



HR Electronic Records

Electronic Signatures in Switzerland: 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 Switzerland?

Electronic signatures in Switzerland are regulated by the Federal Act on the Electronic Signature (ESA), which offers a tiered e-signature legal model similar to the European Union’s eIDAS Regulation ((EU) N°910/2014). Switzerland supports the concept of qualified electronic signatures, requiring independent accreditation for those signatures by an approved certification body. Note that Qualified Certificates from EU member states are currently not automatically recognized in Switzerland, and vice versa.

According to the Swiss Code of Obligations (CO) the qualified regulated electronic signature is considered an equal to the manual signature. According to Art. 14 para. 2bis CO, contracts which require a handwritten signature may also be concluded with a qualified electronic signature and will be enforceable as such in a Swiss court. As an alternative to qualified electronic signatures, regulatory

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electronic signatures require less strict standards. Regulated certificates can be used as the electronic signature of natural persons. Legal entities can use the regulated electronic signature in certain instances, such as when authenticating archived electronic records.

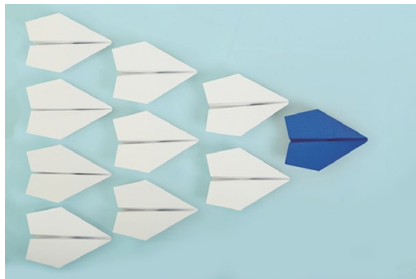
Is an electronic signature valid in Switzerland?

Yes, electronic signatures are generally valid in Switzerland. The level of signature required depends on the type of document. As Swiss contract law is based on the principle of freedom of form, few transactions require qualified or regulatory electronic signatures. In cases where a handwritten or qualified electronic signature is not required, generally any type of electronic signature can be used for contracts as long as all parties are aware of the limitations relating to that type of signature.

Most electronic employment contracts are not required to be in writing, and therefore most types of employment contracts can use any type of electronic signature. However, the probative value (in other words, how easily the validity of the signature can be proven in court) will vary depending on the type of electronic signature.

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

The vast majority of HR-related documents are suitable for simple or advanced electronic signatures. These are often external documents with limited risk and typically include employment agreements, company policies, employee handbooks, performance reviews, expense reports, etc. Qualified electronic signatures are generally not necessary in Switzerland as Swiss contract law is based on the principle of free of form. In practice, most employers do not register for a qualified electronic signature as employment contracts (with a few exceptions) do not have to be in written format.



HR Best Practices

While the decision ultimately relies on how risk-adverse an employer might be, employers might elect to use an advanced electronic signature solution for employment agreements (except with regard to specific areas of the employment relationship, such as intellectual property rights in employee creations), as well as other HR-related agreements. Employers may choose to rely on a

strong, simple e-signature solution for other less sensitive HR documents such as policies and performance reviews.

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