

# **Creating Document Retention Policies**

How to create good document retention policies in an electronic workplace in order to protect your organization against future litigation.

**Protecting yesterday and  
today's documents  
against loss or damage  
for future generations.**

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## **Introduction**

In today's business world, information is created and stored electronically on the computer. Therefore, the importance of creating and implementing a Document Retention Policy becomes more complicated, but extremely important in order to protect against cases of future litigation. archSCAN, LLC has compiled a set of general guidelines to follow when implementing a document retention policy. This document contains observations and should not be used as legal advice. archSCAN strongly encourages its clients to consult their attorneys for specific guidelines.

A document retention policy provides for the systematic review, retention and destruction of documents received or created in the course of business. A document retention policy will identify documents that need to be maintained and contain guidelines for how long certain documents should be kept and how they should be destroyed.

Why is it important to have a document retention policy?

- provide a system for complying with document retention laws;
- ensure that valuable documents are available when needed;
- save money, space and time;
- protect against allegations of selective document destruction; and
- provide for the routine destruction of non-business, superfluous and outdated documents.

Creating a set of guidelines for document retention is a complicated process because the laws governing document retention differ from state to state and industry to industry. Therefore, it is extremely difficult to come up with a standardized policy. These are some of the factors for companies which complicate the issue: work in several different states or with the federal government, work in several different industries, and the costs of storage for documents versus the probability that the documents will be needed in the future.

### **General Guidelines to Establishing Document Retention Policies**

1. Make sure the policy addresses: all types of business records (human resources, financial, legal, correspondence, business activities); all media utilized by the company for record keeping (electronic and paper); and the needs and requirements of all functions and operations.
2. Identify all legal requirements, including federal, state, and local laws and regulations that require a company to maintain records for a certain time.
3. Ensure that the policy is claims and litigation neutral and consistently applied without regard to whether documents may be helpful or damaging in future litigation.
4. Design the policy to work in conjunction with the organization's electronic document management system.
5. Consider the use of technology to help in monitoring and enforcing compliance to the retention policies.
6. Develop and include procedures for obtaining written approval of the initial retention policy and any subsequent modifications to the schedule.

7. Develop an implementation procedure and how to train employees to use it.
8. Develop a procedure for updating the policy as technological advances warrant changes.
9. Develop an effective procedure for ensuring that electronic copies of paper records are 1) complete and accurate replicas of the originals and 2) are and will continue to be accessible in a tangible form for as long as the record will need to be retained.
10. Utilize effective destructive methods, particularly in regards to electronic files.
11. Permanently retain all documentation regarding the design, development, implementation and enforcement of the policy.

**1. Make sure the policy addresses: all types of business records (human resources, financial, legal, correspondence, business activities); all media utilized by the company for record keeping (electronic and paper); and the needs and requirements of all functions and operations.**

All businesses generate different types of records, whether they are accounting records, employee contracts, e-mails, or general business activities. These records need to be retained for legal reasons. There are different laws that apply to different types of records and therefore, the document retention policy must account for these differences. The same rules cannot be applied across the board.

In addition to generating different types of records, businesses generate documents by using different types of media (word processing documents, databases, emails, paper records, audio/video records). The document management policy should account for these differences as well.

Finally, the policy should work in conjunction with all functions and operations of the business. For example, an engineer may be required to keep a set of drawings for 12 years, but renovations are expected in 15 years. It would probably be wise to keep the drawings and not destroy them.

**2. Identify all legal requirements, including federal, state, and local laws and regulations that require a company to maintain records for a certain time.**

When creating a document retention policy, it is imperative that an organization understands the specific requirements under federal, state, and local laws regarding the amount of time a document should be retained. It is highly recommended that an attorney be consulted in regards to this aspect of the policy.

**3. Ensure that the policy is claims and litigation neutral and consistently applied without regard to whether documents may be helpful or damaging in future litigation.**

When creating a document retention policy, it should not be in reaction to the possibility of future litigation. There should be a consistency to the retention of documents regardless of if they could be helpful or harmful in case of litigation. By inconsistently following the document retention policy of the organization, it makes itself vulnerable in times of litigation.

