



Employee Data Privacy – Portugal

GDPR Related National Laws & Modifications

The European Union's General Data Protection Regulation (GDPR) sets a common standard for protecting personal data across the EU. It also allows member nations some flexibility to create additional provisions and limitations. Some examples, which may impact HR teams, include the ability for EU member states to:

- provide “specific rules to ensure the protection of...employees’ personal data in the employment context” (Art. 88);
- limit the transfer of “specific categories of personal data to a third country or international organization” if the country (or international organization) is deemed not to have adequate protections in place (Art. 49, (5)); and,
- “determine the specific conditions for the processing of a national identification number or any other identifier of general application” (Art. 87).

Derogations in Portugal

Pursuant to article 88 of GDPR, *“Member States may, by law or by collective agreements, provide for more specific rules to ensure the protection of the rights and freedoms in respect of the processing of employee’ personal data in the employment context, in particular for the purposes of the recruitment, the performance of the contract of employment, including discharge of obligations laid down by law or by collective agreements, management, planning and organization of work, equality and diversity in the workplace, health and safety at work, protection of employer’s or customer’s property and for the purposes of the exercise and enjoyment, on an*

individual or collective basis, of rights and benefits related to employment, and for the purpose of the termination of the employment relationship” and “Those rules shall include suitable and specific measures to safeguard the data subject’s human dignity, legitimate interests and fundamental rights, with particular regard to the transparency of processing, the transfer of personal data within a group of undertakings, or a group of enterprises engaged in a joint economic activity and monitoring systems at the work place.”.



- Bearing in mind the foregoing, Law no. 58/2019 of 8 August which ensures the implementation of GDPR in Portugal establishes specific requirements applicable to employment relationships. As per article 28, the employer, as well as its processors, may process employees’ personal data within the purposes, objectives, and limits foreseen in the Portuguese Labor Code, as well as other applicable legislation.
- This legal provision also states in item a) of paragraph 3 that the employee’s consent is not a lawful ground for data processing (although it may be used a supplementary

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argument), even if the data processing results in a legal or economic advantage to the concerned employee. At the outset, the law indicates that another requirement for the lawfulness of data processing must be met. However, the CNPD issued Deliberation no. 2019/494 on 3rd September of 2019, according to which the CNPD determined that it will not apply the abovementioned legal provision, as well as paragraphs 1 and 2 of article 2, paragraph 1 of article 20, article 23, items a), h) and k) of paragraph 1 and paragraph 2 of article 37, item b) of paragraph 1 and paragraph 2 of article 38, paragraphs 1 and 3 of article 39, paragraph 2 of article 61 and paragraph 2 of article 62 of Law no. 58/2019 of 8 August.

- In addition, Law no. 58/2019 of 8 August also establishes specific requirements on child's consent (article 16), personal data of deceased persons (article 17), portability and interoperability/interconnection of data (article 18), video surveillance (article 19),

rules applicable to data protection officers (articles 9 to 13) and health and genetic data (article 29).

Finally, employees' representatives may have access to personal data if such is necessary for a union-related purpose and if such union action represents the defense of the collective group. In this sense, the Portuguese Labour Code states (article 412) that "the member of the structure of collective representation of employees cannot disclose to employees or third party's information that has received, in the context of the right of information or consultation, with an express mention of their corresponding confidentiality". However, the employer is not obliged to provide information or to carry out inquiries the nature of which is liable to seriously undermine or seriously affect the operation of the undertaking or establishment. For this case, the employer must justify, in written form, the non-provision of information, based on objective criteria on management requirements, which may include personal data of third parties, irrelevant for union action.

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