



COVID-19 and EU Data Protection

Booklet

April 7, 2020

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All countries information is updated until April 7, 2020

Introduction

Facing the severe public health emergency, the coronavirus pandemic, the EU countries prepared and implemented immediate measures in order to mitigate the social and economic impact of the outbreak.

Highlighting the most important questions concerning the lawfulness of processing carried out in the implementation of measures aimed to stop the spread of coronavirus, Deloitte puts under a magnifying glass the answers within each Member State.

The ***Deloitte COVID-19 and EU Data Protection booklet*** is organized in FAQs and provides insightful and synthetic information about each Member State, above all useful for the **multi-country companies**, that nowadays characterize the global economy, and that have to take into account national provisions.

New measures are implemented daily around the world. Therefore, please, consider the current version a thorough and accurate situation analysis at the publication date, mentioned below.

All countries information is updated until April 7, 2020

Does it make sense to talk about protecting privacy at a time when the general interest in fighting the pandemic is predominant?



*Not only it does make sense, but it is **essential** in order to enable preventive action to be directed **in the most balanced way and compatible with democratic principles**. The challenge set by this health emergency is to combine effective action to prevent and combat contagion with the **essential guarantees of protection of fundamental rights**, such as indeed the right to privacy, which are subject to the **balancing test** with other legal principles such as, first and foremost, **public health**. The rights might, in emergency contexts, be subject to even severe limitations, but such limitations must be **proportional to specific needs and limited in time**. **The strength of the democracy is also in its resilience**: in its ability to **modulate the exceptions** to the ordinary rules, according to necessity, setting them within a framework of certain guarantees and without letting go to improvisation.*

Antonello Soro

Chairman of the Italian Data Protection
Supervisor

(Interview by Angela Majoli, Ansa, March 17, 2020)

All countries information is updated until April 7, 2020

AUSTRIA

What measures can be taken by the Employer/Data Controller with regard to people who needs to enter the premises of the company (employers and/or suppliers)?

Employers have a duty of care under labour law (both private and public) and must ensure that health risks at the workplace are excluded. For these reasons, the employer who wishes to protect his employees from high-risk personal contacts may ask the persons concerned about a possible stay in a risk area and about possible contact with infected persons / persons suspected of being infected. Whether the employer might also take the employees' temperature is unclear but rather not permitted since the above questions can be posed.

In order to prevent risks, it is also permissible for employers to request and temporarily store the private mobile phone number of employees in order to be able to warn them at short notice about an infection in the company or in the authority and so that they do not have to appear at the workplace. However, employees cannot be forced to make this announcement.

The employer may also use visitor lists (name and contact details of a visitor to a company) to the extent necessary to inform visitors of an infection in the company (warning that there has been potential contact with an infected person). The purpose of processing is to facilitate contact with visitors and to limit the spread of infection. The collected data must be treated in strict confidence and may only be processed for the defined purpose. In addition, access controls, i.e. fever measurement or visual checks for suspicious characteristics are also permitted. This does not affect the GDPR at all, if, for example, no data is collected when measuring fever, i.e. the values are not recorded.

How to process data of the employee whose test is positive for infection and which kind of communications can be addressed to the employees who have worked closely with the infected employee?

The data protection law provides that these health data of the employees can be used to the extent necessary to contain the spread of the virus and to protect the fellow human beings. The employer is obliged (due to the duty of care in the employment relationship) to inform his own employees about Covid-19 infections that have occurred in the company. In particular, in such a case, movement and contact profiles must be created to the best of the employer's knowledge and belief on the basis of the information provided by the infected person, and other employees who have thus been in contact with the infected person must be informed accordingly. The name of the infected employee must never be mentioned to the other employees. As mentioned above, it is also permissible for employers to request and temporarily store the private mobile phone number of employees in order to be able to warn them at short notice about an infection in the company or in the authority and so that they do not have to appear at the workplace.

In addition, at the request of the district administrative authority, employers who could contribute to the surveys are obliged to provide information about an infected person in accordance with § 5 (3) of the Epidemic Act 1950.

What to do if an employee shows symptoms of Coronavirus infection?

It is unclear how exactly the employer should proceed in a suspicious case. Due to the duty of care under labour law, the employer should/must first of all send the person concerned home without delay. Furthermore, if the contacts within the company can be traced, the employer must inform persons who have been in contact with the person concerned about the suspected case. However, no names may be mentioned. Furthermore, the employer should immediately vacate the work area and the department of the person concerned. The employer should have the possibly infected employee tested for COVID-19 or in any case ask him to do it himself. As stated above, employers who could contribute to the surveys are, at the request of the district administrative authority, obliged to provide information about an infected person in accordance with § 5 (3) of the Epidemic Act 1950.

For which purpose and on which legal basis the Company can process the collected personal data in the execution of the prevention measure? How long should the company eventually retain such data?

In the context of labour law, it should be noted that every employer has a duty of care towards its employees, which includes the exclusion of health risks at the workplace. Against this background, the processing of health data can be based on Art. 9 para. 2 lit.b GDPR in conjunction with the relevant provisions on the duty of care (processing for the purpose of fulfilling obligations under labour and social law). Data processing must be carried out in compliance with the purpose limitation principle in accordance with Art. 5 para. 1 lit.a GDPR. The use of health data for purposes other than health care, virus containment and curative treatment is therefore not permitted. After the end of the epidemic, therefore, those data which will no longer be necessary (such as in particular the private contact details of employees) must be deleted.

BELGIUM

What measures can be taken by the Employer/Data Controller with regard to people who needs to enter the premises of the company (employers and/or suppliers)?

When processing personal data in the context of COVID-19 prevention measures, it is in any case essential to take into account the basic principles of data processing, such as determining the legal basis, observe the principles of proportionality, data minimization, limited retention periods, meet the information obligation, and take necessary security measures.

It should be noted that, due to stringent confinement measures currently in force:

- remote working is currently mandatory for all non-essential businesses. Where certain functions cannot be performed remotely, work on company premises is permitted provided specific social distancing requirements are complied with.

- the above rules do not apply to essential businesses, although the latter are required to implement remote working and social distancing insofar as practically possible.

The above measures practically result in a drastic limitation of people currently accessing company premises. These measures are re-assessed by authorities on a regular basis.

In case a company would want to have all visitors complete a questionnaire about medical data or recent travels, that would in any case not be allowed for employees. The Belgian Data Protection Authority rather suggests to encourage employees to spontaneously report risky journeys or symptoms to the employer. This is to be done in close collaboration with the occupational physician ('médecin du travail' - 'arbeidsgeneesheer').

In the opinion of the Belgian Data Protection Authority, checking the body temperature of a visitor does not per se qualify as processing of personal data, as long as such temperature information is not combined with other personal information. In practice, it will however be very difficult (if not impossible), not to do so, taking into account such measures as CCTV at the workplace, badging systems to access parking lots and company premises, etc.

How to process data of the employee whose test is positive for infection and which kind of communications can be addressed to the employees who have worked closely with the infected employee?

The processing of personal data of an employee who tested positive for COVID-19 must in any case comply with the GDPR (see inter alia question 1), including the principles of confidentiality, data minimization and proportionality.

This implies that the employer may in principle not disclose the name of a COVID-19 infected employee amongst other employees. This could have a stigmatizing effect.

With a view to preventing the further spreading of the virus, the employer is allowed to inform other employees of an infection within the workforce, without revealing the identity of the person(s) involved.

The name of the infected person may in any case be communicated to the occupational physician or the competent government services.

What to do if an employee shows symptoms of Coronavirus infection?

Employers have the obligation to take measures in order to ensure the safety of their personnel. However, it is the responsibility of the occupational physician ('médecin du travail' - 'arbeidsgeneesheer') to monitor the health of employees whom the employer suspects were exposed to and / or show symptoms of COVID-19.

This results in the following obligations:

- a) As reminded by the Federal Public Service Employment, Labour and Social, in the event an employee becomes ill at work and is still able to return home independently, the employer must ask the employee to go home as soon as possible and to contact a doctor by telephone. It is advisable that the employee does not travel by public transport (unless there is no other option, in which case the employee must strictly apply the principles of sneezing and coughing hygiene during the ride home and wash his/her hands with soap and water before departure).

In the event the employee cannot return home independently, the employer (i) must call emergency services for urgent medical assistance or (ii) look for a solution in consultation with the employee's family and/or his/her general practitioner.

- b) In order to prevent other employees from becoming infected, the employer should take adequate measures. Such measures can consist of isolating the infected person if he/she cannot go home immediately, giving the employee a mouth mask after washing or disinfecting his/her hands or let the employee cover his/her mouth, make the employee aware of the principles of sneezing, cough hygiene and let him/her wash his/her hands, disinfect all surfaces touched by the sick employee, etc.). Crucial in these circumstances is to consult with the employer's occupational physician, so as to ensure that the measures taken are relevant and adequate.

In the event the personal data of an infected employee is processed, the processing activity must comply with the GDPR (see inter alia question 1 and 2 in this respect).

For which purpose and on which legal basis the Company can process the collected personal data in the execution of the prevention measure? How long should the company eventually retain such data?

The purpose of the processing of the collected personal data is the prevention of COVID-19 contagion.

In order to be able to identify the legal basis that may be relied upon, a distinction is to be made between "ordinary" personal data and special categories of personal data (including data concerning health):

- a) For the first category, different options are available under article 6 GDPR. It is to be noted that the Belgian Data Protection Authority shared its opinion on the use of Article 6.1, d) GDPR (necessary in order to prevent vital interest). At this stage and based on the latest information published by the FPS Health ('SPF Santé publique' - 'FOD Volksgezondheid') on COVID-19, there is no reason for a systematic or more broad application of this legal basis by companies and employers, looking at implementing preventive measures.

- b) As far as personal data concerning health is concerned, specific grounds of article 9.2. must be relied upon. For employers articles 9.2. (i) (necessary for reasons of public interest in the area of public health) may at first sight seem relevant. However, the Belgian Data Protection authority clarified that this ground may only be relied upon in case employers act in accordance with explicit guidelines imposed by the competent authority. In this context, article 20, 2° of the Employment Contracts Act of July 3, 1978, may be of relevance. This article obliges the employer to 'ensure that the work is carried out in decent conditions with regard to the health and safety of the employee'.

BULGARIA

What measures can be taken by the Employer/Data Controller with regard to people who needs to enter the premises of the company (employers and/or suppliers)?

Bulgarian legislation and DPA have not explicitly addressed this question so far. There is a special order from the Minister of Health stating that: "All employers, depending on the specifics and capabilities of the respective work activity, should introduce a remote form of work for their employees. Where this is not possible, employers shall arrange for enhanced anti-epidemic measures to be taken in the workplace, including: filter, disinfection and ventilation, personal hygiene instruction, and shall not allow employees or outsiders with acute infectious diseases". Considering that employers are obliged not to allow employees and other persons with acute infectious diseases at the workplace, they could process personal data, including health data (for symptoms of such diseases), for the purpose of performing this obligation. In any case, processing activities should be carried out in compliance with the principle of proportionality and data minimization.

How to process data of the employee whose test is positive for infection and which kind of communications can be addressed to the employees who have worked closely with the infected employee?

