

Global Privacy Compliance Policy Guide on Epidemic Prevention

Enterprise Employee Data Processing

全球疫情防控隐私合规 政策指南

企业雇员数据处理

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引言

Introduction

2020 年春，新型冠状病毒迅速席卷全球。作为这段仍在继续的历史事件的见证人，我们为遭到致命伤害的人们悲鸣，为受到严重冲击的经济担忧，也在接触、体会、适应、承载不断涌现的疫情防控技术和工具，经历这些对生产生活的渐变影响。

In the spring of 2020, the new coronavirus pneumonia quickly swept across the world. As witnesses to this tragic history that continues, we mourn for the unfortunate death of our compatriots and worry about the severely impacted economy. We are also contacting, experiencing, adapting, and carrying emerging epidemic prevention and control technologies and tools, and experiencing these gradual effects on production and life.

中国各大互联网公司定制开发的手机号码一键查询行程、二维码一码在手出行无忧、体温无接触测量应用，美国谷歌和苹果联合开发的新冠病毒追踪系统等毋庸置疑为疫情防控提供了精准的行为信息、方便的分类管理，同时也引出一个颇有争议的话题——疫情之下公共利益与个人隐私的冲突与平衡。

One-click route query by mobile phone number, permission to go out by QR code and body temperature testing without contact developed by Chinese major Internet companies, the new corona virus tracking system jointly developed by Google and Apple and etc. undoubtedly provide accurate information for epidemic prevention and control, convenient classification management, and also lead to a quite controversial topic- How to balance public interest and personal privacy under the epidemic.

2020 年 3 月以来，针对新冠疫情期间如何收集和使用个人数据的话题，各国数据保护监管机构纷纷作出回应，大多数国家有统一的想法：即使是在疫情防控的特殊时刻，个人数据的收集和使用仍应当遵守数据保护立法的要求，特别是对于健康数据等敏感数据需要遵循更为特殊的规定。

Regarding how to collect and use personal data during the epidemic, data protection regulators in various countries have responded since March 2020. Most countries have a unified view: even at a special time for epidemic prevention and control, the collection and use of personal data should still be comply with the requirements of data protection legislation, especially for sensitive data such as health data that requires more special regulations.

我国从事数据保护的专家已翻译成文多个国家的疫情防控指引和政策。为了进一步丰富疫情防控隐私保护专业素材，特别是助力跨国公司应备和迎接当下全球分支机构复产复工潮，选取全球 12 个海外典型国家的与雇佣关系/工作环境相关的监管机构推荐实践，以客观材料形式呈现，采编形成《全球疫情防隐私合规政策指南（企业雇员数据处理）》，为企业雇员数据处理合法合规提供参考和支撑。

Our domestic colleagues in data protection have made tireless efforts to translate the epidemic prevention and control guidelines and policies of many countries. In order to further enrich the professional materials for privacy protection in epidemic prevention and control, especially to help multinational companies prepare and meet the current wave of resumption of production of global branches, we selected the supervisory authority recommendation practices related to employment relationship/work environment in 12 countries around the world, which are presented in the form of objective materials and compiled “*Global Privacy Compliance Policy Guide on Epidemic Prevention (Enterprise Employee Data Processing)*”, to provide reference and support for the compliance of employee data processing in enterprises.

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1.西班牙

1.Spain



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为应对新型冠状病毒肺炎疫情的传播，西班牙数据保护署（AEPD）正在接受公民和企业以及其他有义务遵守个人健康数据处理有关数据保护条例的人员的询问。

以下尝试回答收到的最常见的问题。

In the context of the emergency health program implemented to face the spread of the COVID 19 coronavirus, the Spanish Data Protection Agency, is receiving queries, both from citizens and companies and other subjects obligated to compliance with data protection regulations on the processing of personal data related to health.

These FAQs try to answer the most frequently asked questions received.

1. 雇主能否处理雇员是否感染冠状病毒的信息？

1. Can employers process information about whether workers are infected with the coronavirus?

根据现行有关健康、劳动、特别是职业健康与安全的法律规定，雇主可以根据上述条例和其中所规定的保障措施，获取必要的个人数据以确保员工健康，并允许有权机关采取必要措施以保证其他员工的健康权，避免公司内部或其他工作场合或更大人群范围的感染。

企业知晓员工是否受到感染，可以通过职业保健服务来设计、采取必要的应急计划，或卫生当局预见到的应急计划。

以上信息也可以通过向员工询问一些具体问题来获得。但是，问题应该仅限于询问是否有症状，或是否已经被诊断为冠状病毒感染者，或是否被隔离。下发宽泛且详细的健康问题清单，或列入与该传染疾病无关的问题，将违反数据最小化原则。

In application of the current legal provisions relating to health, labour and, in particular, those relating to occupational health and safety, employers may obtain, according with said regulations and with the guarantees therein established, the personal data necessary to guarantee your health

and to allow the competent authorities taking the necessary measures to ensure the right to protection of the health of the rest of the staff and to avoid contagions within the company and/or their work centres, that can spread the disease to the entire population.

