



Protecting Your Business: The Importance of Record Retention Policies

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*This is the second article in a series on protecting a business's identity and avoiding personal liability for business actions. The **previous article** in this series explained how a business's failure to keep accurate records and follow formalities can result in personal liability for business actions, also known as "piercing the corporate veil."*

Does your business have a **record retention policy**? If so, do you and your employees follow it consistently?

An effective record retention policy is an essential part of protecting a business's corporate veil, yet many businesses' policies are lacking or nonexistent. The number of laws requiring the retention of certain documents continues to increase, along with the penalties companies face for failing to follow best practices in their record retention management. Failure to maintain an appropriate record retention policy can result in any of the following problems:

- Expensive efforts to locate documents;
- Breaches of privacy rights;
- Adverse publicity;
- Unwanted litigation;
- Loss of evidence to support positions in business negotiations or litigation;
- Adverse inferences in litigation;
- Accidental misrepresentation to courts or government agencies;
- Court or government sanctions; and
- Personal criminal or civil liability.

An effective record retention policy should:

- Be followed consistently;
- Be maintained and reevaluated regularly, including identifying documents eligible for retirement;
- Follow company procedures described in governing documents;

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- Protect the business's proprietary information;
- Allow for records to be produced in a timely fashion, regardless of the urgency of the request;
- Include email and other electronic files and correspondence;
- Include specific steps the business will take to ensure employees' compliance with the policy; and
- Adapt to unusual situations; e.g., a "litigation hold" plan that allows documents relevant to a pending lawsuit or government investigation to be protected from destruction while the lawsuit or inquiry is ongoing.

Business record retention policies should avoid:

- Unnecessary confusion caused by retaining drafts, prior versions, or duplicates of documents, especially those with personal notes, thoughts, and opinions added;
- Exposure of confidential information by forgetting password protection or encryption;
- Reliance on "personal" filing systems separate from those used by the business (all records may be discoverable in litigation);
- Keeping documents longer than necessary; and
- Deleting documents too soon.

Above all, businesses should ensure that they have a written record retention policy and schedule, and that it is followed consistently and reliably by all employees.

The next article in this series will discuss a data-driven analysis of veil piercing litigation. This approach reveals which business actions and contexts create the greatest risk of veil piercing for businesses.

In the meantime, if you have questions about your company's existing record retention practices or would like to discuss drafting one, please contact Taylor Gast at 517-371-8238.