

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?

New Zealand's Contract and Commercial Law Act 2017 permits paper and other non-electronic records to be retained in electronic form if (Art. 229):

- the electronic form can ensure the integrity of the information and,
- the information in the record remain accessible for future reference.

If information is scanned and retained electronically and meets the above requirements, the paper or non-electronic form of the information

does not need to be retained. If a person is required to retain information contained in an electronic communication, the electronic communication's origin, destination, time sent, and time received must also be retained (Art. 231).

If there is a requirement to provide information that is in paper or non-electronic form, the information can be provided electronically if (Art. 232):

- the form of the information and means of providing the information ensure the integrity of the record (taking into account the purpose and circumstances of the record);
- the information remains accessible for future reference; and,
- the individual consents to the information being provided or produced electronically.

Therefore, paper HR related records, including employment contracts and termination agreements, can be scanned and stored electronically as long as the above requirements are met.



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

New Zealand's Contract and Commercial Law Act 2017 sets the foundation for electronic recordkeeping in the country. Under the law, information cannot be denied

legal validity solely for being in an electronic form or, for being an electronic communication (Art. 211). In addition, when there is a requirement that information must be recorded in writing, that requirement is met for electronic documents as long as the information is readily accessible so it

can be used for future reference (Art. 22). When there is a requirement to give information in writing (ex. completing an application or making a claim), the information can be given in electronic form as long as the information is readily accessible so it can be used for future reference and, the person to whom information must be given consents to the electronic format.

More generally, New Zealand legislation has tended to take a non-prescriptive approach to information storage and retrieval. Several statutes have set out requirements specific to a particular legislation's subject matter, and these statutes cover the way in which information must be recorded, stored and accessed and for how long. That said, they do not go into specific details of recording, storage and access requirements.

Standards New Zealand (an independent statutory board created under the Standards and Accreditation Act 2015) has developed a set of standards in conjunction with Australia, setting out principles and functional requirements for software used to create and manage digital records in an office environment. These standards establish the

principles of good practice, guiding principles, implementation guidelines and lists risks and mitigations.

The probative value of electronic copies is assessed based on the subject matter of the information and any specific statutory requirements, including whether the information is required for: the purposes of access by consumers or the public; regulatory compliance; or, as evidence admissible in a court of law.



HR Best Practices: When retaining electronic versions of paper employee records, follow the requirements in New Zealand's Contract and Commercial Law Act 2017. When there is a requirement to provide information, employers providing the information electronically should ensure the integrity of the electronic record, the availability of information for future reference, and that the individual has given consent to the information being provided/produced electronically.

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