



HR Electronic Records

Electronic Signatures in Mexico: 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 Mexico?

Electronic evidence, including electronic signatures, are permitted in Mexico under the reform to the Federal Labor Law (FLL) which went into effect in December 2012. The FLL classifies electronic signatures into two categories: simple and advanced. While both version of electronic signatures are considered valid, only advanced signatures will be given the full evidentiary presumption in the event of litigation.

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A simple electronic signature (i.e. one that doesn't utilize an advanced electronic-signature system) will carry the same presumption of validity in court as a photocopied document. According to the FLL, while this presumption validates the existence of the original document, the validity of the signature/consent can still be challenged by the employee.

Mexico's Commerce Code allows for advanced signatures that are certified as valid ("trusted") by the public or private parties (private parties must be accredited by the Ministry of Economy). Generally, under the Mexican Commerce Code, an electronic signature needs to meet the following conditions to be trusted (certified as valid):

- the creation information (e.g., codes or cryptographic passwords) must belong exclusively to the creator of the signature;
- the creation information must have been under exclusive control of the creator at the moment of creation;
- it must be possible to detect any modification; and,
- it has to be possible to detect any alteration to the data messaging after the document was signed.



Is an electronic signature valid in Mexico?

Electronic signatures can be used in Mexico and are recognized in the Commerce Code. Both simple and advanced electronic signatures can be used in the context of Human Resources, but in the event of a lawsuit, only advanced electronic signatures will be given the full evidentiary presumption of validity.

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