Bulgarian legislation and DPA have not explicitly addressed this question so far. According to the Statement on the processing of personal data in the context of the COVID-19 outbreak, adopted on 19 March 2020 by the EDPB (the "Statement"), "Employers should inform staff about COVID-19 cases and take protective measures, but should not communicate more information than necessary. In cases where it is necessary to reveal the name of the employee(s) who contracted the virus (e.g. in a preventive context) and the national law allows it, the concerned employees shall be informed in advance and their dignity and integrity shall be protected." As part of their organizational measures with respect to the COVID-19 risk, employers in Bulgaria are instructed to establish an order to inform employees in case of a sick person with whom they have been in contact. However, considering the EDPB's Statement, anonymized data should be communicated to employees, to the extent possible.

What to do if an employee shows symptoms of Coronavirus infection?

An employee having symptoms of Coronavirus infection should contact his/her GP, or call the national emergency number. Bulgarian legislation and DPA have not explicitly addressed employer's actions in this regard, apart from their obligation not to allow such employees at the workplace.

For which purpose and on which legal basis the Company can process the collected personal data in the execution of the prevention measure? How long should the company eventually retain such data?

Bulgarian legislation and DPA have not explicitly addressed this question so far. The purpose of the processing can be defined as the prevention of COVID-19 contagion and protecting employees' health. The legal basis could be legal obligation, when processing is necessary for compliance with a legal obligation to which the controller is subject. Where processing is not based on this ground, it may serve important grounds of public interest and the vital interests of the data subject, as outlined in recital 46 of the GDPR. The retention period is not legally determined and should be set by the controller, e.g. with reference to the end of the state of emergency in Bulgaria.

CROATIA

What measures can be taken by the Employer/Data Controller with regard to people who needs to enter the premises of the company (employers and/or suppliers)?

It is advisable for the Employer/Data Controller to adopt internal decision on processing of personal data of its employees and other persons occasionally entering its premises

Pursuant to this internal decision prescribing these rules, the Employer/Data Controller should establish and pre-determine its procedures of processing personal data and measures of personal data protection in the context of the COVID-19 outbreak (e.g. measure of measuring body temperature at the entrance of the Employer/Data Controller's premises).

The respective internal decision needs to be drafted and implemented pursuant to (i) the GDPR's principles of necessity of processing and data minimization, and (ii) subject to the existing internal technical and organizational measures, as well as newly adopted (if necessary) in circumstances caused by COVID-19.

How to process data of the employee whose test is positive for infection and which kind of communications can be addressed to the employees who have worked closely with the infected employee?

The Employer/Data Controller is authorized to process the affected employee's personal data, which may be necessary for compliance with the Employer/Data Controller's legal obligations related to health and safety at the workplace and/or the public interest (e.g. the control of diseases and/or other threats to health).

More specifically, the Employer/Data Controller would be authorized to conduct the internal investigations for purposes of identifying an employee potentially affected by COVID-19, and subsequently communicating the respective information on the employee's identity to the national health authority.

Within the procedure, the affected employee's personal data must not be disclosed to any third party outside of the state's police, national civil protection and/or health system, or other competent state authority.

The internal Employer/Data Controller's investigations need to be conducted in a manner which guarantees complete confidentiality and dignity of the affected employee.

What to do if an employee shows symptoms of Coronavirus infection?

The (potentially) affected employee is urged to inform the Employer/Data Controller on its symptoms so that the Employer/Data Controller is able to duly inform the competent health authority.

The affected employee, as well as all employees which were in direct contact with the affected employee, should be immediately isolated from their work environment and other employees.

The affected employee's personal data must not be disclosed to any third party nor should be made publicly available.

The protection procedures need to be conducted in a manner which ensures the confidentiality of all (potentially) affected persons.

For which purpose and on which legal basis the Company can process the collected personal data in the execution of the prevention measure? How long should the company eventually retain such data?

Pursuant to the EDPB's recommendations resulting from the COVID-19 outbreak, the Employer/Data Controller would be authorized to process its employees' personal data when necessary for compliance with the Employer/Data Controller's legal obligations related to health and safety at the workplace and/or to the public interest (in this case particularly control of diseases and/or threat to health).

Additionally, special categories of data (in this case particularly health-related data) can be processed when in public health-interest (always pursuant to the data privacy EU law or national law), and for protecting the vital interests of data subjects.

The respective data's retention period should always be harmonized with the terms of the local law (when applicable), or other specific terms adopted during the state of emergency caused by the COVID-19.

CYPRUS

What measures can be taken by the Employer/Data Controller with regard to people who need to enter the premises of the company (employers and/or suppliers)?

No guidelines and/or regulations have been issued in connection to privacy/data collection measures that need to be taken for people who need to enter the premises of the company, whether they are employees or visitors.

As such, the general principles of the GDPR must be adhered to (including, data minimization, purpose limitation etc.) when processing personal data of employees and visitors in relation to Covid-19, also taking into account the provisions of the Health and Safety at Work Law of 1996 (L. 89(I)/1996) (the "Health and Safety Law"), which require the employer to ensure the health and safety of its employees at work (and any other persons that may be affected by the company's business), by inter alia:

- a) providing them with such information and guidelines so as to ensure their health and safety at work;
- b) providing and maintaining the workplace, including its entries and exits, in a condition which is secure and without health risks;
- c) taking necessary measures for the health and safety of its employees and adapt such measures from time to time in accordance with the circumstances.

How to process data of the employee whose test is positive for infection and which kind of communications can be addressed to the employees who have worked closely with the infected employee?

If an employee tests positive for Covid-19 whilst at the workplace, the employer must immediately inform the Ambulance Service providing the following information:

- Full name of the employee;
- Country of Origin;
- Symptoms of the employee; and
- Address of the working place.

All other employees must also be advised not to enter the employee's work location. Such notification should be made taking into account proportionality under the GDPR i.e. where employees are highly unlikely to have access to/enter the employee's office/place of work then they may not need to be notified of the fact that the particular employee has been diagnosed with Covid-19.

Once an employee tests positive, then all of the employees that have come into close or casual contact with the infected employee must be contacted in order to take the test as well – this is not however an obligation of the employer but of the Ministry of Health.

As such, any additional communication to employees must be carried out taking the general principles of the GDPR into account (and in particular confidentiality and proportionality), as no specific guidelines in relation to such communications have been issued.

What to do if an employee shows symptoms of Coronavirus infection?

Under the general obligations of an employee pursuant to the Health and Safety Law (i.e. to take reasonable care for his and others health and safety while at the workplace), an employee must notify his employer of the fact that he has tested positive, in order to enable the employer to take the necessary measures to protect all other employees of the company.

The employee must also contact the Ambulance Service through the emergency number 1420 in order to inform them of his symptoms and help them determine whether a Covid-19 test is necessary. The employee must, irrespective of whether he is ultimately tested or not, place himself in self-isolation in order to contain the risk of contagion for a total period of 2 weeks.

As per above, any information provided to other employees in connection to the employee showing symptoms, must be made taking the general principles of the GDPR into account as no specific guidelines have been issued in relation to this.

For which purpose and on which legal basis the Company can process the collected personal data in the execution of the prevention measure? How long should the company eventually retain such data?

As per the below response, the purpose of the processing is the maintenance of the health of the employees and the prevention of the contagion of Covid-19 to other employees, contractors and/or visitors of the company. We consider the legal bases for this to be the following:

- a) Where the personal data collected do not fall within the special categories, the processing can be based on Article 6(1)(c) i.e. compliance with a legal obligation (in this case, compliance with the Health and Safety Law) and on Article 6(1)(f) i.e. on the basis of the legitimate interests of the company provided that the processing (including the notification to other employees) is carried out in such a way so as to minimize the intrusion to privacy of the infected employee.
- b) Where the personal data collected fall within the special categories, the processing can be based on Article 9(2)(b) i.e. that processing is necessary for carrying out the obligations of the controller in the field of employment insofar as it is authorized by Union or Member State Law – in this case, we consider the relevant law to be the Health and Safety Law as mentioned above.

As far as retention is concerned, no specific guidelines have been issued in connection to this and thus the general principle of retaining the data for as long as they are necessary for the purposes for which they were collected must be applied. Taking into account the sensitivity of the data in question, we would consider it appropriate for such data to be deleted once the health crisis has been surpassed.

CZECHIA

What measures can be taken by the Employer/Data Controller with regard to people who needs to enter the premises of the company (employers and/or suppliers)?

Firstly, please note that there is no special regulation of this matter, which would be adopted in connection to C19 situation. Our answer is based on generally applicable employment, public health and data protection laws, respecting the current situation, where public health is at stake.

We believe that based on the employer's obligations in the area of Occupational Health and Safety, the employers are generally entitled to request relevant information from anyone who enters the premises of the company. This may include measuring body temperature or information about individual obligatory quarantine. We are discussion internally whether an employer is entitled from local labor law perspective to request information whether its particular employee is C19 positive - should this be relevant for you, please let us know and we can follow-up on this.

From the GDPR perspective, we believe that the processing of the information is based on legal titles under Art. 6 para. 1 letter c), or respectively under Art. 9 para. 2) letters b) and i) in case of health information. The processing principles mentioned by our Italian colleagues apply similarly.

How to process data of the employee whose test is positive for infection and which kind of communications can be addressed to the employees who have worked closely with the infected employee?

In the case of an employee declared positive for the Coronavirus, the company shall carry out internal investigations and collect information aimed at identifying the persons who have come into close contact with the positive subject, in order to communicate such data to the competent authorities and allow that the necessary and appropriate quarantine measures are applied.

The advice is not to communicate the name of the C19 positive employee to other employees (or to anyone else), unless really necessary.

What to do if an employee shows symptoms of Coronavirus infection?

As in the 1st question, please note that there is no special C19 regulation of this matter from the perspective of an employer. The employer does not possess any C19-specific rights towards the particular employee in this situation. Our answer is based on generally applicable employment, public health and data protection laws, respecting the current situation, where public health is at stake.

The employee that shows symptoms is generally recommended to contact his/her medical practitioner and/or the local Public Health Office.

From the employer's perspective – the employer should decide based on individual circumstances whether to let the employee stay at the workplace or order the employee to leave the workplace. Many legal and non-legal factors have to be considered by the employer. From the legal perspective, should the employer order the employee to leave the workplace, such situation would be considered as obstacles to work on the side of the employer and the employee is entitled to full remuneration.

For which purpose and on which legal basis the Company can process the collected personal data in the execution of the prevention measure? How long should the company eventually retain such data?

As likely in other countries, the situation (including the legal framework) in Czech Republic is very dynamic and some of the answers may become outdated or inaccurate soon.

DENMARK

What measures can be taken by the Employer/Data Controller with regard to people who needs to enter the premises of the company (employers and/or suppliers)?

The employer may refuse admittance to the premises of the company.

How to process data of the employee whose test is positive for infection and which kind of communications can be addressed to the employees who have worked closely with the infected employee?

If the processing of data is in compliance with the regulation on employment law, the employer is allowed to process data if the processing is in compliance with the current GDPR regulation.

Please note that the following are examples of information, which the employer may be allowed to process and address:

- that an employee has returned from a so-called "risk area"
- that an employee is in home quarantine (without stating the reason)
- that an employee is ill (without stating the reason)

What to do if an employee shows symptoms of Coronavirus infection?

See answer from no.2.

There is not specific legislation which allows/imposes the employer to take special measurements if an employee shows symptoms of Coronavirus infection.

