

ELECTRONIC SIGNATURES IN ROMANIA

WHAT IT MEANS FOR HR?

What is an electronic signature?

- ▶ An electronic signature is a technical process logically associated with a document in which two (or more) individuals or organizations (the signatories) agree to rely on in order to express their intent to sign.
- ▶ Three components are 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 more complex.
- ▶ The term "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, technical implementation, legal and cultural acceptance of electronic signatures.
- ▶ Most civil law countries (including the EU and most countries in South America and Asia) support a "tiered" approach with higher levels of signature called digital or qualified electronic signatures.
- ▶ Most common law jurisdictions (US, Canada, Australia, etc.) are typically more technology-neutral.
- ▶ In addition, specific industries (e.g. healthcare or banking) or specific documents (e.g. marriage or adoption contracts) often require a higher level of e-signature or handwritten signature.

What are the laws and regulations in Romania?

On July 1, 2016, Regulation (EU) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market (the "eIDAS Regulation") came into force and replaced the former EU Directive on electronic signatures (1999/93/EC). The eIDAS Regulation, directly applicable in the member countries of the European Union, brought uniformity - and much needed clarity - among the EU member states' local legislation on electronic signatures.

In Romania, electronic signatures are regulated by Law no. 455/2001 on electronic signature and related Methodological Norms approved by Government Decision no. 1259/2001 (Law 455/2001) and, Government Emergency Ordinance no. 38/2020 regarding the use of electronic documents in public institutions and authorities (GEO 38/2020). They are also regulated by the Romanian Labor Code (Law no. 53/2003).

Law 445/2001 defines two types of electronic signatures. **Simple electronic signatures** which are electronic data which is attached or logically associated with other data and which serves as an identification method. **Extended electronic signatures** are signatures that meet cumulative requirements. The extended electronic signature is: (1) uniquely linked to the signatory; (2) capable of identifying the signatory; (3) created using electronic means under the sole control of the signatory; and, (4) linked to the data signed in such a way that any subsequent change in the data is detectable. Law 455/2001 provides that an electronic document that has incorporated an extended electronic signature (i.e., the Qualified Electronic Signature under the eIDAS Regulation) is considered to have the same legal effect as a handwritten document.

Note that some scholars have argued that many provisions of Law 455/2001 are no longer applicable as they are outdated and conflict with the more modern eIDAS Regulation, which includes three types of electronic signatures.

Under Romania's Labor Code, employment agreements must be concluded in written form. The Labor Code also requires that termination documents be concluded in written form in order to be valid. Parties can use wet ink signatures or advanced or qualified electronic signatures.

Handwritten signatures are most widely used and considered to be the most reliable piece of evidence by authorities. That said, due to recent developments, advanced electronic signatures and qualified electronic signatures are also valid methods of expressing consent for HR documents. Simple electronic signatures and/or electronic seals of the employer may be valid for some HR documents.

GEO 38/2020 was adopted in relation to the Covid-19 pandemic and establishes the obligation of public institutions and authorities to accept electronic documents. Through this Ordinance, public authorities and institutions may choose which type of electronic signature they require for documents that are submitted to them, subject to the eIDAS Regulation.

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The Labor Code provides that the inspection bodies have the obligation to accept, for verification and control, individual employment agreements and addenda, as well as documents in the field of labor relations/occupational health & safety, which were concluded in electronic format, with electronic signature, according to law, without requesting them in hard copy. Parties may choose to conclude, amend, suspend or terminate employment agreements/relationships using the advanced electronic signature or the qualified electronic signature.

In addition, employers may use the simple electronic signature, advanced electronic signature, qualified electronic signature or electronic seal to prepare specific **ancillary** paperwork/documentation in employment relationships, resulting from the conclusion, execution or termination of the employment agreement as per the conditions set by internal regulation or collective bargaining agreement (if applicable) (Note: the employment agreement itself and suspension/dismissal decisions are excluded).

There are some specific requirements and aspects that should be followed when using electronic agreements:

- All parties must use the same type of signature, handwritten or electronic;
- employers cannot require the employee to use an advanced electronic signature or qualified electronic signature, at the conclusion, modification, suspension or, termination of the individual employment agreement; and,
- procedures for using of these forms of signatures will be part of the informing process of future employees and will be reflected in the content of the employment agreement.

