



Special Information on Corona Pandemic: Data Protection in Corona Prevention

The outbreak of the so-called coronavirus has far-reaching consequences for companies. In the following, we provide an overview of the resulting rights and obligations under German labor law and, in particular, German data protection law

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I. German Data protection regulations for preventive measures against the corona virus

Many companies ask themselves what measures can and may be taken to contain the corona pandemic and to protect employees. Data protection aspects also play a role here. Data protection attaches particular importance to health data. In order to avoid fines or claims for damages for pain and suffering by employees due to the violation of data protection regulations, measures planned or taken to prevent the corona virus must always be based on legal requirements.

1. Measures towards employees

a. Obtaining information about stays in risk areas or contact with infected or sick persons

Employees may be asked to notify the employer of any travel to risk areas and of any contact with infected or sick persons. Employees must therefore be informed about which areas are classified as risk areas and asked to inform the employer immediately if they are or have been in these areas. There are no data protection concerns that prevent the employer from collecting this information. On the basis of the information received, further measures can be agreed upon.

A blanket request to all employees to inform the employer in general about their whereabouts or all social contacts, on the other hand, is unlikely to be effective or permissible under German data protection law.

b. Explicit questioning of employees about corona symptoms

In any case, the employer itself is prohibited by data protection law from questioning individual or even all employees about the presence of specific symptoms that could indicate a corona infection. The principle remains that the employer has no right to know what an employee is suffering from.

Irrespective of this, employees are obliged to report corona diseases on their own initiative, which can lead to a (infection) risk for other employees. Employees should therefore be expressly and regularly informed of this obligation to report.

The personal data collected in this process, which regularly includes health data, may be processed for more extensive preventive measures against the spread of the infection.



c. "Fever measurement" at the factory gates

In the past few days, some companies have secured their premises with isolation airlocks, where temperature differences in the persons passing through the airlock were measured by infrared cameras or manual measurement.

The collection of these personal health data cannot be legitimised in terms of German data protection law by the employer's duty of care for the performance of the employment relationship and is therefore likely to regularly constitute a violation of data protection regulations.

It should be noted that taking someone's temperature is not a sufficiently appropriate measure to identify an infected worker with certainty or to protect other workers from a third infection. This is because people suffering from coronavirus do not necessarily suffer from fever. In addition, an elevated temperature is only a general symptom of an inflammatory process in the body, which does not allow any conclusive conclusion to be drawn about a corona infection. Due to this inappropriateness of the measure, the collection of sensitive health data cannot be justified for the purpose of carrying out the employment relationship.

Such measures are therefore only conceivable on the basis of voluntary, informed and documented consent. Simply passing through the entrance lock at the plant premises does not constitute such consent.

d. Queries of problematic previous illnesses

Even a systematic questioning of all employees - even if carried out with the best of intentions - about previous illnesses, which can be presented as "risk aggravating pre-harm", cannot be legitimised under data protection law for the purpose of implementing the employment relationship. The only possible legal basis could be informed consent.

In addition, a systematic survey of employees for relevant previous illnesses of family members of employees is not legitimate under German data protection law. Not even consent could constitute a suitable legal basis for this data collection, as health data of third parties would be collected.

e. Collection and processing of private mobile phone numbers and contact data to ensure rapid information transfer

The events surrounding the coronavirus have developed very quickly in the past few days. It is therefore a challenge to ensure that communication between the employer and his staff runs quickly and smoothly.



To enable employees to be warned at short notice if, for example, they are no longer allowed to appear at work for risk prevention reasons, employers can also request a private mobile phone number or corresponding contact details for this purpose and store them temporarily.

The legal basis for the collection and use of this contact data is an informed consent of the employees, which should be obtained in writing. However, there is no obligation for employees to disclose this data. If an employee does not wish to be contacted accordingly, the employer must accept this decision.