For which purpose and on which legal basis the Company can process the collected personal data in the execution of the prevention measure? How long should the company eventually retain such data?

There is no specific prevention measure which applies to employers.

ESTONIA

What measures can be taken by the Employer/Data Controller with regard to people who needs to enter the premises of the company (employers and/or suppliers)?

The employer is able to ask the data about visiting the countries which are in the list and employee should provide information whether he or she visited foreign countries and contacted with infected people.

In a situation where the spread of an infectious disease is restricted, the employer must do everything possible to prevent the employees from coming to work.

Taking into account the specifics of the work, the employer shall compile an indicative list of health conditions which, in his or her opinion, could prove dangerous to the employee at work.

The employer must bear in mind that such an indicative list must not include health problems which do not actually affect the employee's ability to perform his or her duties.

How to process data of the employee whose test is positive for infection and which kind of communications can be addressed to the employees who have worked closely with the infected employee?

First of all, data about employee whose test is positive shall not be disclosed or communicated to third parties who are not the subjects.

The employer should inform other employees who have come into close contact with the positive subject and prevent from spreading to other employees.

What to do if an employee shows symptoms of Coronavirus infection?

In a situation where the spread of an infectious disease is restricted, the employer must do everything possible to prevent employees from coming to work.

Generally, in the context of today's situation, it is probably reasonable for an employer to ask the employee for confirmation that the employee does not pose a risk to other workers and the working environment in general.

Otherwise, the employer would not be able to fulfill its statutory obligation to provide a safe working environment.

For which purpose and on which legal basis the Company can process the collected personal data in the execution of the prevention measure? How long should the company eventually retain such data?

Personal data shall be kept for no longer than is necessary for the purposes for which the personal data are processed.

FINLAND

What measures can be taken by the Employer/Data Controller with regard to people who needs to enter the premises of the company (employers and/or suppliers)?

Employer's direction right, subject to certain exceptions, provides the employers a possibility to determine where the employees shall perform their work duties. There are certain formalities (codetermination obligations) for employers to follow. However, in this exceptional situation where the Government recommends all Finns to stay at their home and to avoid any transfers from one place to another, it is easier also for the employers to ask their employees to work from home on temporary basis. The fastest and easiest way is to implement remote/home working on voluntary basis (referring e.g. to Governmental recommendations and work health and safety issues, etc.) and agree on remote/teleworking rules and principles accordingly. However, in case company has employee representative(s) and/or work health and safety delegates elected in Finland, it is recommended to involve them into the process as well (in advance).

Actual measures are limited, if there is a need for entering the premises of the company. The companies (employer/data controller) are not entitled to conduct themselves testing or measuring body temperatures of their employees or third parties, such as suppliers. Employer's direction right is mainly on determining the place where the employees shall perform their work duties.

Workplaces should update their hazard analysis and risk assessment in the light of the coronavirus epidemic. The employer should draw up the necessary instructions and procedures regarding the coronavirus situation.

More information on what to consider in the risk assessment during the Corona situation can be found in the guide for workplaces provided by the Ministry for Social Affairs and Health.

The employer shall take care of occupational safety also in exceptional circumstances. In the coronavirus situation, the primary measure to prevent worker exposures is to avoid human contact. The employer shall assess the need for workers to arrive at the workplace from the point of view of the workers' health. One way to avoid contact is to work remotely; if it is impossible, the workplace conditions shall be organized to minimize the risk of exposure. These measures may include enhanced cleaning, hygiene instructions for employees, use of protective screens to prevent drip infections, guidelines for workers to avoid exposure to corona, and advice on situations where exposure or illness is suspected, and various shift arrangements. Another recommended measure is to avoid unnecessary gatherings in breakrooms in the workplace. If there is a significantly increased risk of infection, for example in work involving continuous human contact, personal protective equipment such as breathing protection, gloves, goggles and, if necessary, protective clothing shall be used. Maintenance, cleaning, and replacement of personal protective equipment must be maintained at all times.

How to process data of the employee whose test is positive for infection and which kind of communications can be addressed to the employees who have worked closely with the infected employee?

If an employee is diagnosed with COVID-19, the employer may not, as a rule, name the employee in question. The employer can inform other employees of the infection or potential infection in general terms and instruct them to work from home. COVID-19 pandemic has not changed the rules on when and how the employer is permitted to process data concerning the employee's state of health. The employer is permitted to process data concerning the employee's state of health (e.g. diagnoses) if the processing is required for the payment of the wages for the period of illness or other, corresponding health-related benefits or to determine whether the employee has a justified reason for absence. The processing of data concerning the state of health is also permitted if the employee specifically requests that his or her ability to work should be reviewed on the basis of the data. The employer is under an obligation of confidentiality concerning the health data of employees. If necessary, the employer can inform third parties in general terms and according to the organization's practices that the employee is prevented from carrying out their duties. If an employee is diagnosed with COVID-19 or placed in quarantine, the employer may not, as a rule, name the employee in question.

The employer can collect data concerning the employee's state of health from the employee. The collection of such data from other sources requires the employee's written consent. If the employee delivers a medical certificate or statement on his or her ability to work to the employer, the employer may deliver it to the occupational health care provider unless prohibited by the employee. The employer should keep documents containing data concerning the employee's state of health separate from the employee's other personal data. Neither may entries concerning state of health be saved in other personal data files maintained by the employer, such as payroll administration files. The employer and any personnel processing data concerning state of health on behalf of the employer are subject to a non-disclosure obligation and may not disclose the employee's health data to third parties.

What to do if an employee shows symptoms of Coronavirus infection?

In general, the employer has a right to refer the employee to a health examination, but due to the nature of the COVID-19 pandemic, there are new guidelines (see below). An occupational safety and health representative (OSH) of the company can, under certain conditions, order an employee suffering from symptoms of a flu to go home. A shop steward cannot actually order sick employees to go home, but he/she can, of course, urge them to do so, as can other workers in the workplace.

As a guideline in the current epidemic situation, a symptomatic person is not allowed to go to work, even if the symptoms are minor. According to the Act on Occupational Safety and Health Enforcement, an OSH representative has the authority to suspend any work that causes immediate and serious danger. This may be the case if the symptoms clearly indicate a coronavirus infection and if the person works in contact with other employees. The OSH representative shall notify the employer of the suspension of work. The sick employee shall be advised to leave the workplace and contact the occupational or public health care. With a suspected coronavirus infection, one shall not go directly to doctor. A shop steward does not have a similar statutory right to suspend work, but of course in this situation, it is a good idea for anyone to encourage a coworker with flu to go home. According to the Occupational Safety and Health Act, employees also in turn have a right to refuse work that puts their or someone else's life or health at risk.

For which purpose and on which legal basis the Company can process the collected personal data in the execution of the prevention measure? How long should the company eventually retain such data?

If personal data is processed at the workplace in relation to COVID-19, the employer is required to follow the laws applying to such processing. Health data belongs to the special categories of personal data that require specific protection. Health data refers to information about an individual's health, diseases, disability or treatment.

- The information that an employee has contracted Coronavirus is health data.
- The information that an employee has returned from a risk zone is not health data.
- The information that an employee is in quarantine (without specifying the reason) is not health data.

All of the above-mentioned information is personal data, however, and data protection legislation thus applies to its processing. In addition to the EU's General Data Protection Regulation (GDPR), the processing of employees' personal data is subject to the Act on the Protection of Privacy in Working Life. The Act on the Protection of Privacy in Working Life specifically provides for the processing of health data and stipulates that the personal data of employees may only be processed when necessary. The Contagious Diseases Act and other legislation related to occupational safety may also apply.

The retention period can be set – if applicable - with reference to the end of the state of emergency, i.e. as long as the information is necessary for the purpose it has been collected.

Please be informed that the Office of the Data Protection Ombudsman in Finland has e.g. compiled answers (in English, too) to the most common questions concerning data protection and the coronavirus epidemic. Further, e.g. The Occupational Safety and Health Administration in Finland has also provided QA on their website.

What measures can be taken by the Employer/Data Controller with regard to people who needs to enter the premises of the company (employers and/or suppliers)?

Businesses and administrations may need to establish a "business continuity plan" (BCP), which aims to maintain the organization's essential activity. This plan must, in particular, include all measures to protect the safety of employees, identify the essential activities to be maintained and also identify the people necessary for continuity of service.

Employers have a general legal safety obligation of employers with respect to their employees. As such, it takes necessary prevention measures to avoid placing employees at risk. However, employers don't have an obligation to guarantee a zero-risk environment.

The employer has three types of action to initiate:

- Prevention measures: Providing employees with personal protective equipment (PPE) (e.g. sanitary masks, especially for employees in contact with the public);
- Information and training: Remind employees of "barrier" gestures to avoid the spread of the coronavirus (coughing into one's elbow, hand-washing, using disposable tissues, refrain from shaking hands, keeping one's distance),
- Changing the way work is organized in a manner appropriate to the situation: Reliance on teleworking where possible, adjust working hours, restrict access to premises or prohibit business travel in certain cases.

More specifically, we encourage you to follow the French National Research and Safety Institute for the Prevention of Occupational Accidents and Diseases (INRS)'s recommendations set out below.

Telework should be the rule for all positions that allow it. For jobs not eligible for telework and for which it is considered essential to the life of the country, the rules of distancing are put in place:

- Organize the maintenance of the activity by limiting the number of people present simultaneously at the workplace or in the same premises (staggered working hours, etc.).
- Avoid meetings and gatherings of people in small spaces.
- Encourage individual offices by allocating the number of employees present.
- Encourage communication by e-mail, telephone, audio or video conferencing.

[...]

How to process data of the employee whose test is positive for infection and which kind of communications can be addressed to the employees who have worked closely with the infected employee?

The employer is responsible for the health and safety of employees in accordance with the French Labour Code and the texts governing the civil service (particularly Article L. 4121-1 of the French Labour Code). In this respect, the employer must implement actions to prevent occupational risks, information and training actions, and finally set up an appropriate organization and means.

In this context, the employer may:

- Raise awareness and invite its employees to provide individual feedback of information concerning them in relation to possible exposure, to the employer or the competent health authorities;
- Facilitate their transmission by setting up, if necessary, dedicated channels;
- Promote remote working methods and encourage the use of occupational medicine.

In the event of a report, an employer may record:

- The date and identity of the person suspected of having been exposed;
- The organizational measures taken (containment, teleworking, orientation and contact with the occupational physician, etc.).

It will thus be able to communicate to the health authorities, on request, the information relating to the nature of the exposure necessary for any health or medical care of the exposed person.

For his part, each employee must implement all means to preserve the health and safety of others and himself (article L.4122-1 of the French Labour Code): employee must inform his employer in the event of suspected contact with the virus.

[...]

What to do if an employee shows symptoms of Coronavirus infection?

As mentioned above, employers have a general legal safety obligation with respect to their employees. If the employee shows serious symptoms, the employer must call 15 (health urgency services). If an employee is infected with coronavirus, the employer must immediately inform the employee to stay at home. The employer must also immediately clean the employee's workplace.

The employee must provide a work stoppage from his general practitioner. He will then be able to obtain financial compensation from the Health Insurance. If a collective agreement provides for the employee's salary to be maintained in the event of illness, this agreement will continue to be applied for the employee suffering from coronavirus.

