



N.J. Human Resources Law Alert

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Electronic Signatures Click! It's signed ... but is it enforceable?

Do you require employees to sign documents electronically? Is your Human Resources Department joining the multitude and going paperless?

With the advancements in technology, many companies are looking for ways to reduce paper and store information electronically. Although the benefits to such may be obvious, it is imperative that companies educate themselves on the laws that govern the acceptance and enforceability of electronic records and signatures, including the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C.A. sec. 7001, et seq. ("E-SIGN") and the New Jersey Uniform Electronic Transactions Act, N.J.S.A. 12A:12-1, et seq. ("UETA"). These laws may apply to your Company's employment documents and personnel policies as well as to agreements with customers, clients, vendors and other third parties.

Whether a person will be bound by an electronic signature will depend upon whether or not he or she has consented to engage in an electronic transaction. That consent will be determined by the context and circumstances surrounding the transaction, including the parties' conduct. N.J.S.A. 12A:12-5b. A common issue that has arisen with the use of electronic signatures in the employment context is whether or not the employee has in fact electronically signed the document at issue. In order to avoid issues such as this, it is important to institute a protocol wherein the Company can show that the employee is the individual who actually "signed" the document, and not some other person who has access to the employee's user ID and password.

Some Additional Requirements

In addition to consent, the UETA sets forth additional requirements, summarized below, that are necessary to give legal effect to employment documents that are signed electronically:

- The employment record must be capable of retention by the recipient at the time of receipt. In other words, the recipient must be able to print or store the electronic record;
- The recipient must be given the opportunity to opt-out and be provided with a hard copy of the document to review and sign;
- The employee must be informed of the hardware and software that he/she requires in order to access or retain a copy of the electronic document;

- The employee must be told how to withdraw his/her consent to receiving documents in electronic form; and
- The employee must be told how to obtain a hard copy of the electronic document.

For more information about the enforceability of electronic signatures and records, please feel free to contact the editors.

About the Editors

For over 30 years, [Sean Kelly](#) has focused his practice on counseling employers and defending employment cases, and has successfully tried many employment cases to verdict. He is certified by the Supreme Court of New Jersey as a Civil Trial Attorney, has been repeatedly included in New Jersey Monthly Magazine's list of New Jersey "Super Lawyers," holds the highest rating awarded by the Martindale-Hubbell Lawyers Directory, has been named a Master of two separate American Inns of Court, and is included on the New Jersey Superior Court roster of court-approved mediators.

[DanaLynn Colao](#) focuses her practice on business litigation with an emphasis on employment issues. She counsels and provides training for clients on a wide array of issues that arise in the workplace including medical leaves of absence, wage and hour claims, employment agreements and non-compete agreements. Strategic thinking and affirmative measures enable DanaLynn to significantly reduce potential liability for her clients. DanaLynn was selected to the *New Jersey Law Journal's* list of leading lawyers in the "Forty Under 40" selection and she has been listed since 2009 in the NJ Super Lawyers "Rising Star" category.

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The information contained in this notice should not be relied upon as legal advice and recipients of it should consult with an attorney to determine the specifics of the provisions referenced herein and their applicability to them.