

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.



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.



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.

Cooperative procedure

In Finland, the collection of personal data in the context of employment and recruiting is managed through a formal cooperative procedure. This also applies to the purpose and introduction of methods in camera surveillance, access control and other technical employee monitoring, as well as the use of email and other data networks.

Generally speaking, the procedure involves calling a meeting where new potential procedure(s) and measure(s) are explained and discussed with employees (or the employees' elected representatives). After the meeting, employers can make a decision to implement the new procedure and/or method, even if the employees object. Employers cannot make the decision before the cooperative procedure has been concluded.

The cooperative procedure only applies when there are 30 or more Finland employees. In cases where there are fewer employees, the employer must provide employees (or their representative) with the opportunity to be consulted, and inform employees of measures that will be implemented.



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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