



Employee Data Privacy – Romania

GDPR Related National Laws & Modifications

The European Union's General Data Protection Regulation 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 Romania

Romania's Law no. 190/2018 implemented the GDPR in the country and set a few requirements that may impact employers, including requirements relating to automated data processing and employee monitoring.

Under the law (Art. 5), employers can process personal data using electronic monitoring or video surveillance in the workplace to achieve legitimate interests pursued by the employer only if:

- the legitimate interests pursued by the employer are duly justified and prevail over the interests or rights and freedoms of the data subjects (i.e., the employee);
- the employer has provided employees with mandatory, complete and explicit information about the monitoring;
- the employer has consulted the trade union or, if appropriate, employee representatives before implementing the monitoring systems;
- other less intrusive ways to achieve the goal pursued by the employer previously have been proven ineffective; and,
- the retention period of personal data is proportionate to the purpose, and is no longer than 30 days, except when expressly provided for by law or in duly justified cases.



UKG HR COMPLIANCE ASSIST

In addition, under Law no. 190/2018 (Art. 3), the processing of genetic, biometric or health data for the purpose of automated decision-making or profiling is allowed with the explicit consent of the employee (or other data subject), or if the data is processed under specific legal provisions, as long as appropriate measures have been taken to protect the rights, freedoms and legitimate interests of the individual. Note that as employee consent is often not considered valid under the GDPR due to the unequal relationship between the employer and employee, employers should use caution before processing genetic, biometric or health information on the basis of an employee or job applicant's consent.

Prior to processing large scale personal employee data, a data protection impact assessment should be completed. Decision no. 174 of the 18th of October 2018, issued by the Supervisory Authority, on the list of type of processing operations which are subject to a data protection impact assessment (Art. 1) includes any large scale processing of personal data of vulnerable individuals (e.g. children) and/or employees through automatic means of systematic monitoring and/or recording of behavior (including for the purpose of carrying out advertising, marketing and publicity activities).

Last updated November 2022.

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 © 2022 UKG Inc. All rights reserved.