The employer will also have to inform employees who have been in close contact with the employee affected by the virus and, if necessary, to place them in quarantine in order to prevent the virus from spreading throughout the company.

In this situation, the employer may, if its activity permits, put the employees to teleworking.

Conversely, if the activity requires a presence in the company, the employer may then apply for a part-time activity to compensate for the absence of these employees.

If the company's activity is judged indispensable, measures recommended by the INRS should be applied.

[...]

For which purpose and on which legal basis the Company can process the collected personal data in the execution of the prevention measure? How long should the company eventually retain such data?

Purpose of processing: As regards the purposes of the processing operations, it should be noted that data processing operations in the context of employment relations may be subject to specific national provisions. Such derogations are expressly provided for in Article 88 of the GDPR. In France, the purpose of processing is to ensure the safety of the employees and/or their vital interests. The European Data Protection Supervisor confirms that :

- employers may collect health data relating to their employees or visitors provided that the principle of proportionality and data minimization is respected and insofar as national provisions allow ;
- employers may request health check-ups only insofar as they are legally obliged to do so;
- employers may disclose the names of their infected employees only if national law so permits and after informing employees in advance. The dignity and integrity of individuals must be protected;
- employers may only obtain covid-19-related data to fulfil their obligations and organize their work within the framework of national legislation.

Legal basis: The GDPR allows competent public health authorities and employers to process personal data in the context of an epidemic, in accordance with national law. In the employment context, the processing of personal data may be necessary for compliance with a legal obligation (in France, the health and safety of employees referred into French Labour Code) to which the employer is subject such as obligations relating to health and safety at the workplace, or to the public interest, such as the control of diseases and other threats to health. The GDPR also foresees derogations to the prohibition of processing of certain special categories of personal data, such as health data, where it is necessary for reasons of substantial public interest in the area of public health (Art. 9.2.i), on the basis of Union or national law, or where there is the need to protect the vital interests of the data subject (Art.9.2.c), as recital 46 explicitly refers to the control of an epidemic.

[...]

What measures can be taken by the Employer/Data Controller with regard to people who needs to enter the premises of the company (employers and/or suppliers)?

[...]

It is recommended that procedures be established for visitor and customer access.:

- Limit the number of visitors or customers and organize queues.
- Provide general hygiene instructions.
- Make hydro-alcoholic solutions available as far as possible at the entrance to the buildings receiving the public.
- Set up a safety distance, or even specific devices (intercom systems, screens, etc.) for positions that are particularly exposed to the public.
- In areas where this is to be maintained, organize company catering by extending the opening hours, leaving more than one meter between seats at the table and introducing alternatives to collective catering.
- Remove magazines and documents from waiting areas or common rooms.
- Limit access to conviviality areas and other collective break areas.
- Ensure that handwashing stations are supplied with soap and preferably single-use paper. If access to sanitary facilities is not possible (couriers, staff on occasional trips) provide staff with hydro-alcoholic solutions.

How to process data of the employee whose test is positive for infection and which kind of communications can be addressed to the employees who have worked closely with the infected employee?

[...]

If the health situation requires all actors to be particularly vigilant, the French Data Privacy Authority (CNIL) invites individuals and professionals to follow the recommendations of the health authorities and to only collect data on the health of individuals who have been requested by the competent authorities.

Finally, health data may be collected by the health authorities, who are qualified to take the measures appropriate to the situation. The evaluation and collection of information on coronavirus symptoms and information on the recent movements of certain persons is the responsibility of these public authorities.

What the employer cannot do:

While everyone must implement measures appropriate to the situation, such as restrictions on travel and meetings or compliance with hygiene measures, employers may not take measures that could infringe on the privacy of the individuals concerned, in particular by collecting health data that would go beyond the management of suspected exposure to the virus. Such data is/are indeed subject to special protection, both by the RGPD and by the provisions of the French Public Health Code.

For example, employers must refrain from collecting, in a systematic and generalized manner, or through individual inquiries and requests, information relating to the search for possible symptoms presented by an employee/agent and his/her relatives. It is therefore not possible to implement, for example :

- mandatory body temperature readings of each employee/agent/visitor to be sent daily to his or her superiors;
- or the collection of medical records or questionnaires from all employees/agents.

What to do if an employee shows symptoms of Coronavirus infection?

For which purpose and on which legal basis the Company can process the collected personal data in the execution of the prevention measure? How long should the company eventually retain such data?

[...]

Retention period: Regarding the retention period, no specific provision are provided in our local regulation. To date, we recommend to implement a retention period with reference to the end of the state of emergency.

Please note, on February 28, 2020, France's Ministries of Health and Labour published a series of questions and answers to assist companies and employees concerned about workplace issues due to COVID-19. These questions and answers were then regularly updated (last updated today, on April 4, 2020).

Similarly, on March 6, 2020, the French Data Privacy Authority (CNIL) provided its own recommendations with guidelines concerning the handling of the health crisis with regard to personal data privacy.

- Employers must refrain from collecting information on possible symptoms displayed by employees/visitors and their relatives, be it in a general way or through individual inquiries and requests.
- It is therefore not possible to collect the body temperature of employees or visitors in a systematic way at the entrance of the employer's premises.
- However, employers can raise employee awareness to encourage employees to report to their employers or to health authorities their possible exposure to the virus.
- Upon request by health authorities, employers may communicate information relating to the health of employees and the nature of the exposure to the virus.

GREECE

What measures can be taken by the Employer/Data Controller with regard to people who needs to enter the premises of the company (employers and/or suppliers)?

The Data Controller is able to request from data subjects to disclose their or their relatives' personal data or special categories of personal data that are absolutely necessary for the purposes of prevention and/or limitation of contagion of COVID-19 in the Company.

As a result, the Data Controller is able to collect the information via the submission of questionnaires by employees or visitors (eg. if they had recently travelled abroad or if any relatives are likely to or have already been diagnosed COVID-19 positive).

Additionally, the Data Controller is able to measure the body temperature of people entering the premises of the Company, given that this is considered as the only available and effective measure for the above-mentioned purposes.

The said measures are lawful under the following circumstances: first, that the principle of data minimization and proportionality are fulfilled, second, all appropriate organizational and technical measures have been taken in order to safeguard security of data and third, that the processing is not systematic, constant and general in a way that leads to profiling

How to process data of the employee whose test is positive for infection and which kind of communications can be addressed to the employees who have worked closely with the infected employee?

According to the Greek employment legislation (arts. 42, 45 and 49 of Law 3850/2010), the employee has the obligation to declare to the employer any circumstances that may put at risk the health and safety at work. In this context, the employee whose COVID-19 test is positive shall disclose this fact to the employer. The collection and processing of such data on behalf of the Data Controller must be carried out in any case in such a way as to safeguard confidentiality, security and integrity of personal data.

Therefore, the employer is not allowed to disclose such information to third persons, since this processing may lead to stigmatization and consequently, transfer is considered unlawful.

What to do if an employee shows symptoms of Coronavirus infection?

As described in the previous answer, the employee is required to communicate to the employer all circumstances that may put at risk the health and safety at work. The symptoms of COVID-19 infection is definitely a condition that need to be disclosed to the Data Controller. As a result, the employer shall notify the National Organization for Public Health in order to proceed to all necessary actions.

The collection and processing of such data on behalf of the Data Controller must in any case be carried out in such a way as to safeguard confidentiality, security and integrity of personal data.

The transfer of this data by the employer to third persons is considered unlawful for the reasons described above.

For which purpose and on which legal basis the Company can process the collected personal data in the execution of the prevention measure? How long should the company eventually retain such data?

The purpose of the processing is the prevention and limitation of COVID-19 contagion.

The lawfulness of the processing of personal data may be established under the following legal bases of article 6 (1):

- (c) processing is necessary for compliance with a legal obligation to which the controller is subject;
- (d) processing is necessary in order to protect the vital interests of the data subject or of another natural person;
- (e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.

The lawfulness of the processing special categories of personal data (health data) may be established under the following legal bases of article 9 (2):

- (b) processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law in so far as it is authorised by Union or Member State law or a collective agreement pursuant to Member State law providing for appropriate safeguards for the fundamental rights and the interests of the data subject;
- (e) processing relates to personal data which are manifestly made public by the data subject;

The employer shall destroy personal data upon the termination of this situation of emergency. However, the special categories of personal data (health data) that are included in the health folder of the employee that are retained by the occupational doctor must be retained according to the respective legislation.

The processing of personal data for purposes related to COVID is regulated under the GDPR and the Greek Law 4624/2019, according to the Guidelines, issued by the Hellenic Data Protection Authority on processing of personal data for purposes related to COVID-19, as well as Legislative Content Act issued on the 25th of February 2020 (art.1 par. 4).

HUNGARY

What measures can be taken by the Employer/Data Controller with regard to people who needs to enter the premises of the company (employers and/or suppliers)?

The employer shall develop a pandemic action plan that supports the company to have an appropriate crisis management plan that includes the procedures, preventive measures and safeguards introduced; the measures to be taken in case of an infection; the privacy impact assessment of the proposed measures recommendations for responsibilities; the decision-making powers; competencies; development of proper communication tools, etc. Within the framework of the action plan, the employer shall prepare a detailed notification for the employees about the most important aspects of COVID-19.

The employer must develop its internal policies in accordance with the risk assessment. It determines the extent to which the employer may interfere into privacy in order to properly manage the pandemic situation. Especially examining the employee's private travels concerning the destination and the date of the travel, as well as recording data about any contact with a person from a high-risk country may be allowed only in case of a high exposure in line with employees' privacy notice. The employer shall also request the employees to notify the employer they may have been affected by the virus and go to their doctor.

The above measure must also comply with the principal of data minimisation and the appropriate legal basis must be determined in all cases.

The Hungarian Data Protection Authority finds it acceptable for example to issue questionnaires for the employees but these may not include questions in relation to health history and the employees may not be request to attach any healthcare related documents.

How to process data of the employee whose test is positive for infection and which kind of communications can be addressed to the employees who have worked closely with the infected employee?

The employee shall notify the appointed person about this fact in line with the employer's applicable internal policy. The employer may conduct the necessary investigation only based on a necessity and proportionality test put behind, however the data of the infected employee may not be disclosed to other employees. The company shall also define the appropriate technical and organisational security measures to protect the data.

What to do if an employee shows symptoms of Coronavirus infection?

There shall be a confidential channel ensured to report the symptoms of Coronavirus, the notification obligation is prescribed by the Labor Code, however, the method of reporting and necessity measures put behind shall be ensured by the company from the perspective of technical and organisational measures; with proper organizational separation, ensuring that these data are minimised and proper interest balancing test and as well legal bas is defined and disclosed.

For which purpose and on which legal basis the Company can process the collected personal data in the execution of the prevention measure? How long should the company eventually retain such data?

Legal basis are doubled and shall be defined by article 6 (1) f) or e) and article 9 (2) h) and (3) of the GDPR.

IRELAND

What measures can be taken by the Employer/Data Controller with regard to people who needs to enter the premises of the company (employers and/or suppliers)?

Measures taken in response to Coronavirus involving the use of personal data, including health data, should be necessary and proportionate. The Data Protection Commission (DPC) has advised that Employers would be justified in asking employees and visitors to inform them if they have visited an affected area and/or are experiencing symptoms.

