



Employee Data Privacy – China

Employee Consent

Do I have to obtain employees' consent in order to collect their personal data?

The processing of any personal data may impose obligations to the individuals the data is related to, the data subjects. Some jurisdictions only recognize processing personal data as lawful if the data subject has provided express consent. Other jurisdictions require a legal obligation to process the data and may not require consent. The processing of HR personal data has raised questions and court decisions in a few countries, and interpretations may vary based on data privacy and labor law requirements.



In general, explicit consent must be obtained for the collection, disclosure, international transfer, and other processing of personal information in China.

The PRC Civil Code, which defines personal information and the general principles of personal information protection, came into effect on January 1, 2021. Under the Civil Code (Art. 1035), processing personal information must follow the

principles of lawfulness, fairness, and necessity, and requires consent, except as otherwise provided by law or regulation.

Exceptions to the consent requirement include when processing basic information directly related to the employee and the labor contract. Under Employment Contract Law, employers have the right to process basic information. That said, the law does not define what constitutes “basic information,” though in the context of the employment relationship, it could arguably include personal information that is necessary to sign the labor contract, manage the relationship, enroll in social insurance and other mandatory benefits as well as comply with audit requirements from authorities.

Under the Personal Information Protection Law (PIPL), data controllers (employers) must obtain express consent from data subjects (employees) unless one of the limited consent exceptions applies. Consent is not required when employers are processing employee’s personal information for HR management purposes. That said, the exact scope of this exception has yet to be outlined.

Employers must obtain separate consent from an employee in certain circumstances, including:

- when processing (including disclosure) personal data;
- when processing sensitive personal data; and,
- for cross-border data transfers.

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Consent must be given by individuals in a voluntary and explicit statement.

The PIPL (Art. 28) has additional requirements for sensitive personal information, which is defined as personal information that, once leaked or illegally used, may easily cause harm to the dignity of natural persons, grave harm to security or property security, including information on biometric characteristics, religious beliefs, “specially-designated status,” medical health, financial accounts, individual location tracking, etc., and personal information on minors under the age of 14.

“Specially-designated status” is considered any protected social status which, if misused, could result in harm to the data subject. Personal information handlers can only handle sensitive personal information when there is a specific purpose and a need to fulfill, and there are strict protection measures in place.

Sensitive personal information may only be processed for the purposes specified in the notice to individuals, subject to additional security measures, and with the data subject’s separate consent. Personal information handlers who handle sensitive personal information, must notify individuals of the necessity and influence on individual's rights and interests of handling the sensitive personal information, unless there is an exception provided by law. When handling

personal information of minors under the age of 14, consent should be obtained from a parent or guardian.

In addition, China’s Cybersecurity Law requires that network operators obtain consent from data subjects in order to collect and use their personal information. “Network operators” primarily applies to organizations who collect information from website users. That said, no guidance or regulation currently defines whether “network operators” includes employers who are processing their employees’ personal information.



HR Best Practices:

Employers should establish specific rules for the collection,

processing, storage, use, transmission, and disclosure of different categories of information, including obtaining consent when the processing goes beyond “basic information.”

Employers should ensure an up-to-date privacy policy is in place, which includes a clear and reasonable purpose for collecting employees’ personal information.

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