

EMPLOYEE CONSENT

Do I have to obtain employees' consent in order to collect their personal data?

The processing of any personal data may impose obligations to the individuals the data is related to, the data subjects. Some jurisdictions only recognize processing personal data as lawful if the data subject has provided express consent. Other jurisdictions require a legal obligation to process the data and may not require consent. The processing of HR personal data has raised questions and court decisions in a few countries, and interpretations may vary based on data privacy and labor law requirements. The concept of employee consent has been increasingly criticized because there is doubt as to whether consent can be given freely in the subordinate employee/employer relationship.

In Chile, employers can only process employee data with the employee's express and explicit consent, except when the processing of personal information is otherwise permitted by law or when the personal data is collected from publicly accessible sources (Personal Data Protection Law, 19628). Likewise, no



authorization is required for the processing of personal data made by private legal entities for their exclusive

use, its associates and entities that are affiliated with statistical purposes, pricing or other general benefits. Employees (and other individuals) must be informed about the purpose of the storage and must give their

consent in writing. Individuals can later revoke consent to having their personal data processed in writing, but this only applies on a go-forward basis.



When employers provide information in order to obtain the data subject's written consent, the document should inform the individual of: the purpose of the collection and storage of their personally identifiable information; and, the possible communication to the public (e.g. the purpose of fulfilling the employer's labor obligations, improving and maintaining the administration of the company, facilitating expense tracking and budgeting, tracking assignments, improving and maintaining security systems, etc.). This information can be included in the employment contract or in an addendum to the employment contract and should be provided before processing the data.

Sensitive Personal Data

There are additional restrictions when processing sensitive data. Sensitive personal data includes

physical or moral characteristics, such as personal habits, racial origin, ideologies and political opinions, beliefs/religious convictions, physical/mental health and sexual life. In principle, sensitive personal data cannot be processed by employers. All personal information (sensitive or not; including medical files) should be managed with due confidentiality. Only as an exception, and with the employee's consent, can certain sensitive data be processed when strictly necessary for the determination or granting of health benefits, or when specifically authorized by law (e.g. the IRS in relation to the information of the taxpayers and the Ministry of Health in relation to contagious diseases).



HR Best Practices:

Build consent for data collection into employee contracts/addendums and onboarding agreements. Ensure individuals are clearly informed about the reasons that their data will be processed. If the purpose of the processing changes, employers will need to have employees consent to the new purpose in writing.

Last updated August 2018.

DISCLAIMER: The information contained in this form is for general information purposes only and is not intended to be a source for legal 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 PeopleDoc cannot guarantee that all the information in this form is current or correct. PEOPLEDOC DOES NOT GIVE ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, SUITABILITY, OR COMPLETENESS OF THIS INFORMATION. TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, NEITHER PEOPLEDOC, NOR ITS AGENTS, OFFICERS, EMPLOYEES, 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 PEOPLEDOC 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. The content of this document is proprietary and confidential information of PeopleDoc. It may not be distributed to any third party without the written consent of PeopleDoc. © 2018 PeopleDoc Inc. Do not reproduce without the written permission of PeopleDoc Inc.

PeopleDoc HR Compliance Assist

HR Compliance Assist helps PeopleDoc clients proactively and effectively manage compliance of their HR files and employees' data with foreign laws and regulations. Led by PeopleDoc's Chief Compliance Officer, the HR Compliance Assist team relies on a network of internal and external lawyers to provide clients with best practices and recommendations on topics such as HR document retention, employee data privacy, electronic signature and electronic archiving. HR Compliance Assist also provides local compliance monitoring and alert services in select countries where PeopleDoc's customers have employees. HR Compliance Assist is a service available to PeopleDoc customers.

PeopleDoc is on a mission to make the difficult job of HR easier. The PeopleDoc HR Service Delivery platform helps HR teams more easily answer employee requests on demand, automate employee processes, and manage compliance across multiple locations. PeopleDoc cloud solutions include case management, process automation and employee file management.

100% software as a service, PeopleDoc solutions integrate with existing HR systems, can be implemented in 8-12 weeks, and are designed for agile ongoing use by HR teams serving diverse workforces. More information is available at www.people-doc.com.



HR Compliance Assist

www.hrcomplianceassist.com - hrcomplianceassist@people-doc.com