

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 Serbia?

The Electronic Document, Electronic Identification and Electronic Business Trust Services Law (Official Gazette of the Republic of Serbia no. 94/2017) (EDA) and associated bylaws set the standard for electronic signatures in Serbia. In addition, the Electronic Trade Act (Official Gazette of the Republic of Serbia nos. 41/2009, 95/2013, 52/2019) contains rules on concluding agreements via electronic forms and, the E-Government Law (Official Gazette of the Republic of Serbia no. 27/2018) contains additional rules relating to the

submission of electronic documents to public authorities.

Is an electronic signature valid in Serbia?

Agreements in Serbia can be concluded electronically, and the law provides that the validity of documents cannot be questioned and cannot be denied admissibility in court only because the record is in an electronic format.

In terms of employment contracts, Serbian Labor Law (Zakon o radu, Official Gazette of the Republic of Serbia Nos. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017, 113/2017 i 95/2018) requires that three copies of employment agreements are signed, and two of the three are retained by the employer. Implicitly, to meet this requirement (and provide sufficient evidence that the requirement is met) employment agreements are concluded and kept in paper form. The courts in Serbia are conservative when it comes to labor disputes, though this is changing. For now, it may be best to take a conservative approach and obtain wet-ink signatures for the most crucial employment documents (such as termination letters) until the courts establish clear practices.

Similar to the European Union, there are three types of electronic signatures in Serbia, with different levels of validity, depending on the technical and security measures that have been taken (simple, advanced and qualified). The Advanced electronic signature has a higher validity than a Simple electronic signature. Qualified electronic signatures have the highest legal value and have been certified by a Serbian-licensed electronic provider. The Qualified electronic signature has the same effect as a wet-ink signature. Note that signatures that have been qualified under the European Union law, may not be qualified under Serbia's law.



HR Best Practices:

Electronic signatures are generally legally allowed in Serbia.

That said, until there is more of a history in the courts relating to the use of electronic signatures in the employment context, it may make sense to use wet-ink signatures for certain employee records.

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