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无归属的认证:完成度指标与就业记录的真实性验证

Heather Grizzle · June 4, 2025

An employer with a completed, timestamped electronic acknowledgment still lost. Ruiz v. Moss Bros shows why completion rates do not prove attribution.

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供应商能够拉动的指标

合规技术的营销对象是它能够改善的那项指标，而在策略管理这一类别中，该指标几乎总是完成率。企业采购一套平台，自动化提醒随即启用，一个原本仅有百分之四十确认率的组织，在一个季度内就能达到百分之九十以上。这种改善是真实的，能在仪表盘上直观呈现，也能向董事会汇报。但就其本身而言，它却难以说明该组织是否因此获得了任何额外的自我防御能力。

难点并不在于完成率毫无意义。覆盖率确实是一个实际问题，一个连让员工确认其制度都做不到的组织，存在着值得纠正的缺陷。难点在于，完成率是一种分布性指标，却被当作证明性指标来使用，而这两者恰恰在记录接受审查的那一刻产生分歧。一份确认记录之所以成为证据，并非因为它存在，而是因为它确立了归属关系：即某一具体个人——而非仅仅某一账户——在某一具体日期，针对某一具体文件，实施了某一具体行

为。完成率衡量的是存在多少条记录，却无法衡量其中是否有任何一条确立了这种归属关系。

这一区分并非纸上谈兵，其所依据的法律比大多数策略管理项目所假设的更为古老、也更为成熟。

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法院如何处理一份确认记录

The California Court of Appeal's decision in *Ruiz v. Moss Bros. Auto Group* remains the most instructive published treatment of the problem, in part because the employer in that case had done what most organizations believe is sufficient.

The employer sought to compel arbitration on the basis of an agreement contained within an employee acknowledgment form. It produced the executed document, bearing the employee's printed name followed by the notation of electronic signature and a timestamp specific to the second. It produced a declaration from its business manager attesting that each employee was required to log into the company's human resources system using a unique login identifier and password in order to review and electronically execute the acknowledgment form. In other words, the employer held a completed attestation record, generated through an authenticated login, timestamped, and stored. On any completion dashboard, this employee was compliant.

The court held that the employer had not carried its burden. Electronic signatures are expressly valid under California law, and the court took care to say that the authentication standard is not difficult to satisfy. What it identified instead was a gap in inference. The declaration established that all employees were required to log in and sign. It did not establish that this employee performed this act. The evidence that the record was attributable to the individual, rather than merely associated with the individual's account, was absent, and the petition failed on that basis. The relevant statutory provision, in California and in the corresponding electronic transactions law adopted elsewhere, turns on whether the electronic signature was the act of the person, and an organization that cannot connect its process description to the specific record has not addressed that question.

法院持续将此类争议视为事实密集型的审查，其裁决取决于雇主能够多具体地描述某条个人记录是如何产生的。决定性的变量并非是否获得了某份确认，而是该组织能否具体地还原出：该个人是通过怎样的过程接触到该文件并对其采取了行动。

为何快速整改会产生薄弱的记录

还存在一个更少被注意到的问题，涉及完成率通常是如何被提升的。

一场在三十天内将组织的确认率从百分之四十提升到百分之九十六的活动，其实现方式是对此前从未参与的人群施以自动化的提醒序列。由此产生的记录具有一些可被发现、且并不有利的共同特征：它们在时间上高度聚集；它们跟随不断升级的提示而出现；在系统捕获到的情况下，其停留时间往往短于阅读该文件所需的时间。原告若想证明其同意只是敷衍了事，在这些数据中所掌握的事实依据，反而可能比雇主更为有力。

The point is not that automation is inappropriate or that reminders are improper. It is that the same instrumentation which produces a favorable headline metric also produces the detailed behavioral record from which an adverse inference may be drawn, and organizations rarely examine what their attestation system is recording alongside the completion event. An acknowledgment obtained after four automated escalations, executed in eleven seconds against a nineteen-page document, is a record the organization created and will be required to produce. Whether it strengthens or weakens the organization′s position depends on facts that were determined at implementation and are not recoverable afterward.

