

## ELECTRONIC SIGNATURE

### 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) or documents (such as marriage or adoption contracts) may require a higher level of e-signature.

### What are the laws and regulations in Canada?

Canada’s Personal Information Protection and Electronic Documents Act (PIPEDA) defines an “electronic signature” as “a signature that consists of one or more letters, characters, numbers or other symbols in digital form incorporated, attached to or associated with an electronic document.” Note that with one exception, PIPEDA is not specified as applicable to HR-related documents (In the

schedule to PIPEDA, there is a reference to a section of the Canada Labour Code requiring employers keep certain records at the time of making wage payments, but this does not relate to signatures). For documents that must be signed under other Canada Labour Code provisions or other federal statutes, the use of an electronic signature would arguably be governed by common law.



Provincial and territorial legislation generally adopt a substantially similar definition but occasionally use different verbiage.

### Is an electronic signature valid in Canada?

Provincial and territorial legislation, give the same legal effect to electronic signatures as it would a written signature, provided certain conditions are met.

Previously, under Alberta’s Electronic Transactions Act (ETA) Regulations, electronic signatures relating to the employee-employer relationship were not covered. However, recent amendments to the Regulations have removed restrictions on the use of electronic signatures related to employment. Employers and employees in Alberta can now execute employment contracts by electronic signature, subject to criteria established in the ETA: (a) The electronic signature must be reliable for the purpose of identifying the person and, (b) the association of the electronic signature with the record must be reliable for the purpose for which the record was created.

Certain best practices should be adopted by employers seeking to rely on electronic signatures in HR-related documents, including electronic employment agreements:

- The employer must be able to prove that the person agreed in full with what he/she electronically signed (e.g. “authentication”), and that there was no way to tamper with the electronic signature or the electronic document once the signature was applied;

- the employer must have a reliable system for recording the electronic signature and, if necessary, could prove by whom (i.e. identity of the signor), how and when the electronic signature was applied; and,
- the person who electronically signed the document must be able to access and retrieve (e.g. print) the document.

In addition, the employer must ensure that the integrity of the electronically signed document is maintained.

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

Federal legislation in Canada (PIPEDA) creates specific technical requirements for establishing a "secure electronic signature." A "secure electronic signature" is only required under PIPEDA in relation

to specific types of documents, such as statements made under oath, statements declaring/certifying the truth of information and documents that must be witnessed. These requirements can be used as guidance on factors that may be considered to ensure an enforceable electronic signature. That said, they may be stricter than what is required in many circumstances.



**HR Best Practices:**

Provincial and territorial legislation provide the possibility of using an electronic signature solution for

employment agreements, as well as other HR-related documents.

Last updated July 2020.

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