

NATIVELY ELECTRONIC DOCUMENTS

What is the legal value of native electronic documents (that do not require signature by the parties)?

The majority of legislation generally recognizes the validity and probative value of documents that are natively electronic (i.e., created as electronic originals), subject to compliance requirements.

Natively electronic documents in Belgium (which don't require signatures) are generally allowed in the employment context as long as the form for the record isn't specified by law. Some HR records may require the employee's agreement in order for the document to be sent and stored electronically. For example, there must be a mutual agreement between the employer and employee in order to electronically send and archive:

- the individual account;
- salary and fringe benefits by month/quarter/year;
- pay slips;
- transmittal/delivery documentation;
- secondment documents ; and,
- termination documents.



The agreement between the employee and employer should specify which documents are included. After the calendar year in which the agreement is signed, employees (and employers) can request to stop sending and storing these records electronically. In this case, the employer would then need to revert to paper transmission and archiving. Employers, as appropriate, can also store additional employee documents electronically with both the consent of the employee and a collective bargaining agreement (CBA).

The employer's work rules should be provided to employees individually and can be provided electronically as long as the employee agrees. Note that employers should keep evidence of the employee's receipt. Work rules must be retained at each workplace and can be stored electronically as long as all employees can easily access the electronic document. A posting of where to locate the work rules should be displayed. In cases where some employees can't easily access the work rules, a hard copy should be retained (ex. Factory workers who don't have computer access at work).

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