



HR Electronic Records

Electronic Signatures in Colombia: 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 Colombia?

Colombia’s laws make a distinction between digital signatures and electronic signatures. Digital signatures are defined as “a numerical value that adheres to a data message” which is linked in such a way to show that the signature was completed by the initiator of the digital signature and that the record has not been modified after the digital signature was completed (Art. 2, Law 527 of 1999). Law 527 of 1999 generally gives digital signatures the same value as handwritten signatures, provided the signature meets certain requirements.

Electronic signatures are defined as “Methods such as codes, passwords, biometric data, or private cryptographic keys, which allows to identify a person, in relationship with a data message, as long as it is reliable and appropriate with respect to the purposes for which the signature is used, taking into account all the circumstances of the case, as well as any pertinent agreement” (Art. 1, Decree 2364 of 2012). Electronic signatures are allowed when it’s reliable and appropriate, given the purpose of the

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signature. In order for an electronic signature to be considered valid, the signature should:

- be unique to the individual. The data related to the creation of the signature must correspond exclusively to the signer;
- be able to be authenticated;
- be under the exclusive control of the signer, and the data related to its creation should correspond exclusively to that person;
- be linked to a document in a way that it's possible to detect unauthorized alterations made after signing; and,
- meet additional requirements adopted by the government authority.

Circular 060 was issued in the development of Law 527 of 1999 and clarifies the guidelines for signing an employment contract via an electronic signature. Circular 060 states that electronic signatures can be used for employment contracts and other labor documents. While the circular is non-binding, it includes important criteria to be considered.

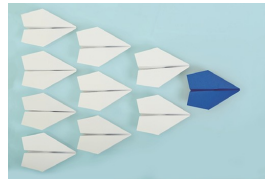
Decree 526 of 2021, issued on May 19, 2021, established specific requirements applicable to electronic signatures for employment agreements and employment-related documents. In general:

- documents/files sent for an employee's electronic signature must be sent through an electronic method authorized by the employee;

- the use of electronic signatures cannot be an obstacle to (or limit) access to employment, and employees cannot be required to cover expenses associated with electronic signatures for employment documents;
- employers must provide employees with the means for the employee to be able to use the electronic signature; and,
- the digital management of electronically signed employment documents must be completed in a manner that allows the document to be shared or consulted, at any time, in the document's original format.

Is an electronic signature valid in Colombia?

Yes. Both electronic and physical signatures are valid in Colombia. When an electronic signature is used, it must be reliable and appropriate for the purpose(s) which the document was generated. Any disputes as to the validity of signatures (electronic or physical) will come down to a question of proof.



HR Best Practices

Electronic signatures are generally considered valid in the employment context in Colombia.

When using electronic signatures, ensure that appropriate safeguards are in place, given the purpose for the record and that the signature can be authenticated.

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