Implementation of more stringent requirements, such as a questionnaire, would have to have a strong justification based on necessity and proportionality and on an assessment of risk. This should take into consideration specific organisational factors such as the travel activities of staff attached to their duties, the presence of vulnerable persons in the workplace, and any directions or guidance of the public health authorities.

Further to the above, more specific and intrusive questions must be limited to the minimum necessary to achieve the purpose of implementing measures to prevent or contain the spread of COVID-19.

How to process data of the employee whose test is positive for infection and which kind of communications can be addressed to the employees who have worked closely with the infected employee?

Identification of an individual infected by COVID-19 should be avoided in the interests of maintaining the confidentiality of the employee's personal data. The DPC advise that, an employer would be justified in informing staff that there has been a case, or suspected case, of COVID 19 in the organisation and requesting them to work from home. This communication should not name the affected individual.

Disclosure of this information may be required by the public health authorities in order to carry out their functions.

Controllers should also ensure they document any decision-making process regarding measures implemented to manage COVID-19, which involve the processing of personal data.

What to do if an employee shows symptoms of Coronavirus infection?

The DPC advise that employers would be justified in requiring employees to inform them if they have a medical diagnosis of COVID-19 in order to allow necessary steps to be taken. However, it is important to keep in mind that the recording of any health information must be justified and factual, and must be limited to what is necessary in order to allow an employer to implement health and safety measures.

Employers should follow the advice and directions of the public health authorities, which may require the disclosure of personal data in the public interest to protect against serious threats to public health.

For which purpose and on which legal basis the Company can process the collected personal data in the execution of the prevention measure? How long should the company eventually retain such data?

In circumstances where organisations are acting on the guidance or directions of public health authorities, or other relevant authorities, it is likely that Article 9(2)(i) GDPR and Section 53 of the Data Protection Act 2018 will permit the processing of personal data, including health data, once suitable safeguards are implemented.

Such safeguards may include limitation on access to the data, strict time limits for erasure, and other measures such as adequate staff training to protect the data protection rights of individuals.

Employers also have a legal obligation to protect their employees under the Safety, Health and Welfare at Work Act 2005 (as amended).

This obligation together with Article 9(2)(b) GDPR provides a legal basis to process personal data, including health data, where it is deemed necessary and proportionate to do so. Any data that is processed must be treated in a confidential manner.

It is also permissible to process personal data to protect the vital interests of an individual data subject or other persons where necessary. A person's health data may be processed in this regard where they are physically or legally incapable of giving their consent. This will typically apply only in emergency situations, where no other legal basis can be identified.

No specific direction has been provided by the DPC around retention periods, however employers should not continue to process such data once the legal basis for such processing has expired.

ITALY

What measures can be taken by the Employer/Data Controller with regard to people who needs to enter the premises of the company (employers and/or suppliers)?

The companies that will adopt the Protocol for the regulation of measures to fight and contain the spread of the Covid-19 in the workplace will be able to request information on the travels made and the state of health of anyone accessing the premises or local offices, as well as to measure the body temperature, with reference both to employees and, where entry is necessary, to suppliers (for example, in the case of personnel in charge of sanitation activities or technicians working on maintenance of systems).

These activities shall, in any case, be carried out in compliance with the principles of necessity of processing and data minimisation.

How to process data of the employee whose test is positive for infection and which kind of communications can be addressed to the employees who have worked closely with the infected employee?

In the case of an employee declared positive for the Coronavirus, the company shall carry out internal investigations and collect information aimed at identifying the persons who have come into close contact with the positive subject, in order to communicate such data to the Health Authority and allow that the necessary and appropriate quarantine measures are applied. Indeed, it is necessary to remind that the data shall not be disclosed or communicated to third parties who are not subjects operating in the Police Force, in the National Civil Protection Service and in public and private organizations operating within the National Health Service.

The collection and processing of such data must in any case be carried out in such a way as to guarantee the confidentiality and dignity of the employees involved.

The company shall also define the appropriate technical and organizational security measures to protect the data.

What to do if an employee shows symptoms of Coronavirus infection?

The employee with symptoms of Coronavirus infection is required to notify the company that shall notify the competent healthcare authorities - through the emergency numbers for COVID-19 provided by the Region or the Ministry of Health - and to isolate the employee and other persons involved so that they do not come into contact with other people, containing the risk of contagion.

The collection and processing of such data must in any case be carried out in such a way as to guarantee the confidentiality and dignity of the employee. The company shall also define the appropriate technical and organisational security measures to protect the data. In conclusion, it is necessary to remind that the data shall not be disclosed or communicated to third parties who are not subjects operating in the Police Force, in the National Civil Protection Service and in public and private organizations operating within the National Health Service.

For which purpose and on which legal basis the Company can process the collected personal data in the execution of the prevention measure? How long should the company eventually retain such data?

The purpose of the processing is identifiable in the prevention of COVID-19 contagion; the legal basis is identifiable in the implementation of the anti-contagion security protocols pursuant to Article 1, no. 7, letter d) of the DPCM of 11 March 2020; the retention period can be set - if applicable - with reference to the end of the state of emergency.

LATVIA

What measures can be taken by the Employer/Data Controller with regard to people who needs to enter the premises of the company (employers and/or suppliers)?

In order to protect business and most importantly - health of the employees and visitors, the employer/data controller can obtain information from the employees and visitors whether they have been abroad for the past 14 days and/or have they been in contact with COVID-19 sufferers or contacts. The employer for prevention purposes also may measure the temperature of the employees to determine whether they can perform their job duties. However, the employer shall ensure appropriate protection of such data and must ensure that all principles stipulated in the GDPR are fulfilled (for instance purpose limitation and data minimization principle).

How to process data of the employee whose test is positive for infection and which kind of communications can be addressed to the employees who have worked closely with the infected employee?

If the employer learns that one of its employees is infected with COVID-19, the employer must contact the Latvian Centre for Disease Prevention and Control. Disclosing this information to a third party other than the responsible authority violates person's right to privacy and data protection.

The employer also must take various steps to protect further transmission of COVID-19 in the workplace. For instance, the employer must be aware when was the employee likely infected by the virus and what transmission risks has this created in the office; who the employee contacted in person (employees, clients, visitors); which areas of the workplace require sanitary cleaning.

The employer has the right to inform other employees if the employer learns that one of its employees is infected with COVID-19 without disclosing the employee's name (or other personally identifiable information) and to inform employees that they are required to comply with the safety and health measures of COVID-19 prescribed by the authorities.

The collection and processing of such data must, in any case, be carried out in such a way as to guarantee the confidentiality of the employee involved and the employer also must limit access to such kind of data to only those employees who need it for the performance of their duties.

The employer shall also define the appropriate technical and organizational security measures to protect the data.

What to do if an employee shows symptoms of Coronavirus infection?

In case an employee shows symptoms of Coronavirus infection, the employer shall inform only the responsible authorities according their competences (in this case Latvian Centre for Disease Prevention and Control).

If there is a reasonable suspicion that the employee is suffering from a disease, which endangers or may endanger his or her or other person safety or health, the employer shall be entitled to order the employee to undergo an immediate medical examination. Though if an employee experiences symptoms of novel coronavirus COVID-19 but refuses to undergo an immediate medical examination, the employer may (depending on the actual circumstances) consider employee's suspension from work.

Furthermore, if the employer has information about the employee being infected with COVID-19, it is the employer's obligation not to allow that employee to carry out his or her job duties and send him or her home.

However, if despite the employer's order, the employee nevertheless arrives at work and does not want to leave it, the employer has the right to call the State Police.

For which purpose and on which legal basis the Company can process the collected personal data in the execution of the prevention measure? How long should the company eventually retain such data?

The purpose of processing may differ and must be determined on a case-by-case basis (for instance when measuring the temperature of the employees the purpose of processing should be the safety of the employees and visitors); legal basis could be a public interest in the area of public health or to protect vital interests (Article 6 and 9 of the GDPR) or to comply with another legal obligation; the retention period should be set by a case-by-case basis (for example, personal data collected when measuring the temperature of the employees cannot be stored, gathered, compiled or otherwise used).

LITHUANIA

What measures can be taken by the Employer/Data Controller with regard to people who needs to enter the premises of the company (employers and/or suppliers)?

There is no specific regulation related to this question. It is up to the Employer/Data Controller what kind of measures it will take regarding to the people who need to enter the premises of the company. While taking into consideration legal regulations, the Employer/Data Controller can set up internal rules to determine the conditions and circumstances of how and when people can enter the company's premises.

However, it is worth mentioning that according to the Law on Occupational Safety and Health of Republic of Lithuania, the Employer is obliged to ensure safe working conditions for the employees. It means that Employer must take actions to ensure safety of every single employee when allowing other employees on company premises.

In order to do that, the State Data Protection of the Republic of Lithuania provided statement that the Employer/Data Controller can ask the following information:

- Whether the person was traveling to a 'country of risk',
- Whether the person was in contact with a person traveling to a 'country of risk' or suffering from COVID-19,
- Whether the person is at home due to quarantine (without giving a reason) and the quarantine period,
- Whether the person is ill (without specifying a specific disease or other reason).

Also, the State Data Protection Inspectorate of the Republic of Lithuania noted that Employer/Data Controller has a right to ask its employees or visitors whether they have symptoms of COVID-19 or whether they have been diagnosed with COVID-19.

Depending on the responses received, different measures can be identified for each person or group of persons.

How to process data of the employee whose test is positive for infection and which kind of communications can be addressed to the employees who have worked closely with the infected employee?

If the employee is tested positive for COVID-19, with this person's consent this data may be transferred to a personal healthcare facility of his/her choice. If the data is requested by the competent public authorities for public health purposes, the Employer/Data Controller should provide the employee's personal data. Data must be provided in accordance with the authority's instructions, for example if the data is provided for statistical purposes (how many employees are sick or isolated in the company) then the information provided should be anonymized.

The Employer/Data Controller cannot provide health information to other employees or clients by disclosing the infected employee's identity. However, if the employee was identified of having COVID-19 or having symptoms of COVID-19, the Employer/Data Controller has the right to notify other employees in order for them to take actions like to undergo quarantine, to work remotely, check health, and so on.

What to do if an employee shows symptoms of Coronavirus infection?

Kindly note that the employer has the right to ask his employees whether they have symptoms of coronavirus or whether they are diagnosed with COVID-19. If tested positive, the employee is required to notify the competent healthcare authorities and the company. The employer must be aware of this information in order to apply additional safeguards in the workplace – to oblige other employees who have worked or who have been in contact with an infected person to undergo self-quarantine, to enable conditions for medical examinations, to work remotely, etc. Please note that Lithuanian laws states that employer is obliged to require an employee to work from home, if there is a threat to health of other employees. If the employee rejects the request to work from home, the employer shall be entitled to remove the employee from the office without payment of salary (it is applied if there is a possibility to work from home). Further, kindly note that employer is required to follow Lithuanian health authorities recommendations on how to ensure safe workplace (i.e. provide facilities for personal hygiene, to ensure surface disinfection, etc.).

For which purpose and on which legal basis the Company can process the collected personal data in the execution of the prevention measure? How long should the company eventually retain such data?

Possible purposes:

- safety of other people;
- public health purposes.

Legal basis:

- GDPR Art. 6 ph. 1 (c), (d); Art. 9 ph. 2 (i).

