

Putting in Place a Document Retention Program

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Why Retain Documents?

- Legal Obligations
- Know the evidence



Legally Required Retention Periods

■ Alabama law

- § 25-8-38: Employers must keep a separate file on site for employees under 19 years of age.
- Must include: name, home address, DOB, date of hire, proof of age, school of attendance, and time records.

Legally Required Retention Periods

- Federal law
 - Multiple sources of law
 - Retention period depends on type of document and source of law
 - See Addendum A on page 79

Legally Required Retention Periods

- Common law duty =

Must preserve documents when litigation is **reasonably anticipated**



Creating a Document Retention Policy

- 1. Inventory**
2. Determine Manageable Retention Schedule
3. Electronic Records
4. Responding to Document Requests
5. Destroying Records

Step 1: Inventory

Creating a Document Retention Policy

1. Inventory

2. Determine Manageable Retention Schedule
3. Electronic Records
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- Need to know types of records on file and types of records regularly created
- Create classes for record types

Creating a Document Retention Policy

1. Inventory

2. Determine Manageable Retention Schedule
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- Get a COMPLETE PICTURE of what you have and what you create

Creating a Document Retention Policy

1. Inventory
- 2. Determine
Manageable
Retention
Schedule**
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Requests
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Step 2: Determine Manageable Retention Schedule

Creating a Document Retention Policy

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2. Determine Manageable Retention Schedule

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- Policy must be realistic and manageable.
- Need input from various parts of organization.
- Easy, secure, cost-effective, efficient, and flexible

Creating a Document Retention Policy

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- 2. Determine Manageable Retention Schedule**
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■ Factors to Consider:

1. How long do these records have value?
2. How long are these records considered active?
3. When can these records be moved to storage with minimal disruption?
4. What legal retention obligations are applicable?

Creating a Document Retention Policy

1. Inventory

2. Determine Manageable Retention Schedule

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5. Destroying Records

- Needs to be the LONGER of either the operational value or the legal value
- Document reason for specific retention period
- Review regularly
(minimum 12-18 months)

Creating a Document Retention Policy

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Step 3: Electronic Records

Creating a Document Retention Policy

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- Greatest challenge
- Requires involvement of IT department

Creating a Document Retention Policy

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- Designate one IT employee to oversee document management
- Needs to be the person with the most knowledge about the policy
- Should also be the same employee responsible for preserving records under a litigation hold

Creating a Document Retention Policy

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Emails

- Emails need to be addressed in overall retention policy or separate policy.
- Include specific, centralized archiving methods
- Want to deter individual employees from saving emails on personal folders

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Step 4: Responding to Document Requests

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Litigation Holds

- Whenever litigation is reasonably anticipated
- Duty to preserve **supersedes** document retention (destruction) policy

Creating a Document Retention Policy

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Litigation Holds

- Need to:
 1. Identify
 2. Locate
 3. Secure

Creating a Document Retention Policy

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Litigation Holds

- Proposed Revisions to the Federal Rules of Civil Procedure
 - Trying to create more uniformity
 - Encourage parties to conduct open discussions early
 - Clear(er) standards and penalties

Creating a Document Retention Policy

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Step 5: Destroying Records

Creating a Document Retention Policy

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- Three most important things for document destruction:

1. Consistency

2. Consistency

3. Consistency

Creating a Document Retention Policy

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5. Destroying Records

- Designate an employee responsible for administering destruction program
 - Should be **very** familiar with document retention policy
 - Trains other employees – from the top down
 - Ensures proper enforcement

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Identifying Records for Destruction

- Establish consistent pattern
- If eligible for destruction under policy →
DESTROY
- **Exception:** any records subject to litigation, audit, or government investigation

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Document your document destruction

■ Include:

1. record identification,
2. date and method of destruction,
3. name of authorizing employee, and
4. any third party vendors used in process

Creating a Document Retention Policy

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- Method of destruction: confidential v. non-confidential records
- Treat electronic records the same as paper records

Questions?

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