

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. There are more prescriptive requirements for obtaining consent under the European General Data

Protection Regulation, including the ability to withdraw consent at any time.

Under the **Danish Data Protection Act** (DPA, Sec. 12), processing employee-related personal data with consent is permitted, as long as it meets the requirements of the General Data Protection Regulation.

The legitimate interest of employers can sometimes be invoked as a legal ground for processing personal data, but only if the processing is strictly necessary for a legitimate purpose and the processing complies with the principles of proportionality and subsidiarity. A proportionality test should be conducted in order to consider whether all data collected is truly necessary, and measures must be taken to keep personal data processing limited to the minimum necessary.

Denmark's DPA permits the processing of personal data when necessary to meet employment law obligations and when necessary to meet the rights of the employer or employee under legal or collective agreements. It's also allowed in order to enable an employer or third party to pursue a legitimate interest based on a legal or collective agreement, as long as employees' fundamental rights or freedoms are not overridden. Note that the disclosure of personal employee data to employee representatives or trade unions requires a legal basis.

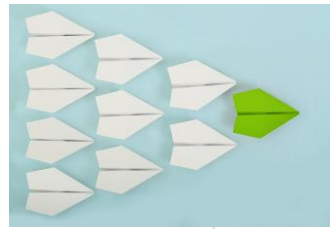
Clear communications should be provided to employees, informing them how their personal data

is being processed. Where possible, such as in the event of monitoring technologies, employees should be given the option to prevent their data from being captured. Where employees are expected to use online applications which process personal data, they should consider enabling employees to designate certain private spaces to which the employer may not gain access under any circumstances, such as a private mail or document folder.

HR Best Practices:

As consent on its own might not be enough to justify lawful processing of employee personal data, other

processes should be documented and implemented.



Consider legitimate requirements, such as processing bank account numbers for purposes of payment, or, processing personal data for health insurance. Commit to properly informing employees, documenting legal rationales for data collection and offering consent/correction/deletion where possible.

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