The legal regulation does not indicate the specific period of time for Employer / Data Controller to handle the data related to COVID-19. However, the data should not be stored than objectively required, i. e. since the data will only be needed to the Employer/Data Controller during the quarantine period it means that the data should not be stored much longer after the the end of the quarantine.

LUXEMBOURG

What measures can be taken by the Employer/Data Controller with regard to people who needs to enter the premises of the company (employers and/or suppliers)?

Under Luxembourg law, the Labour Code provides for an obligation for the employer to take all necessary measures to ensure the employee's health and safety at workplace.

These measures may take the forms of prevention plans as well as imposing additional obligations on employees or suppliers entering the premises. Employers can oblige people to wear masks, gloves or to use hand sanitizer.

It is however not recommended to an employer to measure his/her employees' or suppliers' body temperature as such action shall be considered as a processing of personal data (the individual health status being a personal data) that shall be at all times governed by the principles of proportionality and data minimization.

How to process data of the employee whose test is positive for infection and which kind of communications can be addressed to the employees who have worked closely with the infected employee?

According to the statement issued by the Luxembourg Data Protection Authority (CNPD) in the context of the Covid-19 pandemic, employers are entitled to process infected employees' personal data in order to identify the potential date and place of infection and take the relevant measures.

Such information can be communicated to the national Health Authorities, competent to take necessary measures to prevent the pandemic to spread on the territory of Luxembourg. In the same statement, the CNPD has mentioned that the personal data collected by the employer shall not be communicated to other third parties or entities (other employees, service providers) without a clear justification.

In our understanding, it is clear that the employer is entitled to communicate with other employees who have been in direct contact of the infected employee on order to prevent the spread of the virus within the company. However, the concerned employee shall be informed prior to such communication and his/her integrity and dignity shall be respected at all times.

What to do if an employee shows symptoms of Coronavirus infection?

The Luxembourg Labour Code provides for an obligation for the employee to take all necessary measures in order to protect his/her health and safety as well as the others'. In that sense, the employee who shows symptoms or has been in direct contact with an infected person shall inform the employer of such potential infection without undue delay.

The employer shall abide by the guidelines issued by the national health organizations and ask the employee to remain home isolated. As mentioned above, the employer is entitled to process such personal data and communicate them to the national Health Authority and the other employees who might have been in direct contact with such potentially infected employee. However, such disclosure must respect at all times the integrity and dignity of the individual.

For which purpose and on which legal basis the Company can process the collected personal data in the execution of the prevention measure? How long should the company eventually retain such data?

In our understanding and based on the statements released by the CNPD and the EDPB, the purpose of such processing of personal data is the prevention of the spread of the Covid-19 pandemic. There is no explicit legal basis on which the processing of personal data may be based.

However, the CNPD has released statements mentioning the right of employers to process such data. There is no explicit retention period of such personal data. However, the Law of 24 March 2020 mentions that the State of Emergency related to the Covid-19 pandemic will last for at least 3 months. In our understanding, the personal data may be retained as long as specific measures related to the pandemic may be taken by employers.

MALTA

What measures can be taken by the Employer/Data Controller with regard to people who needs to enter the premises of the company (employers and/or suppliers)?

It is our understanding that, prior to admitting any persons into the workplace, an employer should be permitted to collect the relevant personal data, possibly including body temperature measurements, recent travel history, and recent contact with persons who are subject to self-isolation precautions.

This notwithstanding, the collection of personal data should be limited to only that information which is strictly necessary for the proper assurance of a safe workplace, and the processing of the obtained data should not include any processing which is not strictly related thereto.

Access to the data should be limited to a minimal number of persons, on a need-to-know basis only.

How to process data of the employee whose test is positive for infection and which kind of communications can be addressed to the employees who have worked closely with the infected employee?

It is our understanding that, in the case that an employee, who has been present at the workplace has tested positive for COVID-19, the employer may immediately initiate an investigation to determine the persons – both employees and third parties recently present at the work premises – with whom the infected employee has had contact.

Communications should ideally be issued in a manner which allows for immediate confirmation by the recipient. This means that an email can possibly be viewed as non-sufficient, and a more effective means of communication would be instant messaging (through approved channels) or possibly telephonic communication.

What to do if an employee shows symptoms of Coronavirus infection?

Any employees who have had contact, or shared a physical workspace, with the infected employee should be immediately informed that one of their colleagues has contracted COVID-19, and the necessary precautions, including quarantine leave and/or self-isolation, should be implemented immediately. It is understood that employees do not need to be informed of the identity of the infected employee, unless this knowledge is absolutely critical for reasons which the data controller becomes aware of.

Similarly, it is understood that third parties who have been present at the workplace, or who have had direct contact with the infected employee, should also be informed that an infection has occurred. Likewise, such third parties would not need to know the identity of the infected employee unless absolutely necessary.

As applicable or necessary, the appropriate health authorities should also be informed of the circumstances through the appropriate channels.

For which purpose and on which legal basis the Company can process the collected personal data in the execution of the prevention measure? How long should the company eventually retain such data?

It is our understanding that most data collection may be validly based on the employer's intention and obligation to protect the vital interests of the data subject or persons, in terms of Article 6(d) GDPR.

However, any data collection which specifically relates to information about the health of the given individual, is treated by the GDPR as a special category of personal data, and as such processing should be based on Article 9(2)(b) GDPR.

Furthermore, we consider that the retention period of the data in question should not exceed the appropriate amount of time necessary to ensure that the purpose of the data collection – i.e. ensuring the safety of the workplace – has been achieved.

NETHERLAND

What measures can be taken by the Employer/Data Controller with regard to people who needs to enter the premises of the company (employers and/or suppliers)?

The Netherlands follows a restricted approach to processing health data. The employer/data controller is not allowed to check whether employees or visitors have Corona or are sick in any way (this includes taking temperature or any other tests). Only a (company) doctor is allowed to do so, or the employees themselves. There are certain specific exceptions for processing health data by employers but none of these are applicable to this situation.

How to process data of the employee whose test is positive for infection and which kind of communications can be addressed to the employees who have worked closely with the infected employee?

Following the strict interpretation of the law the employer is not allowed to ask whether the employee is tested positive for corona and process this information. If the employee is tested positive (by a doctor), the doctor will inform the municipal health service ("GGD") and the GGD Protocol will take effect. The Protocol, in essence, includes a contact inquiry. We presume that the employer/data controller will be contacted during this inquiry.

What to do if an employee shows symptoms of Coronavirus infection?

Following the strict interpretation of the law the employer is not allowed to inquire on the nature of the disease, or process health data in any way. However, the Dutch Data Protection Authority ("DPA") has made an "exception" for these extraordinary times: employees may be sent home if they show symptoms of the Coronavirus infection or when the Employer is in doubt. The employer is allowed to request employees to monitor their own health.

For which purpose and on which legal basis the Company can process the collected personal data in the execution of the prevention measure? How long should the company eventually retain such data?

Purpose: the prevention of COVID-19 contagion.

Legal basis: most likely vital interest (art. 6 (1) (d) GDPR), following recital 46 GDPR.

Retention period: this could vary case-by-case depending on the specific reason for retention.*

*Please note that where this concerns health data an exception following art. 9 GDPR is also necessary. As explained in the previous answers, the Netherlands follows a very restricted approach to processing health data by employers, and no specific lawful exception exists for this situation: exceptions (b) and (i) lack the required legal basis in national or union state law. On the other hand, the DPA acknowledged that in times like these, privacy should not stand in the way of providing healthcare and battling this pandemic. While this is not an official, lawful exception ex art. 9 GDPR, it could be argued that the front door is opened a little for a very limited "corona exception". What the boundaries are of such exception and whether this also provides more room for employers to process health data is unclear.

POLAND

What measures can be taken by the Employer/Data Controller with regard to people who needs to enter the premises of the company (employers and/or suppliers)?

First of all, under special provisions adopted due to COVID-19 outbreak, the Chief Sanitary Inspector or the State Regional Sanitary Inspector acting under his authority may issue decisions imposing certain obligations on employers (and other legal entities or natural persons) as well as recommendations and guidelines on how to proceed in the execution of the tasks. Therefore, according to Polish data protection authority's opinion is that all actions to be taken by the Chief Sanitary Inspector and the designated entities will result from the provisions of law and the aforementioned decisions, guidelines and recommendations. These measures will constitute the legal basis for these activities, including the processing of personal data. Thus, if an employer performs certain preventive measures due to decision issued by Chief Sanitary Inspector or State Regional Sanitary Inspector, such decision will constitute a legal basis for processing personal data which is necessary for the execution of the decision.

When it comes to other measures that are not imposed by the decision (issued by relevant authority), there is no uniform approach in that matter.

It can be argued that some measures may be implemented under general rules set out in Polish labour code.

In particular, according to Article 207 of Polish labour code: The employer is responsible for health and safety in the work establishment.

In addition, Article 2092 provides that:

§ 1. If there is any possible danger to health or life, the employer must:

- 1) immediately inform employees about these dangers and undertake activities to ensure appropriate protection for them,
- 2) immediately provide instructions to employees, in the event of a direct danger, enabling them to interrupt work and move away from the location of the danger to a safe place.

§ 2. In the event of a direct danger to health or life, the employer is obliged:

- 1) to stop work and issue instructions to employees to move away from the location of the danger to a safe place,
- 2) not to issue instructions to continue work until the danger has been eliminated.

Thus, as long as employer is able to demonstrate that specific preventive measures were taken due to the obligations indicated above, the processing of personal data necessary for proper fulfillment of such obligation will be justified. This may concern the request of information on the travels made and the state of health of people accessing the premises or local offices, as well as the measurement of the body temperature.

However, there is also an opposite approach, according to which activities indicated above require consent (in case of sensitive data – specific consent) of a data subject or – in case of non-sensitive personal data – legitimate interest could also be applied (provided that the balancing test allows for such processing).

Despite the legal basis for processing, general GDPR principles will apply – in particular the principle of data minimization, necessity, security and transparency.

How to process data of the employee whose test is positive for infection and which kind of communications can be addressed to the employees who have worked closely with the infected employee?

If the employee test is positive, he/she is obliged to follow all instructions of relevant authorities. Non-compliance with such obligations is threatened by the different penalties imposed by Polish law. If in such a case the employee comes to work, the employer should notify the relevant authority and take all necessary actions so as to ensure that such employee does not put other employees at risk.

When it comes to communication addressed to the employees who have worked closely with the infected employee, the general GDPR requirements and labour law provisions (please see the answer to first question), in particular Article 2092, will apply. Therefore, employers should inform employees about COVID-19 cases and take protective measures, but should not provide more information than necessary. In cases where it is necessary to disclose the name of an employee who is infected with the virus (e.g. in the context of prevention), the employees concerned should be informed in advance. Such information should be disclosed only to people whose security is in danger. The employer must however ensure that the dignity of persons concerned is protected as well as all relevant GDPR principles are complied with.

What to do if an employee shows symptoms of Coronavirus infection?

