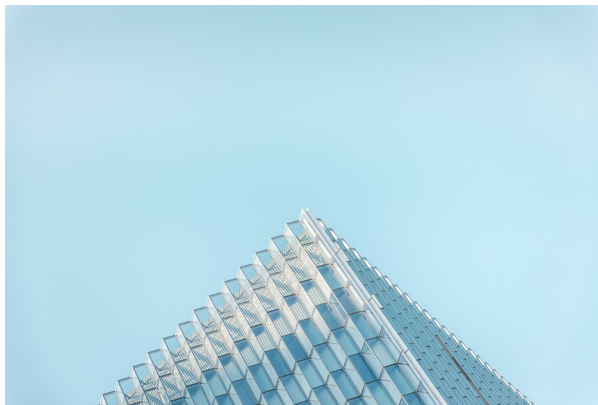


HR Electronic Records – Italy

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?

Under Italian law, a paper original document may be classified as a “private writing” when it contains the signature of a person (art. 2702 of the Italian Civil Code). Indeed, any paper original document which has been signed by a private individual is considered to be a private writing. It is not relevant if the text of the document is printed, precompiled or already drawn up by third parties. It is essential for there to be a signature, which has the effect of assigning the responsibility of the content to the signatory.

Scanned copies of paper original considered as private writings (e.g. employment agreements) have the same probative value as paper originals only if: (i) their conformity with the original has been certified by a Public Official (certification based on the comparison with the original, in this case the signature cannot be repudiated by the person against whom the document is produced, other than by starting up a special procedure called **action to establish falsity**, i.e. “**querela di falso**”); or (ii) when the scanned document is not expressly repudiated (art. 2719 of the Italian Civil Code). If the signature, or the existence of the paper original to which the scanned copy refers to, is contested (so called **repudiation of a private writing**), the party providing the scanned copy must obtain the paper original so that the verification procedure can be carried out (so called **verification procedure**).

So far, the verification procedure of the considered “private writings” cannot be carried out on the scanned copy (therefore, the paper original is necessary and it is highly recommended to maintain it).

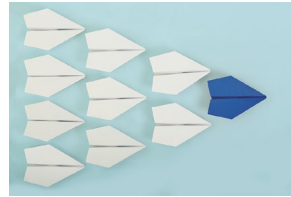
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On the contrary, all other scanned copies of documents, different from private writings (e.g., pay stubs), can be considered full evidence of the documented facts unless the person who contests the validity of the documents is able to prove that the copy doesn't match the original.

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

Not specifically, but the Italian Prime Minister's Decree (no. 78954 of November 13, 2014) states that "copies for images of original paper documents must be created with processes and instruments which assure, through "process certification", that the copy has a content and form identical to those of the paper original from which it is taken." Attachments II and III of the decree contain, in detail, the technical specifications such as the formats (like PDF, XML, etc.) which, due to the properties, satisfy the technical features (opening, security, portability,

functionality, development support, dissemination etc.) required by law to create a valid scanned copy.



HR Best Practices:

The full electronic archiving era is approaching, but for now it is not possible

to guarantee that all paper documents can be destroyed. Indeed, the acceptance of digital copies remains subject to the discretion of the judge.

Similar to the electronic signature, electronic archiving will probably also develop to a three-level structure: simple, advanced and certified archiving. Over time, this means that certified electronic archiving will make the burden of proof fall under the responsibility of the challenging party.

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