Are electronic signatures valid?

Yes! Not only e-signatures are valid ...



... But they are actually more secure

Under eIDAS, a valid electronic signature may be **simple**, **advanced** or **qualified**.

All three levels of signature are legally **valid** and defensible in court.

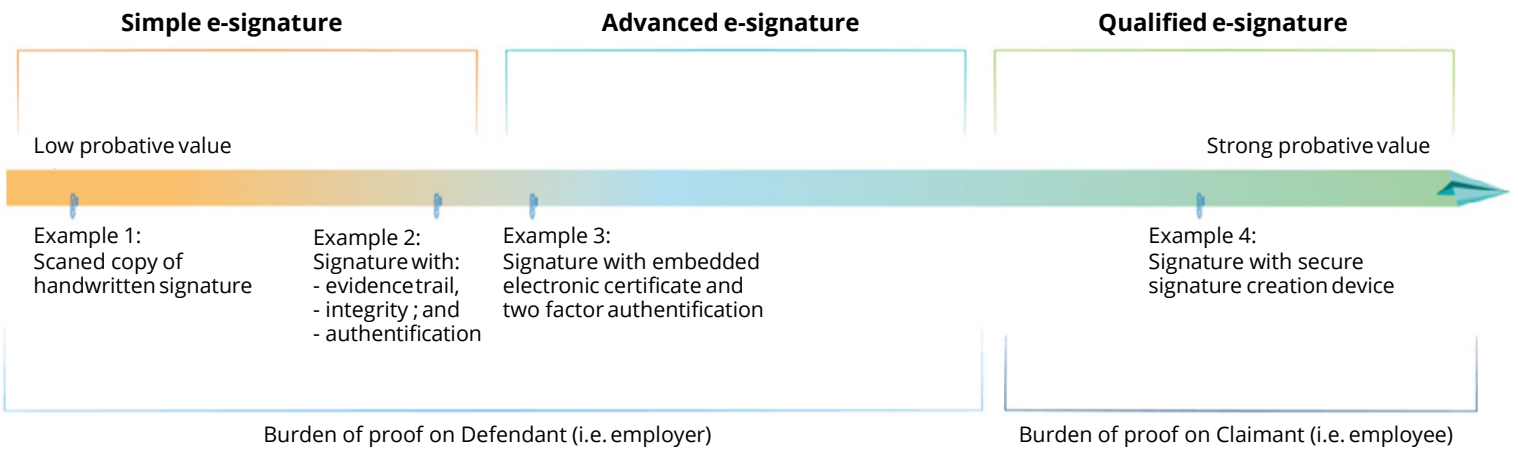
However, the **probative value** (ie. how easily the validity of the signature can be proven in court) will vary depending on the type (or level) of electronic signature as illustrated by the graph.

E-signatures almost always offer higher guaranties than handwritten signatures, regardless of the level of the e-signature being used:

-the **evidence trail** associated with superior electronic signature tools will allow defendant to prove the validity of the signature.

-the use of time-stamping and encryption technologies will provide a much higher level of confidence in the **integrity** of an electronically-signed document compared to the limited level of protection provided by a handwritten original (unless notarized).

Probative value scale



For **simple and advanced electronic signatures**, it is the employer's responsibility to bring evidence of the validity of the signature if an employee challenges the document.

Advanced signature solutions typically offer a more robust evidence file in that regard than simple e-signatures solutions.

Qualified electronic signatures offer the same probative value as a handwritten signature ► it is the responsibility of the party challenging the validity of the signature (most likely the employee) to bring evidence of the signature's invalidity.



HR Best Practices

Most customers elect to use different electronic signature solutions depending on the type of document being signed.

In Europe, customers typically use an advanced electronic signature for employment agreements as well as other HR-related agreements, and rely on a strong simple e-signature solution for other less sensitive HR documents such as policies and performance reviews. However, this decision also depends on an employer's internal culture and its level of risk-adversity.

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