



HR Electronic Records

Electronic Signatures in Argentina: What it means for HR

What is an electronic signature?

Generally speaking, an electronic signature (or e-signature) is a technical process logically associated with a document which two (or more) individuals or organizations (the signatories) agree to rely on in order to express their intent to sign such document. Three components are therefore necessary: a document, a signatory and an e-signature tool. While the tool most commonly used for handwritten signatures is a simple pen, electronic signature tools are typically more complex. From a regulatory standpoint, an electronic signature is a broad category that encompasses many types (or levels) of electronic signatures.

Depending on the country it is used in, there are differences in purpose, legal acceptance, technical implementation and cultural acceptance of electronic signatures. In particular, e-signature requirements tend to vary significantly between most “civil law” countries (including the European Union and many countries in South America and Asia), and most “common law” countries (such as the United States, Canada and Australia). Civil law countries typically support a “tiered” approach including higher levels of signature often called digital or qualified electronic signatures (typically required for specific types of contracts), as opposed to common law jurisdictions which are typically more technology-neutral. In addition, some industries (such as healthcare or banking) and documents (such as marriage or adoption contracts) may require a higher level of e-signature.



What are the laws and regulations in Argentina?

Act No. 25506 (the Digital Signature Law) recognizes digital signatures and regulates their use. Under the Digital Signature Law, when a law requires a handwritten signature, a digital signature can satisfy this requirement. Similar to the European Union, Argentina sets multiple levels of digitally signed documents:

Electronic signatures are defined as a set of electronic data integrated, linked or logically associated with other electronic data, used by the signatory as the means of identification. An employer using this type of signature would need to provide proof of the validity of the signature if it's questioned.

Digital signatures have been certified by a government licensed certifier and are defined as the result of applying a mathematical procedure to a document which requires information that is exclusive to the signer and, under the signer's absolute control. Digital signatures are presumed valid if the digital signature meets the following requirements:

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- the signature is created during the period of validity of the digital certificate;
- the signature is verified via reference to the digital signature verification data in the digital certificate, according to the corresponding verification procedure; and,
- the certificate is issued or recognized by a government licensed certifier.

Argentina's Labour Contract Law, No. 20744 permits employment contracts in any form, except when there are specific requirements in other laws or collective agreements (Art. 48). Under Argentina's Labour Contract Law, signatures are required for all employment contracts completed by private companies (Art. 59). Digital signatures are permitted when the individual can't sign a document in wet ink. The validity of the electronic signature is determined based on the evidence provided, showing its "effective performance." In addition, Argentina's Commercial and Civil Code (Law No. 26994) allow contracts to be created using electronic media or similar technology (Art. 1106).



Is an electronic signature valid in Argentina?

As written employment agreements are not mandatory in Argentina, per the Labour Contract Law, parties are permitted to agree to terms through electronic means and electronic signatures. If an employee challenges the content of a contract and denies their electronic signature, evidence of the electronic exchange between the parties is acceptable (ex., such as through email).

Due to the pandemic, agreements related to suspensions/reduction due to force majeure (i.e., when a contract cannot be fulfilled due to unforeseeable circumstances) are allowed to rely on electronic signatures and special ratification procedure.

As a general best practice, employers should use verified electronic transmissions provided by postal companies (telegrams, electronic notifications, etc.) for disciplinary notifications. In the event of a just cause termination, by law there must be an indisputable notification process (such as using a notary public or telegram service). In the event of a no-cause termination, the notification can be provided in writing, orally, via email, etc. but the employer must be able to provide evidence that the notification was given to the employee.

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