



## Using HR Technology in a Regulatory Minefield

By Joe Carroll, SPHR, IST Management Services, Inc.

**E**lectronic document management software (EDMS) has been around since the 1980s. Most applications were designed to eliminate paper by capturing, storing, indexing and retrieving documents. In today's world, human resource professionals face a regulatory minefield. When one of the leading public accounting firms, Arthur Anderson, was virtually destroyed due to the illegal destruction of records, it changed the records management landscape forever. How we store human resources files today requires more than simply replacing a file cabinet with a software program. This article addresses three key areas that must be reviewed when evaluating document management software.

### 1. Will it help your company pass an I-9 audit?

The Homeland Security Act of 2002 created an executive department whose mission is to protect the security of the U.S. This spawned segments of government such as the U.S. Immigration and Customs Enforcement (ICE) agency, which is responsible for enforcing penalties against companies that hire illegal aliens. All companies must complete the I-9 form every time they hire someone. This excludes independent contractors, temps and leased employees.

I-9 forms must be retained for three years after the employee's start date or one year after the date the person's employment is terminated, whichever is later. United States Immigration and Customs Enforcement will give you at least three days' (72 hours) advance notice before they inspect your I-9 documents. Employers can be fined from US\$110 to \$1,100 per individual I-9 for improper completion or failure to retain I-9s. Each error on an I-9 Form

counts as a separate violation. A company with 100 employees can easily face fines up to US\$100,000. A common I-9 error occurs when an employee's work authorization date has expired.

It is critical that your EDMS provide you with the capability to automatically track expiration dates and to send e-mail alerts to hiring managers and employees well in advance of the expiration date. This is important since acquiring new employment authorization documents can take as long as 90 days. What typically happens is that employers file the I-9s and fail to track the expiration dates on a consistent and ongoing basis.

Another problem associated with I-9s is the employer's failure to destroy I-9s when legally permitted to do so. This represents an unnecessary liability since the form may have been incorrectly completed. Your EDMS must have a built-in records retention system that will destroy your documents in accordance with your records retention policy. When the taxonomy or file structure is set up by you and the software provider, it is critical that the I-9s have their own separate folder. This facilitates I-9 file destruction by date without destroying documents having longer retention schedules. If an auditor shows up on your front door, you will also be able to provide him or her with only the I-9s without their prying into other areas of your HR files. Once an employee's work authorization date expires, you will need to re-verify on the I-9 Form to continue employing the person. Re-verification must be no later than the date the work authorization expires or you will be subject to fines. Your EDMS must have the capability to track these expiration dates and to enter new expiration dates to remain in compliance.

The Department for Homeland Security also requires a records security program for the electronic storage of I-9s. For example, your EDMS must be able to provide a secure and permanent record that establishes the date of access, the identity of the individual who accessed the electronic record and the particular action taken. Failure to comply with this requirement is a violation and severe penalties can be imposed.

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## **2. Will it protect your records and avoid breaches in confidentiality?**

The U.S. Sarbanes-Oxley Act of 2002 was a direct result of the Arthur Anderson file destruction debacle. This act ushered in a new appreciation for adhering to consistent record retention policies, especially the storage of audit and payroll records, stock grants, compensation agreements, benefits and security administration. The U.S. Health Insurance Portability and Accountability Act (HIPPA) contains provisions to ensure that employee health information is not misused or improperly disclosed. Identity theft is a growing problem and employers may be liable if they don't properly secure employee information and prevent unauthorized access to employee files. The U.S. American with Disabilities Act (ADA) requires employers to keep all medical records separate.

In a recent survey I conducted with HRIS managers, most agreed that storing HR files electronically would make it easier to stay in compliance with regulations. Maintaining HR files in paper format is very risky, expensive and burdensome. Anyone can break into a file cabinet and obtain confidential information. According to a survey reported in *Information Week*, "At any given time, between three and five percent of an organization's files are lost or misplaced. The average cost of recreating a document is US\$180. Annual losses for a *Fortune* 1000 company with one million files are US\$5 million dollars."

It is clearly advantageous to keep HR files in electronic format. The folders can be separated electronically and security rights can be designed to restrict access. However, your EDMS must have reporting and monitoring capability to ensure a file access audit trail. The system should be able to tell you what files have been viewed, moved, deleted, renamed, etc. through a file access register.

Electronic security is also critical in blocking the snooping eyes of Internet hackers. A solid EDMS will transfer data using secure sockets layer (SSL) 128-bit encryption. It is an Internet security protocol initially developed by Netscape for transmitting private documents. The 128-bit encryption ensures your data will not be deciphered, cracked or compromised.

Ideally, your system will also use the Software-as-a-Service (SaaS) model where the vendor provides a Web-based, scalable, customizable solution over the Internet. This is the preferred model since it eliminates investment in computer hardware, writing code and provides better security and redundancy tools. In addition, the vendor will often provide the staff necessary to initially scan in your active and terminated files quickly and efficiently.

The SaaS model also provides a built-in disaster recovery system since the files are electronically stored on servers that are off-site in a highly secure environment. Physical security should include a single point of entry, on-site security force and technologies like coded key cards, biometric fingerprint, iris scanners and surveillance cameras. When choosing your EDMS, it is important that you can quickly recover from a catastrophe. Every component in the architecture needs to be redundant, including hard disks, servers, storage arrays, power and Internet connectivity. Data backups should be conducted on a daily basis.

## **3. Will it save you time when responding to lawsuits?**

No company can totally insulate themselves from employee lawsuits. Last year alone, there were 82,792 charges filed with the U.S. Equal Employment Opportunity Commission (EEOC). The EEOC recovered US\$290.6 million in monetary benefits for charging parties. When considering the purchase of any EDMS, it is critical that the software be able to provide reports regarding the number and type of terminations over a specific time period and to essentially point and click to retrieve those documents automatically. It is not unusual for the EEOC to require companies to go back in time 12 months for documentation. For a large organization still using file cabinets to store HR files, this can be a daunting task. The smart solution today is to use HR-friendly software that completely removes the burden of file room management.

Equally important in document retrieval is controlling missing forms. The EEOC will not have much sympathy if you are not able to locate a particular document. Your EDMS should provide you with the capability of identifying

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any required form such as a corrective action, termination or benefit enrollment form. If the form is not received, the system should be able to send e-mail alerts to the hiring manager or in some cases the employee to acquire these forms. Once the form is scanned, it eliminates the form from the missing forms report.

Norman Ralph Anderson once said that “regulations grow at the same rate as weeds.” There are a lot of weeds in HR’s regulatory minefield. Some of those weeds can put a serious dent in your company’s bottom line. A smart electronic document management software system can keep those weeds under control.

## About the Author



Joe Carroll (Joe@istmanagement.com) is vice-president, human resources for IST Management Services headquartered in Atlanta, Georgia USA. IST is a national facilities management company providing on-site, mail and copy services. IST also provides Docstor, an electronic document management software solution that transforms human resources files or virtually any type of file into electronic format. Carroll has more than 20 years experience in managing Human Resources departments for major corporations and has been with IST since its inception 11 ago. Last year, his company won the Human Resources Professional Excellence award granted by the Society for Human Resource Management. He has a bachelor’s degree in English from Queens College and a M.B.A. from St. John’s University (formerly the College of Insurance) in New York City. He is certified as a senior professional in human resources by the Society for Human Resource Management. Carroll is also a member of the International Association for Human Resource Information Management, International Facility Management Association, Association of Legal Administrators and the International Coaching Federation and is the author of the book *Job Zone*.