

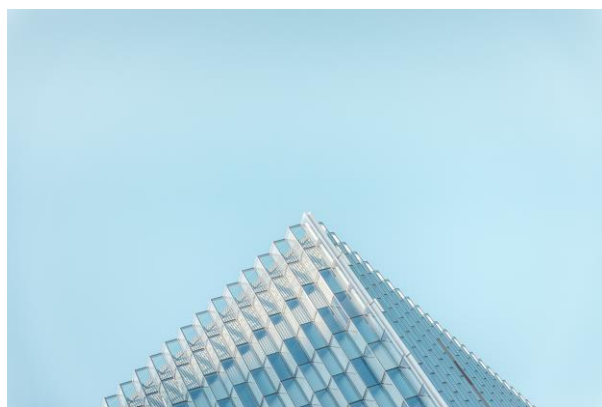


# HR Electronic Records – Canada

## Electronic Archiving of Paper Originals

### Legal Framework for Electronic Archiving

Although some countries require certain types of documents to be kept and archived in their original paper form, for most categories of documents, including HR-related records, there is no such requirement, and it is generally acceptable to use electronic versions of paper records (i.e., scanned copies of paper originals) during most government agencies' inspections and audits or in court proceedings.



The evidential or probative value of electronic versions of paper records may be more easily challenged before a court than it would be for the originals. This is mainly because the original records could be tampered with or changed before being scanned, and, unless proper technology has been used (e.g., encryption and timestamping), it may not be easy to detect such changes from a scanned copy. In specific situations, it may be good practice for employers to retain archives of paper originals in the event such originals would be requested by a specific investigator, auditor, judge or authority.

### Are electronic scanned copies of paper originals legally valid?

Electronic archiving is regulated by federal, provincial and territorial legislation, depending on the jurisdiction of the employee in Canada. Note that not all human resources related records are subject to retention regulations. Different types of employee records are subject to different requirements. For example, federally, the Canadian Pension Plan, Employment Insurance Act and its Regulations, and the Income Tax Act, establish production and retention requirements for certain records related to an individual's employment. Provincial and territorial employment standards, tax and workers' compensation legislation, will establish other requirements. The Protection of Personal Information and Electronic Documents Act (PIPEDA) and its Regulations apply to the electronic retention requirements at the federal level, when other federal legislation does not exist.

Under PIPEDA, documents required to be retained can be retained electronically provided that certain conditions are satisfied:

- the electronic document is retained in the format in which it was created/sent/received, or in a format that accurately represents the information contained in the document that was originally created/sent/received;
- the information remains readable/perceivable by individuals who are

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permitted to access the record and by individuals who are authorized to require the creation of the electronic document; and,

- if the record was sent/received, information identifying the origin and destination, and the associated date and time the record was sent/received is retained.

The Canada Revenue Agency (CRA) released an Interpretation Bulletin (ICO5-1R1 “Electronic Record Keeping”) setting the federal standards applicable to creating electronically readable formats for records required under the Canada Pension Plan, Employment Insurance Act and Income Tax Act. When records are stored to meet the requirements under these three statutes, the system used for storage must be capable of producing accessible and useable electronic copies (i.e. the record must be readable for use by CRA auditors on CRA equipment). Questions about whether a specific format satisfies requirements should be addressed to the local CRA tax services offices.



Provincial laws may apply to employees whose employment falls under provincial jurisdiction. For example, in Alberta the Electronic Transactions Act (ETA) would apply to most legal requirements imposed by Alberta statutes to create, use or retain documents/records. Previously, under the Alberta ETA Regulations,



records relating to the employee-employer relationship were not covered by the ETA. However, recent amendments to the Regulations have removed restrictions on the use of electronic signatures and maintenance of electronic records related to employment.

Employers and employees in Alberta can now execute employment contracts by electronic signature and can maintain employment records electronically, subject to the criteria established in the ETA.

The probative value of an electronic scanned copy will depend on the applicable federal or provincial evidentiary legislation, as well as any applicable common or civil law principles. If an HR-related record is not governed by any statutory requirements regarding its creation or retention, it is likely that the common law would permit the record to be retained electronically.

Federally, its best practice to mindful of the requirements under the Canada Evidence Act in order to ensure that an electronic record (including electronically scanned copies of paper records) can be admitted into evidence in court. The Canada Evidence Act broadly defines a “record” as including “any book, document, paper, card, tape or other thing on or in which information is written, recorded, stored or reproduced.”

Employers seeking to admit an electronic record in federal court have the burden of proving the record’s authenticity through evidence capable of showing that the electronic document is what it purports to be. Employers would also need to ensure that an electronically scanned copy of a

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paper original meets the “best evidence” rule, which can be satisfied by proving the integrity of the electronic archiving system used to store or record the document; or, showing that the document complies with regulations relating documents signed with secure electronic signatures. The Canada Evidence Act sets out certain criteria that must be met to demonstrate integrity of a system in which an electronic document is recorded or stored.

When the above requirements are met, an electronic document should be given the same evidentiary value as a paper original. The Alberta Evidence Act contains similar provisions.

## Are there any legal requirements for electronic archiving systems (EAS)?

There is no national authority which sets out criteria for a legally “valid” electronic archiving system. However, the Canadian General

Standards Board (CGSB) has prepared a national standard which sets out principles, methods, and practices for the creation and management of all forms of electronic records to support their admissibility and weight as evidence in legal proceedings. While non-binding on the employer, continuous compliance with the CGSB standard is an essential component for proving the integrity of an electronic record or electronic records (archiving) system.



## HR Best Practices:

Federal Canadian evidentiary legislation provides that any person may rely on

electronic documents (i.e. an electronic scanned copy) provided that they satisfy the burden of proving the document’s authenticity and the elements of the “best evidence rule.” The best evidence rule is generally satisfied on proof of the integrity of the electronic record itself.

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