



HR Electronic Records

Electronic Signatures in Portugal: What it means for HR

What is an electronic signature?

- An electronic signature is a technical process logically associated with a document in which two (or more) individuals or organizations (the signatories) agree to rely on in order to express their intent to sign.
- Three components are 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 more complex.
- The term "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, technical implementation, legal and cultural acceptance of electronic signatures.
- Most civil law countries (including the EU and most countries in South America and Asia) support a "tiered" approach with higher levels of signature called digital or qualified electronic signatures.
- Most common law jurisdictions (US, Canada, Australia, etc.) are typically more technology-neutral.
- In addition, specific industries (e.g. healthcare or banking) or specific documents (e.g. marriage or adoption contracts) often require a higher level of e-signature or handwritten signature.

What are the laws and regulations in Portugal?

Portuguese legislation specifically permits the use of the electronic signatures through Decree Law no. 12/2021, of 9 February, which executes the eIDAS regulation in Portugal. Qualified electronic signatures have the same probatory value as handwritten signatures in Portugal, provided that the signature is based on certificates issued by accredited certification bodies.

On July 1, 2016, Regulation (EU) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market (the "eIDAS Regulation") came into force and replaced the former EU Directive on electronic signatures (1999/93/EC). The eIDAS Regulation, directly applicable in the member countries of the European Union brought uniformity - and much needed clarity - among the EU member states' local legislations on electronic signatures.

Generally, written signatures are not required for a valid employment contract in Portugal, and contracts are generally considered valid when all parties reach an agreement, regardless of form.

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Certain types of employment contracts must be concluded in writing. This includes fixed and unfixed term employment contracts, part-time employment contracts, intermittent employment contracts and temporary employment contracts, and posting and assignment of workers scenarios. These contracts must be signed using an electronic or wet ink signature.

When using simple or advanced electronic signatures, some employers include a contractual clause stating that both parties expressly recognize that simple or advanced electronic signatures have the same probatory value as qualified electronic ones.

To increase the validity of any electronically-stored records, consider:

- How the electronically scanned record was generated, stored and transmitted. Records should be stored in an un-erasable medium and businesses should retain a backup copy in a separate location. Employers may designate specific individuals to manage electronic records.
- The continued integrity and reliability of the stored data. Electronic archiving systems should be periodically maintained to ensure ongoing reliability.

Please be aware of the risks of, e.g., cloud systems of work and unsafe e-mailing, which may not have sufficient protective measures against intrusion. This might pose a contingency in keeping personal data and sensitive corporate information safe.

Decree no. 121/2021 regulates the electronic archiving of documents drawn up by a notary and other documents filed at notary offices, the permanent notarial certificate, and the electronic reporting of acts to the Central Registry Office

Are electronic signatures valid?

Under eIDAS, a valid electronic signature may be **simple**, **advanced** or **qualified**. All three levels of signature are legally **valid** and defensible in court. However, the **probative value** (i.e. how easily the validity of the signature can be proven in court) will vary depending on the type (or level) of electronic signature as illustrated by the graph.

