



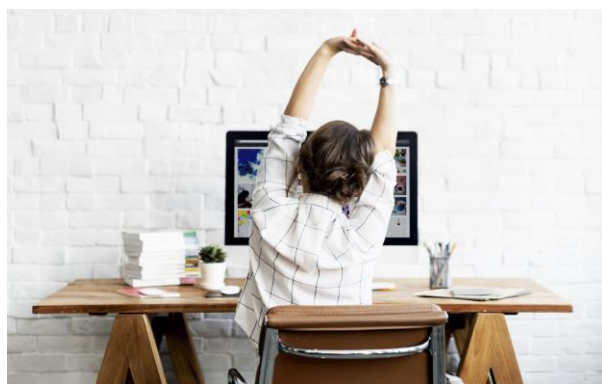
HR Electronic Records

Electronic Signatures in China: 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 China?

The People’s Republic of China (PRC) allows contracts to be concluded electronically (PRC Contract Law, Art. 11). The Electronic Signature Law of the People’s Republic of China (电子签名法) was amended and promulgated by SCNPC on April 24, 2015 (“Electronic Signature Law”). According to the text, “Electronic Signatures” refers to the data included and attached to electronic data in electronic form for the purpose

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of identifying the signatory, and verifying that the signatory has acknowledged the attached content. The Electronic Signature Law further provides that a reliable electronic signature has the same legal effect as a seal or signature by hand. The Electronic Signature Law does not specify the form or scope of an electronic signature.

The Ministry of Human Resources and Social Security issued a Letter on Issues Concerning the Conclusion of Electronic Contracts (Letter No. 33 [2020] of the General Office of the Ministry of Human Resources and Social Security) on July 1st, 2021, which stipulates steps employers should follow when concluding electronic contracts:

- **Consent:** Concluding an electronic labor contract requires the consent of the employer and the employee.
- **Notification:** Employers should “clearly inform employees of the process, operation methods, precautions, and ways to view and download the complete text of an electronic labor contract”. Employees should not be charged a fee.
- **Platform and technical requirements:** Electronic labor contracts should be concluded through an electronic labor contract execution platform (government sponsored platforms are preferred). Platforms should include labor contract signing, retrieval, storage, application and other services. The execution of electronic

labor contracts must reflect the identity authentication and the willingness of execution. The verification process should be recorded and saved. The employer and the employee must use digital certificates and keys issued by legally established electronic certification service agencies. Contracts must be accompanied by a trusted timestamp.

- **Post-execution obligations:** Employers are required to notify employees that the electronic labor contract has been concluded. This can be done via text message, WeChat, email or APP information prompts. Employers should remind employees to download and save the text of electronic labor contracts in a timely manner, inform employees how to view and download electronic labor contracts, and provide necessary guidance and assistance. If needed, employers must provide at least one free copy of the contract to the employee, and prove that it is consistent with the original electronic copy by stamping or other means.

Is an electronic signature valid in China?

Yes. Electronic signatures on employment contracts, NDAs, privacy notices and other HR documents are valid and recognized in China so long as the electronic signature is authentic, integral and reliable.

The Electronic Signature Law confirms that electronic signatures are valid and provides that a

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“reliable electronic signature” must satisfy all of the following requirements concurrently:

- the data creating the electronic signature must be owned exclusively by the electronic signatory;
 - when a signature is created, its data is controlled by the signatory only;
 - any alterations of the electronic signature after signing can be identified; and
 - any alterations of the contents or form of any electronic data after signing can be identified.
- documents related to marriage, adoption and succession;
 - documents related to the transfer of the rights and interests in land, housing and other immovable property;
 - documents related to the termination of public utility services like water, heat, gas and power; and,
 - other circumstances as provided under laws and regulations.

Electronic signatures can also be deemed “reliable” if they are certified by a qualified certification organization and the signatory passes identity verification.

The following contracts or documents should not be executed by electronic signature:



HR Best Practices

Chinese legislation and labor arbitration generally provide the possibility of using an electronic signature solution for employment agreements, as well as other HR-related documents.

Last updated September 2022.

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