

## 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 Brazil?

Electronic recordkeeping requirements and the use of electronic signatures has only recently been regulated by law in Brazil. Provisional Measure (MP-2200-2/2001), which relates to the legal security of electronic commerce and documents, was passed in 2001. This law created the Brazilian Public Key Infrastructure (ICP-Brasil) and provided certification for the authenticity of digital signatures. Electronic signatures are permitted in Brazil, as long as all parties mutually agree to use it (Article 10, paragraph 2 of MP 2.200-2).

Law 14.063 of September 23, 2020, created three levels of digital signatures:

**Electronic signatures (simple electronic signatures)** allow an individual to be identified as the signatory and attaches or associates certain data to other data in the electronic form of the signatory.

**Advanced electronic signatures** use a mechanism or certification (other than the ICP-Brazil certification) to prove the authorship and the

integrity of the electronic documents. Note that involved parties must accept the mechanism or certification as valid. Advanced electronic signatures include certain characteristics:

- the signature is associated with the signatory in a unique way;
- the signature uses data to create the electronic signature whose signatory can operate under its exclusive control with a high level of confidence; and,
- the signature is related to the associated data in such a way that any later modifications are detectable.

**Qualified electronic signatures** use the ICP-Brazil certification (i.e. the digital certificate). Digital signatures certified via ICP-Brazil have the same legal value as signatures that have been notarized, but they are not commonly used in the employment context (except in reporting and other interaction with public authorities), in part because the cost can be prohibitive.

If a digital signature without certification is challenged, the employer would have to prove the:

- authenticity of the signature (i.e., that the employee signed the document); and,
- integrity of the record (i.e., that the document could not be changed after being signed, and that the signature date matches the date the employee signed the document).

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## Is an electronic signature valid in Brazil?

Yes. Electronic signatures are generally considered valid in Brazil as long as the authenticity of the signature, the authenticity of the signer, and the integrity of the content in the record can be verified. In addition, contracts are considered valid regardless of the method used, except in cases where the law contains specific rules for a given document.

At this time, many employers still use wet signatures for critical documents, such as employment agreements, termination documents, and timekeeping records in order to reduce the risk of having employment documents deemed invalid by a labor court. In these cases, the records may be digitized in addition to keeping the physical paper document. That said, Law 13.874/2019 (the Economic Freedom Act), which was effective on September 20, 2019, will likely eliminate the need to keep paper originals in the future.



### HR Best Practices:

Electronic signatures are generally considered valid in the employment context in

Brazil. When using electronic signatures, ensure that appropriate safeguards are in place and that all parties have agreed to allow the document to be electronically signed.