

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 Hong Kong, the individual's consent is not generally required in order to collect personal data. Employers are allowed to collect personal employee information when it's done in a lawful and fair manner for a purpose that is directly related to a function or activity of the employer, on the condition that certain information about the collection has been

disclosed to the employee in advance of processing any personal information.



The information that's collected must be reasonable, given that specific purpose (i.e. you shouldn't collect excessive personal information). Note that the collected personal data cannot be used for a new purpose without the voluntary and explicit consent of the individual. In addition, personal data should not be revealed or used by a third-party without the data subject's (i.e., the employee's) express, voluntary consent, unless it's legally required (or unless the employer already informed the individual that the personal data may be disclosed to or used by the third-party).

Before collecting personal employee or applicant data (or any other personal data), employers must explicitly provide information relating to the individual's right to access and correct their data, as

well as provide the contact information (name or title, address, etc.) of the individual to whom they can submit requests. This disclosure is referred to as a Personal Information Collection Statement. This Statement should include:

- the purpose of the data collection;
- the classes of individuals to whom personal data may be transferred;
- whether the data collection is required or voluntary (unless it's obvious from the circumstances);
- notification that individuals have the right to access and correct their personal information; and,
- the name or job title, and address of the individual to whom access/correction requests should be sent.

There is no required format for the Personal Information Collection Statement. It can be given in hard copy or electronically (ex., displaying the

Statement on a webpage before the employee accesses an electronic form).

In the event that employment-related personal information was collected prior to December 20, 1996 and employees did not receive any notifications on the collection, the employer can continue to use the information as long as the data is used for a purpose within the reasonable scope of the original purpose of the collection.



HR Best Practices:

Limit data processing to what is necessary to perform HR functions and to fulfill

your contractual obligations with employees. Prior to collecting personal employee and applicant information, provide individuals with a Personal Information Collection Statement.

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