

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.



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 India, the burden of proof for electronic records is quite high. 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 records are legally recognized in India under the Information Technology Act (2000). Under the Evidence Act (Section 65B), electronic records can be admitted as evidence without the paper original, subject to:

- the output being produced by a computer regularly used to store/process information by the person who has lawful control over the computer;
- during the period the record was created, data similar to the information contained in the electronic record has been regularly entered into the computer (i.e. the record in evidence was managed in the same way other records were managed);
- the computer operating properly through the material part of such period (or, if the computer was not working properly, the non-operation did not impact the accuracy of the record or its contents); and,
- the electronic record containing or being derived from information entered into the computer in the ordinary course of activities.

To be admitted as evidence, electronic records must be accompanied by a certificate which:

- shows the conditions above were met;
- identifies the electronic record containing the statement;
- describes the manner in which the record was produced;
- provides the details of the device involved in the production of the electronic record to show the record was produced by a computer; and,
- is signed by an individual in a responsible official position relating to the operation of the device or the management of the relevant activities.

The certificate must be prepared by the party who controls the electronic document and/or device.

In cases where an electronic copy of a paper original exists, the electronic scan can be admitted as secondary evidence, with the court's permission. As a best practice, the original record should also be retained in the event the original version is required.

Certain statutory records/forms under labor law statutes must be retained in physical form. During inspections, inspectors may demand hard copies of the statutorily mandated forms. That said, most states have now relaxed this requirement and allow labor registers and forms to be retained electronically.



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

There is no legal framework in India specifically governing the electronic archiving of HR-related documents. In order for electronic archive systems to have evidentiary value, they should meet the requirements listed in the section above.



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, in India, unless you can meet the strict archiving and certificate requirements, it often makes sense to keep a copy of the paper originals in addition to the electronic record.

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