

CROSS-BORDER DATA TRANSFER

Are there any restrictions on transferring personal data and how can these be overcome?

Cross-border data transfers affect all organizations that engage online IT services, cloud-based services, remote access services and global HR databases. Understanding the applications of lawful data transfer mechanisms is essential to validate recipients located in other nations.



Under the Personal Information Protection Act (PIPA), employers are not required to obtain the consent of employees when outsourcing the processing of personal information. Similarly, consent is not required if the processing of personal information is outsourced to a foreign entity, but employers must include information on the specific tasks to be outsourced and the name(s) of the outsourced

processor(s) in their privacy policy, so that such information is readily available to employees. Additionally, the outsourced processor must comply with specific obligations set out in the PIPA.

For employers that transfer personal information to a foreign entity for the benefit and use of such entity, obtaining consent is the only approved method to transfer personal data overseas, even in cases where consent would not otherwise be required. When obtaining employee consent, inform employees of:

- who will receive the personal information;
- the reason the third party will receive the information and how it will be used;
- the details of the information that will be shared with the third-party;
- the period the data will be retained and used; and,
- the fact that the individual can deny consent, as well as the potential disadvantages that will result if the individual rejects consent.

HR Best Practices:

The use of applications in the cloud frequently results in the international transfer of employee data. Employees should be clearly informed before any of their personal data is transferred outside of South Korea. In addition, all entities that will receive the data must comply with the PIPA.

Last updated January 2021.

DISCLAIMER: The information contained in this document is for general information purposes only and is not intended to be a source for legal, tax, or any other professional 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. All legal or tax questions or concerns should be directed to your legal counsel or tax consultant. Laws and regulations may change and UKG Inc. ("UKG") cannot guarantee that all the information in this document is accurate, current or complete. UKG MAKES NO REPRESENTATION OR WARRANTIES WITH RESPECT TO THE ACCURACY OR COMPLETENESS OF THE DOCUMENT OR THE INFORMATION OR CONTENT CONTAINED HEREIN 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 UKG, 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 UKG 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 UKG. No part of this document or its content may be reproduced in any form, or by any means, or distributed to any third party without the prior written consent of UKG © 2021 UKG Inc. All rights reserved.