



Employee Data Privacy – South Africa

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.



South Africa's Constitution sets the foundation for privacy in the country, giving everyone the right to privacy, including "the right not to have...the privacy of their communications infringed" (Sec. 14).

The Protection of Personal Information Act, 2013 (POPIA) regulates and sets the standard that public and private bodies must follow. All responsible parties that process personal information, including employers, must comply with POPIA.

Under POPIA, employers (and other data processors) must follow certain parameters to process personal information, including:

- processing data in a reasonable manner that doesn't infringe on the privacy of the individual;
- limiting processing to what's adequate, relevant and not excessive;
- only processing data with the individual's consent, to comply with a legal obligation, or for another permitted reason;
- only collecting personal information directly from the employee (with a few exceptions);
- retaining personal information for no longer than necessary under law, contract between parties or other permitted reason;
- collecting personal employee data only for a specific purpose (any additional processing must be compatible with the original purpose);
- taking reasonable steps to ensure the accuracy and completeness of information, and to ensure information isn't misleading and is updated as necessary;

UKG HR COMPLIANCE ASSIST

- informing the employee about their personal data that is being collected along with their rights related to the collection;
- taking appropriate security measures; and,
- giving individuals access to the personal information that is being collected about them.



Under POPIA, processing sensitive personal information may require

the consent of the employee. Sensitive personal information includes information concerning:

religious/philosophical beliefs, race or ethnic origin, trade union membership, political persuasion, health or sex life or biometric information, and/or criminal behavior.

In addition, Regulations Relating to the Protection of Personal Information were published in December 2018. These Regulations further define the requirements outlined in POPIA.

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

Information Regulator (South Africa)

<https://inforegulator.org.za/>

Last updated August 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.