



## HR Electronic Records

### Electronic Signatures in New Zealand: 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 New Zealand?

Electronic signatures are permitted under New Zealand’s Contract and Commercial Law Act 2017. Under the law, electronic signatures (other than a witness’s signature, which has additional requirements) are allowed as long as the signature (Sec. 226):

- adequately identifies the individual signing the record and adequately indicates the individual’s approval of the information in the record; and,
- is considered reliable given the purpose of the signature.

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Note that if there is a legal requirement for a signature that relates to information that is legally required to be given to an individual, the electronic signature is only allowed if that individual consents to receiving the electronic signature.

Under the law (Sec. 228), electronic signatures are presumed to be reliable, if:

- the means used to create the electronic signature is linked only to the individual signing the record;
- the means used to create the electronic signature is only under the control of the individual signing the record;
- alterations to the electronic signature made after the time of signing are detectable; and,
- if the legal requirement for a signature is to provide assurance as to the integrity of the information in the record, any alterations made to the record after being signed are detectable.

## Is an electronic signature valid in New Zealand?

Yes. As long as the above requirements are met, electronic signatures can be used on most HR documents including employment agreements and separation/release agreements.

- the form of the information and means of providing the information ensure the integrity of the record (taking into account the purpose and circumstances of the record);
- the information remains accessible for future reference; and,
- the individual consents to the information being provided or produced electronically.



### HR Best Practices

Electronic signatures are generally considered valid in the employment context in New Zealand. When using electronic signatures, ensure that appropriate safeguards are in place and that any alterations made after signing are detectable.

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