

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 Spanish Civil Procedural Law, the admissibility of electronic evidence in judicial proceeding is the same as other evidence. Note that it is advisable to retain original documents - and not only electronic scanned copies - due to the fact that some documents may be requested by the Courts or may need to be relied upon in litigation by the employer. In this case, any party involved in the judicial procedure may challenge the veracity or authenticity of a document. If a document is questioned, it will be necessary to provide the original to defeat a challenge to authenticity.

That said, the probative value of a scanned employee record may be enhanced by third-party certifications and/or "digitalization" procedures, or through a system which allows employers to validate the conversion of the employee record.

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

There are no legal requirements for an electronic archiving system to be considered as legally valid from a Spanish labor law perspective.



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.

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