

GDPR Considerations during COVID-19 & into the future

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Before we start

This presentation does not imply nor provide actual legal advice and the workshop participant accepts this.

Legal advice should be sought with respect to queries on legislation and legal ramifications for the workshop participant from their own chosen legal services provider.

Outline of presentation

- ▶ Quick overview and definitions
- ▶ GDPR & Return to Work
- ▶ GDPR & Continued Remote Working
- ▶ Data Protection Commissioner – An Eye on the Future

Quick overview and definitions

- ▶ GDPR 25th May 2018 – Is the law
- ▶ 2018 Data Protection Act

Quick overview and definitions

“The protection of natural persons in relation to the processing of personal data is a fundamental right (Recital 1)”

“The processing of personal data should be designed to serve mankind. The right to the protection of personal data is not an absolute right; it must be considered in relation to its function in society and be balanced against other fundamental rights, in accordance with the principle of proportionality (Recital 4)”

Quick overview and definitions

“Those developments require a strong and more coherent data protection framework in the Union, backed by strong enforcement, given the importance of **creating the trust** that will allow the digital economy to develop across the internal market (Recital 7)”

[The GDPR helps] “ensure a consistent and high level of protection of natural persons and to remove the obstacles to flows of personal data within the Union (Recital 10)”

Quick overview and definitions

- ▶ Data Subject
- ▶ Personal Data
- ▶ **Sensitive Personal Data**
- ▶ Data Processing
- ▶ Data Controllers
- ▶ Data Processors

GDPR & Return to Work

“Data protection law does not stand in the way of the provision of healthcare and the management of public health issues...

...nevertheless there are important considerations which should be taken into account when handling personal data in these contexts, particularly health and other sensitive data” DPC, March 2020

Back to work Guiding Rule

“Measures taken in response to Coronavirus involving the use of personal data, including health data, should be necessary and proportionate...

...Decisions in this regard should be informed by the guidance and/or directions of public health authorities, or other relevant authorities”

GDPR & Return to Work

Lawful basis must still exist

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- ▶ Employers also have a legal obligation to protect their employees under the Safety, Health and Welfare at Work Act 2005
- ▶ Article 9(2)(i) GDPR and Section 53 of the Data Protection Act 2018 will permit the processing of personal data, including health data, once **suitable safeguards** are implemented



Consent



Contract



Legal Obligation by Law or regulation



Vital Interest



Public Interest



Legitimate Interests of Data Controller

Suitable Safeguards

- ▶ Transparency:
 - ▶ Purpose
 - ▶ How long? / strict time limits for erasure
- ▶ Confidentiality / limitation on access to the data,
- ▶ staff training
- ▶ Document decision making process
- ▶ DPIAs where necessary

Sample questions

- ▶ Can an employer require all staff and visitors to the building to fill out a questionnaire requesting information on their recent travel history concerning countries affected by the virus, and medical info such as; symptoms of fever, high temperature, etc?
- ▶ Can an employer request more specific details of their employee's illness on medical certificates in light of the situation in relation to COVID-19?

Sample questions

- ▶ Can an employer send employees home from work if they are confirmed to have the virus?
- ▶ Can an employer disclose that an employee has the virus to their colleagues?
- ▶ Do the timelines for responding to GDPR data subject requests still apply where an organisation is temporarily closed or capacity to handle requests is curtailed because of COVID-19?

Submitted questions

- ▶ Use of camera's to measure the temperature of **people** entering a building and the impact of GDPR on the recording of their **image** and **temperature**
 - ▶ People, is this staff or customers
 - ▶ Why image?
 - ▶ Is it proportionate and necessary
 - ▶ Is there any other way of achieving the desired outcome
 - ▶ Data Protection Impact Assessments (DPIAs) would be required for accountability and risk analysis purposes

Remote working

- ▶ Policy and culture
- ▶ Secure and provide the teleworking equipment
- ▶ Provide secure remote access
 - ▶ *Beware of bogus emails from “the IT department”*
- ▶ Due diligence on corporate communications Gotomeeting, Zoom
 - ▶ *If meeting is being recorded inform participants (but also why record...)*
- ▶ Mechanism to ensure devices are up to date etc / increased security monitoring / ensure they are on secure access
- ▶ Regularly check in on staff
 - ▶ *Avoid Whatsapp*

Remote working

- ▶ Raise staff awareness:
 - ▶ Only access company data on company machines
 - ▶ Only use company machines for company purposes
 - ▶ Use secure remote access
 - ▶ Password and encryption
 - ▶ Do not leave PC unattended without logging off
 - ▶ *Beware of Cats and kids!!??*
 - ▶ Avoid giving out personal information
 - ▶ Provide shredding paper sacks for print offs for shredding
 - ▶ Encourage people to report suspicious activity
 - ▶ And.....

Remote working

- ▶ Beware of Emails!!!!
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Looking to the future

- ▶ First substantial fine by DPC of 75,000 Tusla
- ▶ Biometric attendance system – 725,000 fine (Netherlands)
- ▶ Austria, 1,500 CCTV over looking neighbouring shop
- ▶ Its not fine, not to appoint a DPO, 10,000 (Germany)

Looking to the future

- ▶ Stupid actions during covid – HSE / meat factory's
- ▶ Facial recognition
 - ▶ A lot of disquiet in industry
 - ▶ An immediate moratorium on the sale, transfer, and use of surveillance technology, including face recognition, until legal frameworks are established that meet human rights standards
 - ▶ EU (AI) *“a time-limited ban on the use of facial recognition by private or public actors in public spaces”*
- ▶ Website Cookies and tracking
- ▶ Increased DSARs