternity Pay and Statutory Adoption Pay

Parental Pay and Statutory

Records to be retained

- the date the paternity pay period began;
- the evidence provided to statutory paternity and statutory adoption pay;
- the weeks in that tax year in which payments of SPP, ShPP or SAP were made and the amount;
- any week in that tax year in which payments of shared parental pay were made but for which no payment was made.

parental pay period or adoption

support of his or her entitlement to shared parental pay (ShPP) or

payments of SPP, ShPP or SAP were made

in the employee's paternity pay period but for which no

Retention period: Three years from the end of the tax year in which payments of SPP, ShPP or SAP were

the tax year in which payments of

7. Employee HR files

Records to be retained

employee contracts.

Retention period: Six years from the date of termination of employment. This takes into account that there is the possibility that documents relating to an employee could be relevant to a Tribunal claim, for up to six years after termination of employment. The Information Commissioner considers this as acceptable on the basis of the risk of litigation against legal risk.

ment terminates. This takes into account documents relating to an employee claim, for up to six years after termination of employment. The Information Commissioner considers this as keeping information to protect

8. Job Applications

Records to be retained of unsuccessful candidates

forms and interview records of

Retention period: Six years from the date of the outcome of their application. This takes into account the fact that a job applicant can bring a claim for discrimination to the Employment Tribunal within three years from the date of the outcome of their application, but also that this time limit can be extended where a Tribunal finds it equitable to do so.

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9. Accident Records

Records to be retained

the workplace.

Retention period: At least 3 years from the date on which the accident record was made.

the date on which the accident

Accident records are confidential and so employers must ensure that the personal information is not shared by other members of staff.

and so employers must ensure by other members of staff.

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