

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 Chile?

Electronic signatures are permitted in the context of HR records per the Act on Electronic Documents, Electronic Signature and Certification Services of Such Signatures (Law 19,799). The Law creates two tiers of signatures:

- Electronic signatures – any electronic process that allows the recipient to identify the document's author
- Advanced electronic signatures – those certified by an accredited provider

In general, HR-related documents do not require advanced electronic signatures.

Electronic signatures are considered to have the same value as handwritten signatures, except where:

- the law requires a solemnity (e.g. when it is necessary to incorporate these documents in a particular registry that does not allow electronic format) that cannot be fulfilled by electronic document;
- the law requires in-person signatures (i.e., documents that require notarization); or, where
- related to family law.

Advanced electronic signatures are generally not necessary in the context of human resources but do provide a higher probative value if a signature is questioned in court. Electronic signatures that are not certified should follow general best practices including: verifying the identity of the individual signing, date stamps (and similar metadata), measures to prevent alterations after signature, etc.

Is an electronic signature valid in Chile?

Yes. Electronic signatures are generally permitted in the context of human resources and are appropriate for employment contracts, policy acknowledgments, etc. The Labor Board has ruled that even termination release agreements (finiquitos) may be executed by electronic means with the compliance of certain requirements, especially the personal attendance of the employee (Ruling No. 847, 02.08.2016). Any disputes as to the validity of signatures (electronic or physical) will come down to a question of proof.



HR Best Practices: Electronic signatures are generally considered valid in the employment context in Chile. When using electronic signatures, ensure that appropriate safeguards are in place and that metadata (such as time stamps) is properly recorded.

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