

## FINES AND PENALTIES

### What are the penalties for non-compliance with any applicable data protection laws?

Noncompliance with Data Privacy Laws and Data breaches may lead to sanctions, fines, and penalties. The amounts are usually calculated according to the risk to which personal rights were exposed and the preventive measures taken by the data controllers, processors and sub-processors in relation to their respective role in the chain of personal data processing.

Brazil's Federal Constitution gives individuals the right to compensation for economic and non-financial damages relating to privacy violations.

Denying an individual's right to personal data access, correction and removal under the Consumer Protection Code (which applies to consumers) could result in a fine, compensation (for the individual whose right was violated) and/or up to one year of imprisonment.



Violating the Internet Law can result in sanctions, including:

- warnings;

- suspension and/or prohibition of data processing; and,
- a fine of up to 10% of annual revenues in Brazil.

Cybercrimes, including breaking into third-party systems to obtain or destroy information can result in a fine and imprisonment (Law 12,737/2012).

### New General Data Protection Law

Starting in August 2020, administrative fines and penalties may be imposed if there is a violation of Brazil's new General Data Protection Law. Penalties include:

- warnings with deadlines for corrective measures;
- fines of up to 2% of annual revenue in Brazil (based on the previous financial year) up to a maximum of 50 million reais per violation;
- daily fines up to the same limit;
- public disclosure of the violation;
- blocking the personal data relating to the infraction, until corrected; and,
- deleting personal data relating to the infraction.

In addition, the below penalties may be imposed in recurring cases, after at least one of the sanctions above has already been imposed for the same reason:

- partially suspending the operating database in which the infringement occurred for up to 6 months, and extendable until the employer (or other controller) implements compliant processing operations;



- suspending the personal data processing on which the infringement occurred for up to 6 months, and extendable for the same period; and,
- partially or fully banning data processing activities.
- prompt adoption of corrective measures; and,
- what's proportionally appropriate given the nature of the breach.

The penalties under Brazil's new General Data Protection Law are cumulative to other applicable penalties.

Sanctions will be based on:

- the severity and nature of the violation and its impact on individuals' rights;
- the good faith of the offender;
- how the offender benefited or hoped to benefit from the violation;
- the economic circumstances of the offender;
- whether this is a repeat offense;
- damages;
- the cooperation of the violator;
- repeated and clear adoption of measures to reverse or mitigate the impact of the incident;
- adoption of good practices and policies;



**HR Best Practices:**

Before processing employees' personal data, make sure to be in line with the security measures necessary to ensure data security within your organization. Furthermore, ensure all data processors have data breach response plans in place.

Last updated December 2019.

DISCLAIMER: The information contained in this form is for general information purposes only and is not intended to be a source for legal, or any other 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. Organizations or individuals receiving this document should always seek the advice of competent counsel in their home jurisdiction. Laws may change and The Ultimate Software Group, Inc. cannot guarantee that all the information in this form is current or correct. THE ULTIMATE SOFTWARE GROUP, INC. MAKES NO REPRESENTATION OR WARRANTIES WITH RESPECT TO THE ACCURACY OR COMPLETENESS OF THE DOCUMENT OR CONTENT 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 THE ULTIMATE SOFTWARE GROUP, INC., 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 ULTIMATE SOFTWARE GROUP, INC 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 The Ultimate Software Group, Inc. No part of this document or content may be reproduced in any form or distributed to any third party without the written consent of The Ultimate Software Group, Inc. © 2019 The Ultimate Software Group, Inc. All rights reserved.

## PeopleDoc HR Compliance Assist

HR Compliance Assist helps companies manage compliance of their HR files and employees' data with foreign laws and regulations. The HR Compliance Assist team works with an international network of lawyers to provide best practices on topics such as HR document retention, employee data privacy, electronic signature and electronic archiving.

HR Compliance Assist is available to customers of PeopleDoc by Ultimate Software, a leading HR Service Delivery provider. In 2018, PeopleDoc joined Ultimate Software, a leading provider of human capital management cloud solutions. Today, Ultimate serves approximately 4,500 customers with employees in 180 countries.

More information about PeopleDoc by Ultimate Software can be found at [www.people-doc.com](http://www.people-doc.com).



HR Compliance Assist

[www.hrcomplianceassist.com](http://www.hrcomplianceassist.com) - [hrcomplianceassist@people-doc.com](mailto:hrcomplianceassist@people-doc.com)