

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?

South Africa's Electronic Communications and Transactions Act, 25 of 2002 (ECTA) generally recognizes electronic records as having equal value to hard copy records, unless another statute has a specific format requirement. In addition, the ECTA does not prescribe a specific format for electronic archiving beyond general requirements, allowing paper originals to be scanned and stored as electronic copies.

If a record is required to be "in writing," the written requirement under the ECTA is met if the document/information is:

- in the form of a data message; and,
- accessible/usable for later reference (Sec 12).

None of South Africa's employment laws, including the Basic Conditions of Employment Act (BCEA) and the Labour Relations Act, prescribe a required format for employer related documents.



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

Under the ECTA (Sec. 14, 16) records can be archived and retained electronically. When a law requires that information must be presented in its original format, the electronic archiving system must ensure that:

- the integrity of the information has remained complete and unaltered, except for the addition of endorsements or changes which arise in the normal course of communication/storage/display; and,
- the information remains accessible for future reference (Sec. 14).

When there is no statute requiring the original format, the archiving system should ensure:

- the integrity of the data is retained in light of the purpose for which the record was created (and considering other relevant circumstances);
- the information remains accessible for future reference; and,
- if it's an electronic message, certain metadata is retained including the origin/destination of the message and, the date it was sent/received (Sec. 16).

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