**4. Design the policy to work in conjunction with the organization's electronic document management system.**

An Electronic Document Management System (EDMS) is an organizational process which stores electronic versions of all of your documents, usually scanned copies of your paper documents and drawings, and those which have been produced electronically. It should be designed to improve how documents are stored and the ease in which to find them. This can significantly reduce the risk of "loosing" important documents and the time spent searching for them. In cases of litigation, it is often necessary to search through thousands of documents and by having an effective document management system in place, finding those documents becomes much easier.

**5. Consider the use of technology to help in monitoring and enforcing compliance to the retention policies.**

Technology is constantly improving and new advances are constantly enabling businesses to save time and money. For example, the use of electronic signatures and other security measures can protect against fraud and spoliation of documents. There are also encryption methods for securing information or destroying electronic information in the future.

**6. Develop and include procedures for obtaining written approval of the initial retention policy and any subsequent modifications to the schedule.**

The adoption and subsequent modifications of the retention policy should be made in writing to ensure that all of the implicated parties in the policy are aware of its measures.

**7. Develop an implementation procedure and how to train employees to use it.**

It is absolutely essential that employees understand how to implement and follow the document retention policy. Consistency is the key to success of the operation and this lies in the employees' hands. The policy cannot be a success unless it is completely adopted by everyone in the company.

**8. Develop a procedure for updating the policy as technological advances warrant changes.**

Technology is constantly changing and therefore, it may be necessary to modify the retention policy. It is extremely important that documents are available and reproducible when needed. Therefore, once technology becomes outdated, it is necessary to transfer the information to a more readable medium.

**9. Develop an effective procedure for ensuring that electronic copies of paper records are 1) complete and accurate replicas of the originals and 2) are and will continue to be accessible in a tangible form for as long as the record will need to be retained.**

Electronic copies of paper records must be complete replicas of the originals, in an unalterable state such as a "read-only" format, and they must be accessible as long as the record is needed. Often it is also necessary to have a record of when the electronic copy was made and if it was made in the regular course of business.

**10. Utilize effective destructive methods, particularly in regards to electronic files.**

Destroying records has become much more difficult since electronic files have been created. This is due to the fact that so many measures are taken to safeguard against the destruction or loss of information that the information gets stored in many places, i.e. on different desktop computers, on the server, on backup tapes, etc. It is a huge challenge to destroy the information. It may be useful to use encryption methods to destroy information in the future.

**11. Permanently retain all documentation regarding the design, development, implementation and enforcement of the policy.**

It is imperative that all information regarding the document retention policy be kept indefinitely to ensure the continual use of the policy and to protect the organization in cases of litigation.

**Conclusion**

Unfortunately, there is not a standardized set of document retention policies that will work for all organizations and their documents. It all depends on federal, state, and local regulations. In addition to that, the laws are constantly changing as the technology advances. Fifteen years ago, there were no regulations regarding electronic documents and now the laws are changing to accommodate them. The ways in which information is generated and stored is constantly changing and therefore, your document retention policies must adapt to these changes in order for your organization to be protected in today's world. archSCAN, LLC is committed to helping organizations become more efficient and effective in archiving and protecting yesterday's and today's documents for future generations. Please contact us with further questions you may have regarding document retention policies and electronic document management systems.

**Helpful websites and books on the subject of Document Retention Policies:**

<http://www.reference.com/search?q=document%20retention&r=d&db=web>

This site provides links to many articles on document retention.

<http://www.abanet.org/lpm/lpt/articles/ftr01045.html>

Law Practice Today, Electronic Document Retention Policies (And Why Your Clients Need Them) by Paul French

<http://www.nspe.org/liability/DocRetentionGuidelines0305final.pdf>

These guidelines are specifically oriented towards the engineering field.

<http://www.perkinscoie.com/content/ren/updates/bc/062606.htm>

This is an excellent guide to document retention with a lot of good tips and advice.

<http://www.pf.com/documentRetPD.asp>

This is a link to be able to purchase, Document Retention in the Electronic Workplace, by Michael R. Overly and Chanley T. Howell, which is an excellent book on document retention. It is very readable and has a lot of helpful information.

<http://www.pf.com/sedonaPrincPD.asp>

The Sedona Principles, crafted by some of the nation's finest lawyers, consultants, academics, and judges, are the widely cited rules designed specifically to bring order to the chaos that has characterized electronic discovery.

**Please contact archSCAN, LLC if you have any further questions regarding document retention policies and electronic document management. (410) 974-8183, [archscan@comcast.net](mailto:archscan@comcast.net), [www.archscan.com](http://www.archscan.com).**