



Complex Problems. Simple Solutions.

E-SIGNATURES



While electronically providing documents to applicants and employees has become common, many employers do not have appropriate language authorizing the use of electronic signatures. Without the required language, e-signatures aren't valid, which means the documents haven't been "signed."

For many years, companies have relied on the federal E-SIGN law to validate e-signatures. Unfortunately, many companies do not have e-signature language which complies with the stringent requirements of E-SIGN. Additionally, some plaintiffs' lawyers have argued that E-SIGN does not apply to any employment-related documents. Finally, by its own plain terms, E-SIGN applies to only a narrow group of documents (i.e., those documents that are required by another statute, etc. to be provided in writing). That does not include documents that are not statutorily required to be "in writing" but for which employers understandably want to secure an e-signature (e.g., employment applications in many states). For those documents, state law—not E-SIGN—applies. These are exactly the kind of

technicalities that aggressive plaintiffs' lawyers love to find because they can result in an easy class action and the recovery of attorneys' fees.

Here's an easy way for you to check your current online e-signature language: if it doesn't contain several paragraphs dealing with hardware and software requirements, how to obtain a hard-copy of the online document, how to withdraw electronic consent, and several other required notices, then the language does not satisfy federal and state e-signature laws.

That's why we developed **OD COMPLY: E-SIGNATURES**, a flat-fee product* that includes electronic consent language compliant with federal E-SIGN and all 50 state e-signature laws. For a single flat fee, we will provide you with the appropriate language to validate and use e-signatures on your electronic documents.

*A product (i.e., without ongoing updates), not a subscription (i.e., with ongoing updates during the subscription period), because e-signature law traditionally has not been as fluid as the law in the areas covered by the *OD Comply* subscriptions (e.g., background checks, employment applications, etc.). To obtain a valid e-signature, employers also must comply with any separate substantive law (e.g., if using an e-signature for a health insurance SPD, employers must comply with ERISA), a separate topic not covered by this product.

For questions, additional details, or subscription information, contact the Ogletree Deakins attorney with whom you normally work or the Ogletree Deakins E-signature team at esignatures@ogletree.com.