

ELECTRONIC SIGNATURE

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 Russia?

Federal Law No. 63-FZ "On Electronic Signature" dated April 6, 2011 regulates the use of electronic signatures in the country, including the signature types and requirements for their use. Electronic signature types include:

- **Simple electronic signatures:** Enables the confirmation that a certain individual has generated the signature through the use of codes, passwords, or similar means. Documents signed with this signature have the same probationary value as a handwritten signature only when: (1) simple electronic signatures are specifically permitted in the law or regulation, or, (2) the participants in the electronic exchange agree that documents executed with a simple electronic signature have the same probationary value as a handwritten signature. This implies entering into an electronic exchange agreement, which would need to include certain terms (rules of identifying the individual signing a document on the basis of their electronic signature; and, the obligation of the party generating and/or using an e-signature key to preserve the confidentiality of the key).
- **Unqualified reinforced electronic signatures (unqualified signatures):** (1) Are created through a cryptographic conversion of information using an electronic signature key; (2) allow identification of the signatory; (3) enable the identification of any modifications made in the document after it was signed; and, (4) are created with electronic signature tools, such as encryption tools.

The probationary value of documents signed using unqualified reinforced electronic

signatures can be equal to hand-signed documents when specifically permitted by laws or regulations or, the participants in an electronic exchange (see above) agree that the documents executed with use of this signature have the same probationary value. The agreement would set out the procedure of e-signature verification.

- **Qualified reinforced electronic signatures:** Meet all the requirements of electronic signatures, and also have a qualified certificate showing the signature is valid. Only accredited certification centers can issue these signatures. Qualified electronic signatures are recognized as being the equivalent to handwritten signatures, except when a physical document is required by law.

The Personal Data Law also includes rules on obtaining written consent to personal data that is in an electronic form and signed digitally. The Labour Code of the Russian Federation (No. 197-FZ) governs the use of electronic signatures in the context of HR.

Is an electronic signature valid in Russia?

Electronic signatures are valid in Russia, but the use of electronic signatures in the context of HR is limited at this time. The Labour Code of the Russian Federation explicitly mentions only few cases where documents may be signed with use of qualified reinforced electronic signatures (i.e., signatures verified through accredited certification centers). Under the Labour Code, electronic signatures are specifically permitted for:

- the provision of information on a former employee's employment by the employer;

- the provision of information on a former employee's employment at the moment of employment termination (when the employer does not maintain the employee's labour book in hard copy);
- the exchange of electronic documents between an employee working remotely and an employer.

When an employee is working remotely, employers should use qualified reinforced electronic signatures and have the employee sign by qualified reinforced electronic signature or an unqualified signature when concluding, amending, or terminating:

- employment contracts and additional agreements to the employment contract;
- contracts of material liability;
- training contracts; and,
- documents terminating the above contracts.

For other documents that apply to remote employees, the form of communication and the type of signature should be specified by internal policies, employment contracts, or additional agreements to the employment contract.



HR Best Practices: Russian labor legislation is undergoing a transition to enable the digitization of employment relations. For now, the use of e-signatures in the employment context is limited due both a lack of clarity as to whether electronic signatures can be used in the context of HR in cases that aren't regulated and, the number of formalities that must be followed when electronic signatures for employment purposes are permitted.

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