In order to limit the spread of coronavirus, the employer may instruct the employee to perform remote work for a fixed period of time (work specified in the employment contract, outside the place of permanent work) – regardless the fact of whether an employee shows symptoms of Coronavirus or not. When it comes to other preventive measures, the general rules indicated in the answer to question 1 will apply. Therefore, an employer can take actions if he/she is convinced that it is necessary to ensure the safety of employees as well as protection of their life and health. However, since there are no specific requirements in that matter, all preventive measure should be first thoroughly analyzed and justified so as to ensure that they are proportionate to the risk and non-discriminatory. In addition, all GDPR requirements will apply in that matter.

For which purpose and on which legal basis the Company can process the collected personal data in the execution of the prevention measure? How long should the company eventually retain such data?

The purpose of processing personal data that may be indicated is the prevention of COVID-19 contagion as well as protection of employees' life and health. The legal basis for processing will differ depending on the actions taken as well as personal data processed (normal or sensitive data).

In the context of execution of the prevention measures, sensitive personal data may be processed on the basis of Article 9 paragraph 2 letter a), b), h) or i) of GDPR. When it comes to non-sensitive data, possible basis for processing are set out in Article 6 paragraph 1 letter a), c), d) or f) of GDPR.

When it comes to retention period – it should be specified in accordance with general GDPR rules and taking into account a specific purpose of processing.

PORTUGAL

What measures can be taken by the Employer/Data Controller with regard to people who needs to enter the premises of the company (employers and/or suppliers)?

The Portuguese Data Control Authority (CNPD) has not published guidelines regarding personal data processing within the COVID-19 pandemic emergency. However, the Portuguese Health Authority (DGS) has published guidelines for the establishment of a contingency plan in companies . According to the Presidential decree that enacted the emergency state and the following Decree-Laws executing it, these guidelines must be duly followed.

In that regard, we have been advising our clients that they can collect personal data related to COVID-19 symptoms as part of the implementation of a contingency plan, in light of what other Control Authorities and the EDPB have advised. Any control measures should be adequate and proportional to the purpose they pretend to fulfill.

The applicable legal requirements may vary according to the type of data to be collected, and in some instances, the type of data subject (employees, employees' families, clients or services providers) can also have impact on the implementation of specific measures.

How to process data of the employee whose test is positive for infection and which kind of communications can be addressed to the employees who have worked closely with the infected employee?

According to the DGS guidelines, any infected employee should immediately report that situation to its immediate leadership.

Data controllers should only reveal health related personal data to the person responsible for the HR department and to the competent authorities. We have also advised to limit information collection to a specific and restricted group of people, whether it is the HR department or a task force created for this purpose.

What to do if an employee shows symptoms of Coronavirus infection?

We have been advising our clients that if any employee shows symptoms of infection the company should warn other colleagues that might have be in direct contact with the said person, without revealing any information related to its situation or identification.

As a rule, infected employees are advised to only contact with the persons assigned as responsible for collecting such data, which normally is the person in charge of the HR department (as prescribed by safety and health rules in Labor context in Portugal).

For which purpose and on which legal basis the Company can process the collected personal data in the execution of the prevention measure? How long should the company eventually retain such data?

We have been advising our clients to rely on one of the exceptions that GDPR foresees where health data is allowed to be processed, namely:

- Consent (not for employees as consent it not considered adequate)
- To comply with labor obligations and exercise labor-related rights
- To process the data for reasons of public interest in the area of public health

Regarding other data subjects (family members, customers, and service providers) the collection of such data can be based on consent.

For any other information that is not under a special category, companies may justify their processing under a legitimate interest, as we have no specific legal provision on this subject. A due balance test is needed, however, in order to verify if all the necessary technical and organizational measures are in place and to evaluate the adequacy and necessity, as well as the retention period, of the collected data.

ROMANIA

What measures can be taken by the Employer/Data Controller with regard to people who needs to enter the premises of the company (employers and/or suppliers)?

Romanian legislation (including the ones specifically adopted in relation to the Coronavirus prevention) does not provide specific measures that can be taken with respect to persons who need to enter the premises of the company. Similarly, the Romanian Data Protection Authority ("DPA") has not adopted any specific guidelines, recommendations or best practices in relation to the adoption of such measures, but has mainly reiterated in a recent press release the necessity to observe the provisions of the GDPR with respect to processing of health related personal data.

Therefore, in our view, the procedures adopted with respect to employees and/or suppliers entering the premises of the company will need to be carefully assessed from the perspective of the GDPR, considering the purpose pursuit by the company, specifics of the industry, number of employees and specifics of the working environment (i.e. whether there is closed contact between employees etc) and observance of data protection principles, in particular purpose limitation, data retention and data minimization.

With respect to employees, the measures will need to observe also applicable health and safety regulations, which may vary from industry to industry, as well as the instructions or recommendations issued by the healthcare professional within the company.

How to process data of the employee whose test is positive for infection and which kind of communications can be addressed to the employees who have worked closely with the infected employee?

In case of an employee whose test is positive for infection, the company will need to notify the competent relevant competent authorities (i.e. public health authorities). As regards communications addressed to employees who have worked closely with the infected employees, in line with applicable data protection regulations, disclosure shall be addressed only to a number of limited persons, such as the internal team or department dealing with the case or employees with which the infected employee worked closely (i.e. not the entire department or personnel of the company). Similarly, communication addressed to other employees should not regard more information than necessary and adequate technical and organizational security measures to protect data should be, as well, implemented.

What to do if an employee shows symptoms of Coronavirus infection?

The regulations issued in Romania relation to COVID-19 do not set express obligations on private companies in case an employee shows symptoms, but it is reasonable to apply the same requirements as set out for public entities. Thus, the person showing the symptoms should be isolated and the case should be notified both on the 112 emergency number and to the local public health department. Until the arrival of the ambulance, it is prohibited to enter the isolation room except for the person designated for providing medical care to the suspect and who is wearing protective equipment and respects the medical precautionary procedures. Other requirements are provided in case the suspect is tested positive. However, in order to limit risks to employees, companies may consider applying preventive measures even until the health authorities inform of the result of the tests.

There are no specific provisions regarding the processing of personal data of employees showing COVID-19 symptoms and the general rules apply. However, considering the general obligation of the employer to provide all the information regarding the related labor health and security risks, we are of the view that disclosure of such information should be provided to a limited number of employees who are in contact with the respective employee (who shows symptoms of the infection).

For which purpose and on which legal basis the Company can process the collected personal data in the execution of the prevention measure? How long should the company eventually retain such data?

Romanian specific regulations, including the ones adopted in connection with the prevention of COVID-19 contagion do not address this aspect. Therefore, the general provisions of the GDPR with respect to choosing a legal ground and determining the retention period shall be applicable.

Also, with respect to the employer-employee relationship, the Romanian Special Telecommunications Service has provided a publicly available platform for the statements issued by data subjects and, respectively affidavits issued by the employer. Personal data collected through these documentations (which format is approved by the Internal Affairs Ministry) regard any trips or travels outside home permitted as an exception under current regulations. Legal basis is applicable in the Military Ordinance no. 3/2020 regarding the prevention measures with respect to COVID-19 contagion. Also, retention period can be set - if applicable - with reference to the end of the state of emergency.

SLOVAKIA

What measures can be taken by the Employer/Data Controller with regard to people who needs to enter the premises of the company (employers and/or suppliers)?

The government has adopted various complex measures to combat the crisis, among which there are some that affect the employers and employees. Depending of the type of business, the Employer/Data Controller may measure the body temperature, with reference both to employees and, where entry is necessary, to suppliers.

Such possibility applies to hospitals and industrial factories (and is recommended to shops/grocery stores), i.e. it is not applicable generally to any company at this point.

The new rules have also introduced some exceptions to certain activities related to data processing and therefore to sanctions stipulated by GDPR and local regulation.

These activities shall, in any case, be carried out in compliance with the principles of necessity of processing and data minimisation.

How to process data of the employee whose test is positive for infection and which kind of communications can be addressed to the employees who have worked closely with the infected employee?

One of the obligations of any employer is to ensure safety at workplace for all the employees. Such safety may be hindered by the Coronavirus. In the case of an employee declared positive for the Coronavirus, the company should take all the necessary measures to protect the employee and any of the employees that may have been in touch with such person, however the data should not be disclosed or communicated to unauthorized third parties.

The collection and processing of such data must in any case be carried out in such a way as to guarantee the confidentiality and dignity of the employees involved. The company shall also define the appropriate technical and organizational security measures to protect the data.

What to do if an employee shows symptoms of Coronavirus infection?

The employee with symptoms of Coronavirus infection is required to follow all the measures and recommendations adopted in legislation, therefore this responsibility rests primarily with the employee, not the employer.

Should the employer come into contact with such information and therefore to process such data, the collection and processing of such data must in any case be carried out in such a way as to guarantee the confidentiality and dignity of the employee.

The company shall also define the appropriate technical and organisational security measures to protect the data.

For which purpose and on which legal basis the Company can process the collected personal data in the execution of the prevention measure? How long should the company eventually retain such data?

The purpose of the processing is identifiable in the prevention of COVID-19 contagion and assurance of safety at workplace; the legal basis is identifiable in the implementation obligations stipulated by law (e.g. Act No. 124/2006 Coll., on Occupational Health and Safety; the retention period can be set – if applicable - with reference to the end of the state of emergency.

SLOVENIA

What measures can be taken by the Employer/Data Controller with regard to people who needs to enter the premises of the company (employers and/or suppliers)?

Employers are required to comply with the GDPR principle of data minimization GDPR and proportionality. collect only such information as is necessary to ensure a safe working environment, depending on the organization of the work environment and prevent the spread of the virus.

Employers are required to take the necessary measures to ensure the safety and health of employees and other persons present in the work process, but are obliged to comply with the principle of data minimization and collect only such information as necessary in order to ensure safe work environment and to prevent the spread of the virus. It is reasonable for the employer to require the employee to notify him on information required to ensure safety and health, e.g. if he has symptoms of Covid-19 virus or if his diagnosis has been confirmed or if he visited a particular critical country. In doing so, it is essential to ensure that workers are provided with transparent information regarding the collection of data, including the purpose of the processing and the retention period. The company shall also adopt appropriate security measures and confidentiality policies to ensure that personal data are not disclosed to unauthorized persons (accessible only to certain persons and not for example the whole department).

Employers/Data Controllers do not have a general authorisation or requirement to measure the body temperature of employees/visitors. However, should the employer (considering special circumstances and the responsibility to ensure safety and health of employees) identify the measurement of the body temperature of employees/visitors as reasonable and necessary to minimise the potential of contagion at the work place, such measurement can be applied. In such case, however, the consent of the person to obtain this data should be given. Should the respective person refuse the measurement, the employer/data controller could deny entry to the premises of the company, in order to prevent contagion.

How to process data of the employee whose test is positive for infection and which kind of communications can be addressed to the employees who have worked closely with the infected employee?

If an employee tests positive for Coronavirus infection, it is in general the obligation of the employee to notify primarily the responsible authority of the persons (including his co-workers) who have been in contact with. However, considering the responsibility of the employer to ensure the safety and health of employees and other persons present in the work process, in case the employer is notified on the fact that the employee has tested positive, the employer shall as well collect information to identify persons who have been in contact with the employee and notify respective persons, but in principle on an anonymous basis, i.e. unless necessary, should not disclose the name of the infected person (in accordance with the principle of confidentiality and the principle of data minimization) as this could lead to discrimination and stigmatization.

The collection and processing of data must be carried out in such a way as to guarantee the confidentiality and dignity of the employee involved.