At the latest after the end of the pandemic or the current acute risk situation, the collected contact data must be deleted again.

f. Procedure in case of suspicion or infection in the company

If an employee falls ill from the coronavirus or if there is a suspicion of infection or illness, the employer has the obligation to keep the affected employee out of the company. If the infection of the employee is only detected after the infected or sick employee has stayed in the company for a longer period of time, those third employees who have had contact with the infected or sick employee must be informed and, if necessary, also removed from the company in order to prevent further employees and third parties from being endangered.

In this context, the mention of the name of the specifically affected employee must be avoided as far as possible, as sensitive personal data is disclosed to third parties if the identity of the specific employee is disclosed.

If in individual cases it is not possible to contain the risk of infection without a specific name being given, the identity of the employee concerned may be disclosed as a last resort. This should only be done under legal supervision and in consultation with the responsible health authorities.

2. Measures towards visitors and other third parties

a. Obtaining information about stays in risk areas or contact with infected or sick persons

Third parties (e.g. visitors, guests, customers of a company) can also be interviewed about any trips to risk areas and about contacts with infected or sick persons. The collection of this data is permitted under German data protection law.

b. Explicit questioning for corona symptoms; "fever measurement"

The explicit questioning of third parties about the presence of corona symptoms is only possible in terms of data protection law on the basis of voluntary, informed and explicit consent. The



same applies to the collection of health data by carrying out examination procedures such as measuring fever. Passing through entrance gates at the entrance to the company premises alone does not constitute a sufficient declaration of consent which could be regarded as given voluntarily.

c. Storage of visitor data and transmission to health authorities in case of suspicion

Personal master data as well as contact data of visitors and other third parties may be stored by companies on the basis of informed and voluntary consent for the purpose of tracing the whereabouts of the respective person in the event of a later determined risk of infection and to transmit the respective data to the health authorities upon their request.

The data should not be kept much longer than the currently known incubation period of the infection. Thus, a storage period of about 14-21 days is recommended.

3. Transmission of data on patients or persons at risk to authorities

If the competent authorities – in general the competent health authority or the respective local police authority - request corresponding personal and other data on sick or risk persons (in particular persons who have stayed in risk areas or have been in contact with infected or sick third parties), the employer's corresponding authority to transmit the data is generally assumed to be in compliance with the existing obligation to transmit.

4. Further data protection requirements

If health data of employees or third parties are processed within the permissible framework, these data may only be accessible to third parties to the extent absolutely necessary. Adequate protection of this data must be ensured by appropriate technical and organisational measures.

In addition, the data must be deleted immediately after the respective processing purpose has ceased - at the latest when the pandemic ends.

II. Conclusion

Data protection law issues are certainly not the focus of attention in the current situation. Nevertheless, data protection law aspects must be included in the considerations of possible prevention measures even in the current emergency situation.

Employers are authorised to process health data to a large extent if they are obliged to do so by official order. In addition, the rule should be observed that powers of intervention are not vested in the employer, but only in the state health authorities. In case of doubt, employers are



requested to consult with the health authorities and not to collect health data on their own authority or even against the will of the employees.

The information provided is of a general nature and cannot take into account specific features of individual cases. In case of actual concern, an individual analysis and consultation is required in any case.

III. Further information

You can find all special information here:

<https://www.sonntag-partner.de/kontakt/covid-19-aktuelle-sonderinfos/>



The above statements are only a non-binding compilation according to the current status. No liability is assumed for the correctness and completeness. We would be pleased to support you in checking and, if necessary, implementing the above measures in your company.

The contact persons of our law firm who are known to you are also available here. In addition, you will find the contact persons who have been particularly involved in the above-mentioned topics.

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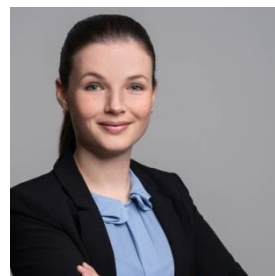
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Concluding remarks

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