

ELECTRONIC ARCHIVING OF PAPER ORIGINALS

Legal Framework for Electronic Archiving

Although some countries require certain types of documents to be kept and archived in their original paper form, for most categories of documents, including HR-related records, there is no such requirement, and it is generally acceptable to use electronic versions of paper records (i.e., scanned copies of paper originals) during most government agencies' inspections and audits or in court proceedings.



The evidential or probative value of electronic versions of paper records may be more easily challenged before a court

than it would be for the originals. This is mainly because the original records could be tampered with or changed before being scanned, and, unless proper technology has been used (e.g., encryption and timestamping), it may not be easy to detect such changes from a scanned copy. In specific situations, it may be good practice for employers to retain archives of paper originals in the event such originals would be requested by a specific investigator, auditor, judge or authority.

Are electronic scanned copies of paper originals legally valid?

Electronic scanned copies are permitted in the Philippines except in cases where the law specifically prohibits copies and requires a record to be retained in its original form. In that case, the original version must be maintained (whether paper or electronic). Note that copies of original records are considered secondary evidence, and

may be admitted in legal proceedings upon proof that the original is not available (Rule 130(B)(2), Section 5). The Philippine Supreme Court has ruled that in order to use secondary evidence to prove the content of the original document, the employer (or the party providing the evidence) must prove:

- the existence or due execution of the original;
- the loss and destruction of the original or the reason for its non-production in court; and,
- the absence of bad faith to which the unavailability of the original can be attributed.

This exception is generally invoked in court, when the original record is lost or cannot be found, despite efforts to locate the document.

Generally, there is no law in the Philippines prohibiting keeping HR-related documents in electronic form. Note that the Omnibus Rules Implementing the Labor Code require that “[e]very employer...keep an individual time record of all his employees bearing the signature or thumbmark of the employee concerned” and that “entries in time books and daily time records shall be accomplished in ink.”



That said, an electronic or digital signature that has been authenticated under the Rules on Electronic Evidence is admissible as evidence as the equivalent of a handwritten signature. Therefore, electronic signatures that have been authenticated in this

manner should meet the requirements in the Omnibus Rules to Implement the Labor Code.

Before an electronic HR-related document is offered as evidence, its authenticity should be proved by any of the following:

- by evidence that it had been digitally signed by the person purported to have signed the document;
- by evidence through other appropriate security procedures or devices (as authorized by the Supreme Court or law); or
- by evidence showing the record's integrity and reliability to the satisfaction of the judge. (Section 2, Rule 5 of the Rules on Electronic Evidence).

Are there any legal requirements for electronic archiving systems (EAS)?

There is no specific regulation or statute on electronic archiving of HR records. If the integrity of

an electronic archiving system in a legal proceeding is questioned, it must be established that the system continually maintained the integrity of the record and there was also no reason to doubt the integrity of the system.

In addition, it must be established that the data was recorded and stored in the usual manner and through the ordinary company procedures followed by an individual who isn't a party to the legal proceedings and didn't "act under the control of the party using the record (Electronic Commerce Act of 2000, Ch. II, Sec. 11)."



HR Best Practices: The full electronic archiving era is approaching, but for now it is not possible to guarantee that all paper documents

can be destroyed. Indeed, the acceptance of digital copies remains subject to the discretion of the judge.

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