这种普遍性的失误可称为“指标替代”。治理项目采用其自身仪器设备能够产生的指标，供应商则针对买家已经采用的指标进行优化，久而久之，该指标逐渐取代了它本应代表的能力本身。完成率取代了可辩护性，正如培训时长取代了能力、审计结项率取代了控制有效性一样。在每一种情形中，这种替代都在底层能力真正受到检验之前是不可见的，而检验往往发生在最不合时宜的时刻。

一套具有证据效力的确认架构需要什么

补救性的规范要求并不复杂，并且可以具体表述出来——这正是组织理应在采购阶段就坚持要求它、而非等到诉讼中才发现其缺失的主要原因。

该记录必须将四个要素绑定为一个整体：被明确身份识别的个人、特定的文件版本、日期与时间，以及该个人抵达该文件所经由的、经过身份验证的路径。若系统只捕获前三

项，却将第四项视为基础设施而非证据，那么它所产生的记录，正是在*Ruiz*一案中败诉的那种记录。该组织应当能够针对随机抽取的任意一份确认记录，具体说明该个人是如何进行身份验证的、显示了什么内容、是哪一版本，以及是在哪一天完成的，而不是仅仅泛泛地描述所有员工被要求做什么。

> **四个绑定要素**
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> 被明确身份识别的个人、特定的文件版本、日期与时间，以及该个人抵达该文件所经由的、经过身份验证的路径。

版本绑定尤其值得强调，因为它是最常缺失的要素。如果一个组织无法确定某个人确认的是文件的哪一个版本，那么它所拥有的，只是该个人确认了“某样东西”的记录。如果争议中的条款是在后续修订中才加入的，那么这份记录可能比没有记录还要糟糕，因为它反而会招致这样的证明：被确认的那个版本根本不包含争议中的条款。

记录保存必须在创建之初就进行架构设计，而非等到需要时才考虑，并且必须能够经受系统迁移的考验。策略管理平台的更替周期通常远短于适用于雇佣纠纷的诉讼时效期，而一份无法以经过身份验证的形式导出的确认记录，是一项该组织尚未计算过到期日的资产。

最后，完成率应当被如实地报告为其本来的样子。它是一项覆盖率指标，有助于识别该流程未能触及的人群。它并非一项合规指标，也不应被当作合规指标呈报给董事会。一个报告百分之九十六确认率的组织，所报告的只是百分之九十六的人群产生了一条记录。这些记录是否经得起审查检验，是另一项独立的结论，只能通过尝试按照法院所适用的标准，实际提交其中的样本来获得。

治理层面的启示

这一建议延续了本系列此前分析所确立的模式。五月的论述涉及那些身处监管边界之内、却未被识别为如此的系统。六月的论述涉及那些产生证据要求、而非单纯政策要求的义务。而本次的情形，是同一类错误的第三种表现形式：组织拥有该义务所要求的那份文件，却未能确立该文件确实发挥了应有的作用。

The diagnostic is an adversarial production test conducted against a sample rather than a review of aggregate metrics. Select individual attestations, attempt to assemble

the complete evidentiary chain for each, and assess the result against the authentication standard rather than against the organization's own process documentation. Where the chain cannot be assembled, the gap is architectural and will not be closed by raising the rate.

各组织应当对自己坦诚：其合规项目究竟是为产生这两种结果中的哪一种而设计的。这两者都是正当的目标，而第一种的成本要低得多。但只有第二种才称得上是一种防御。

参考文献

Ruiz v. Moss Bros. Auto Group, Inc., 232 Cal. App. 4th 836 (Cal. Ct. App. 2014).

California Civil Code §§ 1633.7, 1633.9（加州采纳的《统一电子交易法》），涉及电子签名的法律效力及电子签名归属于本人行为的认定。

《全球暨全国商务电子签名法》，15 U.S.C. § 7001 及其后条款。

29 C.F.R. Part 1602（人事记录的存档与保存）。

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TIPS

Know something about a sign language AI system that the public should know? Send it to tips@novaracg.com. Every tip is read by me and kept confidential. If you work in the UK, writing to us is not by itself a protected disclosure under the Public Interest Disclosure Act 1998, so before you share employer information, check your options with Protect (protect-advice.org.uk), the free whistleblowing advice line.

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