



HR Electronic Records

Electronic Signatures in South Africa: 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 South Africa?

Under South Africa’s Electronic Communications and Transactions Act, 25 of 2002 (ECTA) Electronic signatures can’t be denied legal validity merely for being in electronic form, except when there is another statute that prescribes the type of signature (Sec. 13(1) and (2)).

When an electronic signature is required only by the parties involved (and not by law) and the parties haven’t agreed to a specific type of electronic signature, the requirement is met if the electronic signature method used:

- identifies the individual and indicates their approval of the information in the record; and,

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- is considered reliable and appropriate for the purpose of the record (Sec. 13(3)).

In cases where there is a statute that requires a signature, an advanced electronic signature, verified through an accredited eSignature provider, would likely be required. This is generally not necessary in the employment context.

Is an electronic signature valid in South Africa?

Yes, section 13(1) of ECTA gives electronically signed agreements the same legal validity as a hand-signed document.



HR Best Practices

Electronic signatures are generally considered valid in the employment context in South Africa. When using electronic signatures, ensure that appropriate safeguards are in place and that metadata (such as time stamps) is properly recorded.

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