



# Employee Data Privacy – Austria

## Data Privacy Laws and Regulations

### What laws apply to the collection and use of individuals' personal information?

Data privacy laws have become more prominent in recent years. As the amount of personal information available online has grown substantially, there has been an enhanced focus on the processing of personal data, as well as the enforcement of such laws.

The EU General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679) went into effect on May 25, 2018 and has become new cornerstone of data protection laws throughout the EU. Organizations in the European Economic Area (EEA) must

comply with EU data protection laws when retaining documents containing personal data. The EEA includes the EU countries as well as Norway, Lichtenstein, and Iceland.

### National Laws Under the GDPR

Austria has a few different laws which work together to regulate data privacy as it relates to employees. First, Austria's Civil Code provides individuals with the right to privacy along with the right to compensation if the right to privacy is

violated and there are damages (§ 1328a). Second, the Austrian law implementing the GDPR, the Austrian Data Protection Act (Datenschutzgesetz - DSG), includes provisions which may be relevant when processing HR data.

The Collective Labour Relations Act sets additional requirements that relate to protecting employee information. These provisions are especially relevant for employee control measures (e.g. CCTV, IT monitoring, location tracking, whistleblowing hotlines, etc.).

The Collective Labour Relations Act also requires employers to notify the works council (if one exists) of any personal employee data that is being processed automatically along with any data that may be transferred. Further, employers may need to get works council approval before processing certain employee data and may need to give the council permission to view employee data for inspections. Individual employee consent is required if the works council will be inspecting the data of an individual employee.

### EU Legislative Framework

Firstly, it is important to understand who is the "data controller" under the EU legislative framework. An organization is a data controller when it determines the purposes and manner in which personal data is processed. "Personal data" refers to "any information relating to an identified or identifiable natural person." That person is



# UKG HR COMPLIANCE ASSIST

considered a “data subject” under the GDPR and may be “identified, directly or indirectly...by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.”

Clearly, a lot of employee-related information collected by employers qualifies as personal data, thereby subjecting European employers to EU data privacy regulations. The employer collecting the employee-related data is the data controller, and every HR solution adopted might be qualified as a sub-processing activity.

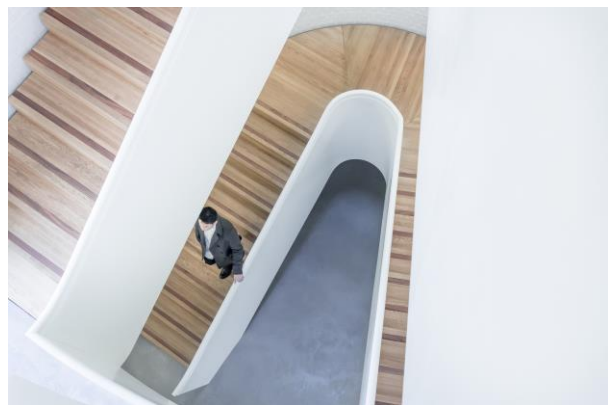
Regardless of whether an employer utilizes subcontractors to process information, data management processing principles will still need to be followed. This is because the “processing of personal data” is construed broadly and includes physical and automated procedures, such as: collecting, recording, organizing, structuring, storing, adapting/altering, retrieving, consulting, using, disclosing by transmission, disseminating, making available, aligning/combining, restricting and erasing/destroying.



Therefore, as controllers of employee personal data collected in the employment context, employers must comply with the following personal data processing principles:

- process personal data fairly and lawfully;
- collect personal data only for specified, explicit, and legitimate purposes;

- collect personal data only to the extent that it is adequate, relevant, and not excessive in relation to the purposes for which it is collected;
- ensure that personal data is accurate and, where necessary, kept up to date; and,
- do not keep personal data in a form that permits identification of individuals for longer than is necessary.



Employers should be able to provide a documented rationale for processing each piece of personal data. Processing can be legally justified if the:

- data subject has unambiguously consented to the processing (under the GDPR, regulators are cognizant that employee consent may not be freely given due to the nature of the employee/employer relationship);
- processing is necessary for the performance of a contract to which the data subject is party;
- processing is necessary for compliance with a legal obligation;
- processing is necessary in order to protect the vital interests of the data subject;

# UKG HR COMPLIANCE ASSIST

- processing is necessary for the purposes of the legitimate interests pursued by the data controller or by the third party or parties to which the personal data is disclosed, except where such interests are overridden by the data subject's fundamental rights and freedoms.

If the employee data qualifies as sensitive personal data, then a narrower set of conditions applies. For example, one such condition is that a data subject has given explicit consent to the processing of his/her sensitive personal data. "Sensitive personal data" is the personal data

consisting of information about the data subject's racial or ethnic origin; political opinions; religious beliefs or beliefs of a similar nature; trade union membership; physical or mental health or condition; or sexual life.

---

The current authority responsible for enforcement of data privacy law and regulations in Austria is the:

## **Austrian Data Protection Authority**

<https://www.data-protection-authority.gv.at/>

Last updated February 2023.

DISCLAIMER: The information contained in this document is for general information purposes only and is not intended to be a source for legal, tax, or any other professional advice and should not be relied upon as such. This information is not intended to create, and the receipt of it by the reader does not constitute, an attorney-client relationship. All legal or tax questions or concerns should be directed to your legal counsel or tax consultant. Laws and regulations may change and UKG Inc. ("UKG") cannot guarantee that all the information in this document is accurate, current or complete. UKG MAKES NO REPRESENTATION OR WARRANTIES WITH RESPECT TO THE ACCURACY OR COMPLETENESS OF THE DOCUMENT OR THE INFORMATION OR CONTENT CONTAINED HEREIN AND SPECIFICALLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES INCLUDING BUT NOT LIMITED TO ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, SUITABILITY, OR COMPLETENESS OF THIS INFORMATION. TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, NEITHER UKG, NOR ITS AGENTS, OFFICERS, EMPLOYEES, SUBSIDIARIES, OR AFFILIATES, ARE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOSS OF USE OR PROFITS, OR BUSINESS INTERRUPTION), EVEN IF THE UKG HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT, ARISING IN ANY WAY OUT OF THE USE OF OR INABILITY TO USE THIS INFORMATION. This document and the content are proprietary and confidential information of UKG. No part of this document or its content may be reproduced in any form, or by any means, or distributed to any third party without the prior written consent of UKG © 2023 UKG Inc. All rights reserved.