

## 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?

There is no specific legal framework for electronic archiving in Switzerland but rules of several areas of law are applicable, depending on the concerned documents which are archived. In general, regulations regarding archiving documents depend on the content of a document and not on the form of the archiving (physical or electronic archiving).

In general, an electronic scanned copy of a paper original is legally valid. However, for purposes of proof in court, it is good practice to keep a paper original of all signed employment contracts and other written agreements until expiration of their retention periods. At a minimum, in cases where the law requires written form of a contract to be valid, it is recommended to maintain an archive of the paper original, particularly for:

- employment contracts and contract addendums when the employee and employer have agreed that only the written form will be considered valid;
- employment contracts containing clauses that require written form (For example, lump sum payments for expenses and an employer's right to acquire employee inventions/designs);
- apprenticeship contracts, staff leasing contracts, contracts with travelling salespeople, employment contracts for sailors;
- waning letters; and,
- work certificates (Art. 347 f. Swiss Code of Obligation (CO)).

Working documents relating to time travel for professional drivers must be kept in the original format and on the company's premises. Electronic archiving is not permitted for these documents.

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

According to Art. 168 (1) (b) and Art. 177 of the Swiss Civil Procedure Code (CPC), facts may be

proven by physical as well as electronic documents.

Note that, as opposed to other countries (such as some civil law countries), an archiving system in Switzerland does not need to be (and cannot be) approved or certified by any public authority.



#### HR Best Practices:

Electronically scanned versions of paper originals are permitted,

but as a best practice, employers should keep an archived copy of the original document in addition to the electronically scanned copy. This can help to ensure that employers have the necessary documentation in the event that the validity of an employment-related record is questioned in court and the paper original is required (Art. 178 CPC).

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