

## Employee Data Privacy – Czech Republic

### 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.

The concept of employee consent has been increasingly criticized because there is doubt as to whether consent can be given freely in the subordinate employee/employer relationship. There are more prescriptive requirements for obtaining consent under the European General Data Protection Regulation, including the ability to withdraw consent at any time.

The legitimate interest of employers can sometimes be invoked as a legal ground for processing personal data, but only if the processing is strictly necessary for a legitimate purpose and the processing complies with the principles of proportionality and subsidiarity. A

proportionality test should be conducted in order to consider whether all data collected is truly necessary, and measures must be taken to keep personal data processing limited to the minimum necessary.



Clear communications should be provided to employees, informing them how their personal data is being processed. Where possible, such as in the event of monitoring technologies, employees should be given the option to prevent their data from being captured.

Employees in the Czech Republic must be informed in advance of any employee monitoring (both in scope and method). Note that monitoring of employee emails, letters or calls is restricted unless there is a serious cause, and employees have been informed of the scope and method of monitoring.

# UKG HR COMPLIANCE ASSIST

Where employees are expected to use online applications which process personal data, they should consider enabling employees to designate certain private spaces to which the employer may not gain access under any circumstances, such as a private mail or document folder.

Under the Czech Labour Code, employers are not allowed to require employee information that doesn't directly relate to performance of work or the basic employer relationship (i.e. you can't require unnecessary personal information). Employers also cannot require information relating to sexual orientation, origin (i.e. ethnicity), trade union membership, membership in political parties or, movements or religion/confession.

In addition, employers can only request information relating to pregnancy, family/property situation, or criminal records when there is cause (i.e. when it may impact the work to be performed), and if the request for

information is appropriate or necessary to comply with the Labour Code or other legal Acts. This information must be obtained directly from employees, and can't be obtained in other ways such as through third parties.

## HR Best Practices:



As consent on its own might not be enough to justify lawful processing of employee personal data,

other processes should be documented and implemented. Consider legitimate requirements, such as processing bank account numbers for purposes of payment, or, processing personal data for health insurance. Commit to properly informing employees, documenting legal rationales for data collection and offering consent/correction/deletion where possible.

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