What to do if an employee shows symptoms of Coronavirus infection?

If an employee shows symptoms of Coronavirus, he should notify the employer, who shall then ensure safe work conditions, e.g. isolate the employee other persons involved so that they do not come into contact with other people, containing the risk of contagion.

For which purpose and on which legal basis the Company can process the collected personal data in the execution of the prevention measure? How long should the company eventually retain such data?

The purpose of the processing is the prevention of COVID-19 contagion and the possibility of employees to benefit from intervention measures provided by new intervention regulations.

According to the Statement on the processing on personal data in the context of the COVID-19 outbreak (EDPR, 19 March 2020) "Employers should inform staff about COVID-19 cases and take protective measures, but should not communicate more information than necessary. In cases where it is necessary to reveal the name of the employee(s) who contracted the virus (e.g. in a preventive context) and the national law allows it, the concerned employees shall be informed in advance and their dignity and integrity shall be protected."

The legal basis in Slovenian national law for such collection of data can be identified in Article 5 (ensuring the safety and health of employees at work) of Health and Safety at Work Act, Article 45 (safe work conditions) of Employment Relationships Act and GDPR (Article 9) itself. The company should retain such data according to the purpose of processing for the period of state of emergency.

What measures can be taken by the Employer/Data Controller with regard to people who needs to enter the premises of the company (employers and/or suppliers)?

The Companies, acting in their capacity as data controllers, may request information about the trips made and the state of health of the persons accessing the workplace. Of course, these measures must be within the scope of the limits and guarantees established by the competent authorities and, in particular, the health authorities with regard to the safeguard of public health.

Therefore, the request for information to employees and external visitors on symptoms or risk factors would be fully justified under the provisions of the applicable regulations on data protection and prevention of occupational risks. Such a request for information would not require the consent of the data subjects, even if it concerns special categories of data (health data).

The SDPA even enables the security personnel to take the temperature of workers and suppliers at the time of access to the facilities, provided that it can be guaranteed that the data obtained from the temperature measurements strictly comply with the specific purpose of containing the spread of the virus, and not with other additional purposes, and that the data is not kept longer than necessary for the proper fulfilment of this purpose.

[...]

How to process data of the employee whose test is positive for infection and which kind of communications can be addressed to the employees who have worked closely with the infected employee?

The Company will be able to find out whether the working person is infected or not, in order to design through its prevention service the contingency plans that are necessary, or have been provided by the health authorities. This is justified by the application of the provisions set forth on the health and labour applicable regulations, in addition to the specific data protection. The Employer may, in accordance with such regulations and with the guarantees they provide, process personnel data necessary to ensure their health and take all the necessary measures dictated by the competent authorities, which also includes ensuring the health protection right of other personnel and avoiding the transmission within the company that can spread the disease to the population as a whole.

The personal data of any infected employee must be processed in accordance with the principles and guarantees set out in the applicable data protection regulations, and in particular guaranteeing the security, integrity and confidentiality of the information processed, and limiting the processing to the strict pursuit of the above mentioned purpose.

Therefore (as the SDPA has pointed out) the Companies will be able to know if the worker is infected or not, in order to design through their prevention service the necessary contingency plans, or those that have been foreseen by the health authorities. In addition to the Occupational Risk Prevention Service and based on the legal criteria indicated, for operational needs this data may be processed by the areas involved in business continuity and crisis management. The above could be carried out in order to take those organizational measures necessary to maintain the activity of the Company and to avoid new infections, and in particular in relation to those employees who, due to their special functions and responsibilities may have been assigned to access to certain company facilities.

[...]

What to do if an employee shows symptoms of Coronavirus infection?

In accordance with the recommendations published by the SDPA, those employees who, after having had contact with a case of coronavirus, may be affected by this disease and who by applying the protocols established by the competent Health Authorities are subjected to the corresponding preventive isolation to avoid the risks of contagion derived from this situation until the corresponding diagnosis is available, must report this through the usual channels established by the Company.

Indeed, in accordance with Occupational risk prevention regulations and, particularly, regarding employees obligations in this matter (article 29 of the Spanish Occupational Risk Prevention Law) employees have the duty to cooperate with the employer to ensure safe working conditions which do not entail any risk for the health and safety of employees' and to contribute to the fulfillment of the obligations established by competent authorities in order to protect employees' health and safety at work. Indeed, among other obligations, the employee shall even inform of any situation which may put at risk the security and health of employees at the workplace.

On this basis, employees' non-compliance with Occupational risk prevention matters are legally considered as a labour infringement which could ultimately be sanctioned by the employer in accordance with the types and classification of offences under the Workers' Statute and the applicable Collective Bargaining Agreement to the company.

[...]

For which purpose and on which legal basis the Company can process the collected personal data in the execution of the prevention measure? How long should the company eventually retain such data?

Depending on the particular circumstances associated with each processing of personal data, as well as the legal nature or the activity carried out by the Company as a data controller, they may collect and process this personal information in accordance with the following legal basis:

- Compliance with legal obligations: Article 14 of the Spanish Law on the Prevention of Occupational Risks states that workers have the right to effective protection in terms of health and safety at work. This implies a correlative duty for Spanish companies to protect the health of their workers and ensure their safety. In addition, the provisions by which the Spanish State has declared a state of alarm, and has adopted the appropriate measures for the management of the pandemic, must be taken into consideration. Therefore, and based on Article 6.1.c) and 9.2.b) of the European General Data Protection Regulation ("GDPR"), as well as the provisions of the SDPA, the processing of employee data, including those relating to their health, is permitted precisely to ensure the health and safety of patients, employees and collaborators (especially those who need to visit the Company's offices).
- Protection of the vital interest of employees: As established by article 6.1.d) and 9.2.c) of the GDPR, the processing of employee data is permitted, including those relating to their health, in order to protect the vital interest of the employee himself or of third parties - such as other employees or even patients or suppliers who may need to come to the Company's offices.
- The performance of a task carried out in the public interest or in the exercise of official authority vested in the controller: In addition to the above, and in accordance with article 6.1.e) and 9.2, sections g and h of the GDPR, the processing of employee health data is also justified for the purpose of preventing the spread of the virus and to carry out the measures established by the health authorities.

[...]

What measures can be taken by the Employer/Data Controller with regard to people who needs to enter the premises of the company (employers and/or suppliers)?

[...]

Similarly, the Employer may send health questionnaires to those persons who may have access to its offices. These health questionnaires may not be excessively detailed, and should collect questions exclusively related to the disease (e.g. visits to countries with high prevalence of the virus in the incubation period of the disease, or existence of symptoms).

Of course, it is not necessary to emphasize that these data processing activities, and any others carried out by the Employer, must comply with the principles of proportionality and data minimization set out in the applicable regulations.

How to process data of the employee whose test is positive for infection and which kind of communications can be addressed to the employees who have worked closely with the infected employee?

[...]

This information can also be obtained by questioning the staff. However, the questions should be limited exclusively to find out about the existence of symptoms, or whether the working person has been diagnosed as infected, or are subject to quarantine.

In regard to the information to be provided to the company's personnel who may have been in close contact with the infected employee/s, the relevant information will be provided in accordance with the principles of purpose and proportionality set out in the applicable regulations. This necessarily implies that, as far as possible, this information should be provided without identifying the person concerned in order to maintain his/her privacy. However, it is envisaged that this identifying information could be transmitted upon request by the competent authorities, in particular health authorities.

Similarly, in the event that the objective of ensuring the health of other employees and society cannot be achieved with partial information, or the practice is discouraged by the competent authorities, in particular health authorities, identifying information could be provided to those employees who have had close contact with the infected person.

What to do if an employee shows symptoms of Coronavirus infection?

[...]

Although under normal circumstances the employee on sick leave would be not obliged to inform the company of the reason for the leave, given the current public health crisis, this individual right may be waived in the face of the defense of other rights such as the safeguard of the health protection right of a group of workers in situations of pandemic and, more generally, the defense of public health of the entire population.

For which purpose and on which legal basis the Company can process the collected personal data in the execution of the prevention measure? How long should the company eventually retain such data?

[...]

Finally, regarding the retention periods to be observed by the Company health data, it is necessary to comply with the principles of data minimization and accuracy, i.e. to ensure, as far as possible, that the data are limited to what is necessary in relation to the purposes for which they are processed, accurate and, if necessary, updated. In accordance with the SDPA's pronouncement, the principle of minimization should also be applied with regard to the time limits for the storage of personal data. Furthermore, taking into consideration that personal health information collected from employees is mutable over time, nothing justifies its retention beyond the period during which the Employer must conduct relevant research to mitigate the effects of the spread of the virus within its company. With regard to other obligations, such as the blocking of personal data, the content of the purposes reported in each case will be taken into account to define the periods of blocking in each case.

SWEDEN

What measures can be taken by the Employer/Data Controller with regard to people who needs to enter the premises of the company (employers and/or suppliers)?

Testing people who enter the premises is viewed as a significant integrity infringement. Which measures can be taken is a labor law issue and the possible examination types which are dependent on the nature of the operations carried out at the workplace.

For measures such as tests of employees entering the premises, the big difference is whether such tests are voluntary or not. Voluntary tests can be carried out easily, however if there is a collective agreement at place, the union must be notified prior to the initiation of tests. If the tests are involuntary, these will be harder to carry out, and an analysis of the importance of the tests versus the integrity infringement must be carried out. The type of business can have a great impact on this analysis (more likely to be granted at a health care provider).

Other measures that can be taken at the workplace are setting up new guidelines for interactions at the workplace, such as lunch routines or meeting routines. These guidelines can be set up with short notice.

How to process data of the employee whose test is positive for infection and which kind of communications can be addressed to the employees who have worked closely with the infected employee?

The Swedish data protection authority, Datainspektionen, has explained that the employer is responsible for taking measures to ensure that employees are not exposed to any sickness or virus. Generally it should be possible to inform the employees without naming the colleague that might have been affected by the virus. Naming the employee is only permitted in exceptional cases.

If the employer believes that it is necessary to name the affected employee this employee must be informed beforehand. The employer must also take measures to protect the integrity of the employee and all information provided must be precise, correct and never infringe on the person affected.

As always, information sharing should be limited.

What to do if an employee shows symptoms of Coronavirus infection?

The starting point is that the employer is always responsible for the work environment and needs to ensure the safety of the employees. Having an employee showing symptoms of the virus could be dangerous for the workplace and it is therefore the employer's responsibility to manage and distribute the work to the best of all employees. In doing so, the employer may request an employee showing symptoms to stay at home. Either to work from home or, if this is not possible, stay at home with full salary. If sent home, the employee must always be able to come to the workplace with short notice.

For which purpose and on which legal basis the Company can process the collected personal data in the execution of the prevention measure? How long should the company eventually retain such data?

The legal basis for the Company to process personal data can be found in the labor law, where the employer has responsibilities towards the employees. However, the processing must be limited. The retention of any data cannot be longer than the fulfillment time of the purpose for which the data has been collected.



Deloitte Legal Italy

For any doubts on legal impact of COVID-19:

COVID-19 Task Force

e-mail: C19help@deloitte.it

website: [Coronavirus Legal Tips](#)

Ida Palombella | Deloitte Legal Italy

Head of IP, Technology & Data Protection

ipalombella@deloitte.it

Deloitte.

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