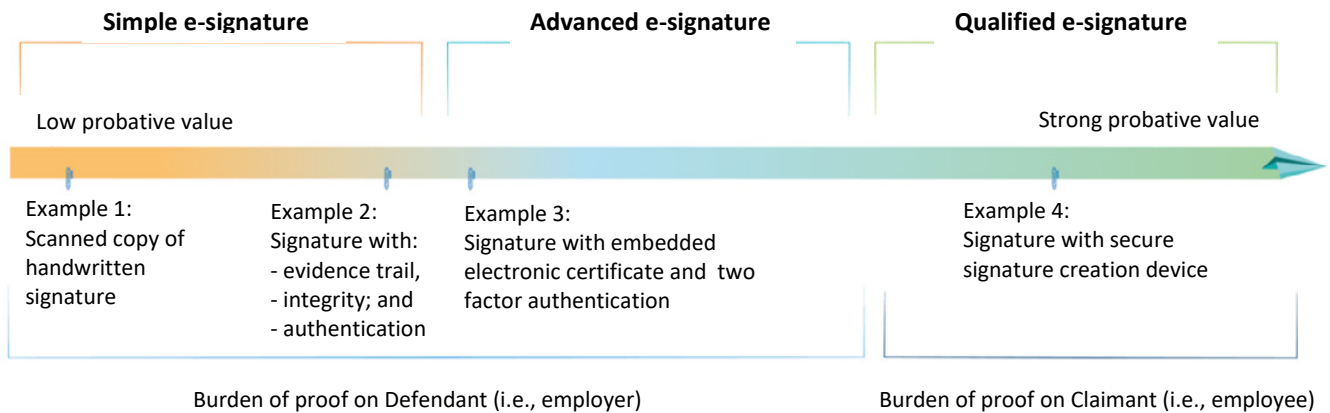
There are certain modalities of employment contracts that must be concluded in writing, namely fixed and unfixed term employment contracts, part-time employment contracts, intermittent employment contracts and temporary employment contracts, and posting and assignment of workers scenarios. In such cases, those contracts must be signed in wet ink by the parties or include the qualified electronic signatures of both parties.

E-signatures almost always offer higher guaranties than handwritten signatures, regardless of the level of the e-signature being used:

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- the **evidence trail** associated with superior electronic signature tools will allow defendant to prove the validity of the signature.
- the use of time-stamping and encryption technologies will provide a much higher level of confidence in the **integrity** of an electronically-signed document compared to the limited level of protection provided by a handwritten original (unless notarized).

Probative value scale



For **simple and advanced electronic signatures**, it is the employer's responsibility to bring evidence of the validity of the signature if an employee challenges the document.

Advanced signature solutions typically offer a more robust evidence file in that regard than simple e-signatures solutions.

Qualified electronic signatures have the same probative value as handwritten signatures in Portugal, provided that the signature is based on qualified certificates issued by accredited certification bodies. Portuguese legislation specifically permits the use of the electronic signatures through Decree Law no. 12/2021, of 9 February, which executes the eIDAS regulation in Portugal.

Based on the experience and application of the above-referred Decree Law, case law surrounds mostly on public procurement and administrative regulatory affairs. For public procurement, specifically, most case law requires that electronic signatures (even if certified) - when documents are submitted to governmental platforms – must also be accompanied by an additional electronic document stating the powers conceded (for representation) to the signature of the subscriber (for example a POA – Power of Attorney and a supplementary Citizenship Card of the entrusted person to subscribe and a company updated registration). When and if doing so, this would be highly recommended in order to avoid or mitigate possible risks.

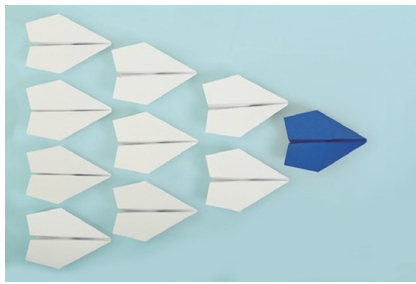
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What level of e-signature is recommended for HR documents?

The vast majority of HR-related documents are suitable for simple or advanced electronic signatures. Simple and advanced electronic signature are recommended for documents with a risk factor ranging from low to medium. These are often external documents with limited risk and typically include employment agreements, company policies, employee handbook, performance reviews, expense report, etc.

Qualified electronic signatures or handwritten signatures would only be justified in limited cases for very sensitive documents such as credit or life insurance agreements or when specifically required by law (e.g. specific healthcare documents).

HR Best Practices



In Europe, customers typically use an advanced electronic signature for employment agreements as well as other HR-related agreements, and rely on a strong simple e-signature solution for other less sensitive HR documents such as policies and performance reviews.

However, this decision also depends on an employer's internal culture and its level of risk-adversity.

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