

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.

Under the Nigeria Data Protection Regulation (The Regulation, 2019, 2.2), processing an individual's



personal data is only permitted if one of the following conditions is met:

- the employee (or other data subject) has given their consent for the specific purpose(s) of the personal data collection after being informed of the specific reason the data is being collected;
- when necessary for the performance of a contract to which the employee (or other data subject) is a party or, in order to take steps at the request of the employee prior to entering a contract;
- when necessary to comply with a legal obligation to which the employer (or other Data Controller) is subject;
- when necessary to protect the vital interests of the employee or another natural person; or,
- when necessary to perform a task in the public interest or to exercise an official public mandate to which the employer (or other Data Controller) is subject.

Privacy Policy & Consent Notice

When processing personal data in Nigeria, the employee must be informed of the specific, legitimate and lawful purpose of the collection. A simple and conspicuous privacy policy should be displayed to employees and other data subjects. This should include, at least, the following information (The Regulation, 2019, 2.5):

- what constitutes the employee's consent (ex., checking a box);
- a description of the personal employee information that's being collected and the purpose(s) for the collection;
- technical method(s) (ex. cookies) used to collect and store personal information;
- any third parties who have access to personal data and the reason for their access;
- a summary of the principles of processing under the Regulation; and,
- remedies available to the employee if the privacy policy is violated along with the timeframe for remedies; and, that the time limit

doesn't apply if the employer (or other Data Controller) breaches the Regulation's principles.

When consent is used as the permitted reason to collect personal data, employers (and other Data Controllers) must be able to ensure that consent is obtained freely (without fraud, coercion or undue influence) (The Regulation, 2019, 2.3). If personal data is being transferred to a third-party, it should be clear that the employee freely consented to the transfer. When requesting an employee's consent, the employee should be informed of:

- the name of the employer (or other Data Controller) and any third parties that will be involved in processing/handling the data;
- why the personal data is being requested;
- what will be done with the personal data; and,
- their right to withdraw consent at any time.



HR Best Practices: To show that employees have freely given their consent to the personal data processing, employers should consider:

- the ability to demonstrate that the employee gave consent to have personal data processed and has the legal capacity to give consent (i.e., pre-checked boxes should not be used);
- if consent is requested in writing and declaration includes other items, the consent request should be prominent and separate from other terms and conditions. Written documents should be

provided to employees in an intelligible and accessible format, using clear and plain language;

- whether the performance of a contract (including the provision of a service) is based on the employee's consent (i.e., consent shouldn't be required to fulfill a contract or a portion of a contract). The personal data that's collected should be necessary, and not excessive;
- giving multiple ways to consent when possible (i.e. the employee should be able to consent separately to different purposes and types of data processing;
- maintaining detailed records of consent (including who consented, how they consented, and what they were told);
- making it easy for employees to withdraw consent at any time; and,
- regularly reviewing consent processes and assessing whether a refresh is needed.



Last updated November 2020.

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. © 2020 The Ultimate Software Group, Inc. All rights reserved.