Electronic Signatures Must Be Properly Authenticated

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Last month a California Court of Appeal held that while electronic signatures are valid on employment arbitration agreements in California, if an employee disputes an electronic signature, the employer bears the burden of proving the employee electronically signed the document. (Ruiz v. Moss Brothers Auto Group (2014) 2014 WL 7335221.) This decision can guide K-12 school districts and community college districts in ensuring the authenticity of electronic signatures, not only on employment-related documents, but on any documents signed electronically.

Ruiz was a named plaintiff in a class action wage and hour lawsuit against Moss Brothers Auto Group, Inc. The lawsuit alleged Ruiz and other employees were not paid for all hours worked, paid overtime wages, provided meal and rest periods, provided with accurate wage statements, timely issued final wages, and reimbursed for business expenses. Plaintiffs sought damages and civil penalties.

Moss Brothers filed a petition to compel arbitration on the basis that Ruiz had electronically signed an agreement to arbitrate all disputes with his employer. Moss Brothers also sought dismissal of the class claims because the arbitration agreement included a waiver of the right to assert claims on a class basis. The court acknowledged the use of electronic signatures is expressly permitted under California contract law. (Cal. Civil Code § 1633.7 [a signature may not be denied legal effect or enforceability because it is in electronic form and an electronic signature satisfies a legal signature requirement].)

Moss Brothers proffered a declaration from its business manager stating Ruiz electronically signed the arbitration agreement. In a competing declaration, Ruiz asserted he did not recall electronically signing the agreement. Moss Brothers countered that “all employees” were provided with “unique usernames and passwords” to log in, review, and sign the arbitration agreement. With the authenticity of the electronic signature in dispute, Moss Brothers had to prove by a preponderance of the evidence (more likely than not) the electronic signature on the arbitration agreement was attributable to, and resulted from, an act of Ruiz and not some other person. (See Civil Code § 1633.9 [the attribution of an electronic signature to a person may be shown in any manner, including showing the efficacy of any security procedure applied to determine the person to whom the electronic signature is attributable].)
The trial court concluded the evidence of the employer’s practice of issuing employee usernames and passwords was insufficient to prove the electronic signature resulted from an act by Ruiz. The Court of Appeal explained the evidentiary standard was not difficult to meet, but found a “critical gap” between Moss Brothers’ statement that “all employees” received a username and password to log in and sign the arbitration agreement and the conclusion that Ruiz therefore had electronically signed the document. The court opined that Moss Brothers should have explained how Ruiz’s electronic signature came to be placed on the arbitration agreement and how the electronic signature could have been completed only by an act of Ruiz. The employer could have done so through evidence establishing the efficacy of the security procedures applied to the username and password that Moss Brothers issued to Ruiz and explaining that only Ruiz could have electronically signed the arbitration agreement.

K-12 school districts and community college districts, unlike the parties in Moss Brothers, must comply with the more strict public entity digital signature requirements delineated in section 16.5 of the Government Code. Section 16.5 refers to electronic signatures as digital signatures, and allows K-12 school districts and community college districts to choose whether to use or accept digital signatures.

If a district allows digital signatures, the signature must meet all of the following seven requirements:

- Be unique to the person using it;

- Be capable of verification;

- Be under the sole control of the person using it;

- Linked to data in such a manner that if the data fields are changed, the signature is invalidated;

- Conform to regulations adopted by the Secretary of State, listed at Title 2, Division 7, Chapter 10 of the California Code of Regulations;

- Prior to accepting a digital signature, districts must ensure the level of security used to identify the signer and transmit the signature is sufficient for the transaction being conducted; and
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If a certificate is a required component of the digital signature transaction, the district must also ensure the certificate format used by the signer is sufficient for district’s the security and interoperability needs. (Government Code § 16.5; 2 Cal. Code Regs. §§ 22002 and 22005.)

The Moss Brothers decision highlights the need for school districts using digital signatures for employees, students, parents, and third-party vendors to have policies and regulations in place that ensure each signature meets these requirements. Usernames and passwords should be utilized for digital signature purposes and should be maintained in a secure manner to ensure only the designated user has access to this information. School districts may adopt secure electronic signature board policies and administrative regulations that permit employee, student, parent, and third-party vendor signatures to be tracked and confirmed such as through a confirming email to the signer and the district indicating which documents were electronically signed and when. Human Resources, Information Technology, and other management personnel should be familiar with the district’s digital signature protocol so they can explain it in detail, if necessary, to a court.

K-12 school districts and community college districts utilize electronic signatures for employees, students, parents, and third-party vendors. Common electronic documents include:

- Employee notifications
- Parent notifications
- Student notifications
- Third-party contracts
- Settlement, resignation, and retirement agreements
- Electronic signature attendance systems
- Electronic registration systems
- Electronic permission slips
- Electronic medical notifications
- Electronic assignment submissions
- Electronic acknowledgments
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- Electronic transactions

In light of the burden described by the Moss Brothers court, adequate verification methods for the electronic signatures on these and other documents must be in place to protect the district in the event an electronic signature’s authenticity is disputed. An electronic signature policy, regulation, or practice guideline is strongly recommended for this purpose.

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