

Is Pumping Green Driving HR Files Into Oblivion?

By Joe Carroll

Can you imagine a world without paper in today's corporate office? But the idea of a paperless society will not happen in our lifetime. The futurists who were ushering in the age of the paperless society 30 years ago were off by at least a few hundred years. Yet, the question remains: Will green initiatives eventually, such as HR files, drive paper out of the office and into oblivion?

Paper is certainly not going anywhere. Paper is not the enemy. How we legally store, retrieve, secure and analyze the information on that paper is the real question that most companies need to nail down today.

According to IDC, the global provider of market intelligence, U.S. corporations will spend between \$25-\$35 billion a year to file, store and retrieve incoming paper. According to another study, 7% of documents are lost forever and misfiled documents cost \$120 each. Ask any human resources manager how frustrating and time consuming it is to manage paper documents. It can be overwhelming. Executives recognize the problem but often don't know how to eliminate the problem.

What aggravates the problem is that many companies don't have a clue as to the legal ramifications of storing records electronically. With that lack of knowledge, they feel more secure by simply maintaining the paper documents. This "old school" mentality will often require a cultural change within the organization to make the leap of faith into the world of electronic storage. To help ease companies into the use of electronic document management storage systems, this article addresses some of the legal requirements pertaining to electronic signature and electronic documents. Readers, of course, are always advised to discuss these issues with their legal counsel before deciding on a course of action.

Electronic Signatures & Records

On June 30th, 2000, President Clinton signed the E-SIGN Act (Electronic Signatures in Global and National Commerce Act) using an electronic smart card. With the swipe of a card, he ushered-in the most significant piece of legislation impacting the electronic storage of documents. This act provides that electronic signatures and records are legally valid. The act also provided the criteria for recognizing the validity of electronic signatures and records:

1. Electronic signatures and records are legally effective, valid and enforceable as signed signatures and paper documents.
2. The law is neutral in regards to the specific technology used to create electronic signatures and records.
3. The legal effect, validity or enforceability of a document may be denied if it is not retained

accurately and is accessible.

This act also preempts all state laws that only recognize paper records or handwritten signatures. It also exempts the following: wills, codicils, testamentary trusts or adoption, divorce or other family-related matters, court orders and notices, transport documents pertaining to hazardous or toxic materials and contracts or records governed by the Uniform Commercial Code pertaining to electronic fund transfers, negotiable instruments, letters of credit and investment securities.

Through the E-SIGN, the U.S. government gave corporate America the green light on electronic storage. But it came with a few caveats to ensure that your electronic documents are legal documents that would hold up in court:

1. Records Must be Accurate
2. Records Must Be Accessible
3. Records Must Be Reproducible

You must be able to print or provide the record in some other format that renders an accurate reproduction.

Other Federal Regulations Impacting Records

Two key regulations were passed since E-SIGN that had a major impact on records management. The Sarbanes-Oxley Act was passed in 2002 after the Enron-Arthur Anderson scandal regarding, among other things, the inappropriate destruction of financial records. While the Act applies only to U.S. public companies and public accounting firms and foreign accounting firms working for U.S. companies, all companies should strive to ensure that their accounting records are accurate and accessible. Be sure to have a records retention schedule in place for your records. When it is time to destroy these records, make sure it happens. Unnecessary records may represent a legal liability. Obviously, if your company is under investigation, any records pertaining to the lawsuit should not be destroyed.

Another key piece of legislation impacting the electronic storage of records is the Homeland Security Act of 2002. It created an executive department whose mission is to protect the security of the U.S. One of the agencies created is the U.S. Immigration and Customs Enforcement better known as ICE. ICE is responsible for enforcing penalties against companies hiring illegal aliens. All companies must complete the Form I-9 every time they hire someone. This excludes independent contractors, temps and leased employees.

Should you choose to scan and upload your I-9 documents, you are legally permitted to discard the original paper documents. In addition, you are not required to maintain the documents the employee provided to verify eligibility to work in the U.S. However, you are required to follow specific rules. Failure to follow these rules will cause ICE to determine that you have not properly completed the Form I-9 which can result in severe fines and penalties. A summary of these rules are shown below:

1. If you use electronic signatures for your I-9s, you must affix the electronic signature at the time of the transaction, create and preserve a record verifying the identity of the person producing the signature and provide a printed confirmation of the transaction, at the time of the transaction, to the person providing you with the signature.
2. You must make available upon request a complete description of your electronic document management system including procedures, indexing system and business processes.

3. If you retain Forms I-9 electronically, you must ensure that:
 - a. Only authorized personnel have access
 - b. Provide back-up and recovery systems
 - c. Provide employee training to minimize unauthorized or accidental alteration of documents
 - d. Creates an access register to track anyone that creates, accesses, views, updates or corrects an electronic record.

Paper will be with corporate America for a long time. Human resource files are here to stay for at least the next 50 years. But, is it very practical in managing the tons of information that flow from its reams? Beryl Pfizer once said, "I write down everything I want to remember. That way, instead of spending a lot of time trying to remember what it is I wrote down, I spend the time looking for the paper I write it down on." Remembering information is nice. Finding information is nicer.

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