The company will be able to know if the worker is infected or not, to design through its occupational health service the contingency plans that are dealt to be necessary, or that have been foreseen by the health authorities.

This information can also be obtained by asking staff some specific questions. However, questions should be limited exclusively to inquiring about the existence of symptoms, or if the worker has been diagnosed as coronavirus COVID 19 infected, or subject to quarantine. Circulating extensive and detailed health questionnaires, or including questions not related to the disease would be contrary to the principle of data minimization.

2. 雇主能否把这些信息转达给其他员工？

2. Can they transmit this information to the staff?

这些信息应在不可识别具体被感染员工个人的前提下提供，以维护其隐私，而且只能应主管当局，特别是卫生当局的要求下转达。信息提供必需遵守目的限制和相称性的数据保护原则，并始终遵守主管当局，特别是卫生当局发布的建议或指示。例如，如果可以通过不具体指明感染者身份的方式报告感染病例的存以保护工作人员健康，则应当这样做。相反，如果仅通过提供部分信息无法实现这一目标，或者主管当局不鼓励这一做法，则可提供健康信息和识别信息。

This information should be provided without identifying the person affected to maintain his/her privacy and could be transmitted only at the request of the competent authorities, notably the health authorities. The information must be provided with due respect to the data protection principles of purpose limitation and proportionality and always within the provisions of the recommendations or directions issued by the competent authorities, notably sanitary authorities. As a matter of example, if it is possible to achieve the purpose of protecting the staff's health by reporting the existence of a contagion, without specifying the identity of the infected person should proceed in this way. On the contrary, when that objective cannot be achieved through the provision partial information, or the practice is discouraged by the competent authorities, the health and identifying information could be provided.

3. 能否向公司的员工和外部访客询问他们此前到访过的国家或他们是否有冠状病毒相关症状？

3. Can you ask workers and visitors outside the company data such as countries that they have visited previously, or if they do have symptoms related to the coronavirus?

尽管主管当局，特别是卫生当局已经制定了公共卫生措施，并将这些措施通知了工作中心，但雇主仍然有法律义务保护雇员的健康，保护工作场所不受健康威胁。因此，向员工和外部访问者索取有关症状或风险因素的信息而无需征得明确同意是合法正当的（基于《通用数据保护条例》及《1995年11月8日第31号关于职业风险预防的法案》）。索取信息应遵循相称性和目的限制原则，仅限于询问员工对于新型冠状病毒肺炎流行率高的国家的访问情况以及在最近两周内，也就是该疾病潜伏期内的访问情况，或者询问员工是否存在新型冠状病毒肺炎感染症状。下发宽泛而详细的包含与冠状病毒疫情无关的健康问题清单或问卷，将违反数据最小化原则。

Even though the competent authorities, in particular the health authorities, have established

these measures for a matter of public health and communicated them to the work-centres, employers have the legal obligation to protect the health of their employees and to maintain the place of work free of health hazards. Therefore, requesting information to employees and external visitors about symptoms or risk factors without the need to ask for your explicit consent (under GDPR and the ACT 31 of 8th November 1995 on Prevention Occupational Risks) shall be legally justified. The information to be requested should respond to the data protection principles of proportionality and purpose limitation and limited to asking workers about their visits to countries with a high prevalence of the COVID 19 coronavirus and about visits within the incubation time of this disease that have taken place in the last 2 weeks, or to inquiring if the worker has suffered from any of the symptoms of the coronavirus disease. The use of extensive and detailed health questionnaires or questionnaires that include questions not related to the coronavirus disease would turn out contrary to the principle of data minimization.

4. 已感染员工的健康数据是否可以处理？

4. Can coronavirus-related workers' health data be processed?

为了遵守主管当局特别是卫生当局通过的关于冠状病毒疫情的决定，数据保护条例不应妨碍或限制当局在疫情防控方面所采取的措施的效力。

数据保护条例允许采取必要措施保障自然人的重大利益、健康卫生领域基本公共利益、医疗诊断或工作场所法律义务的履行，包括处理健康数据而无需受感染者的明确同意。

无论如何，这些数据的处理必须遵守《通用数据保护条例》中确立的原则，特别是目的限制和数最小化原则。

To comply with decisions about the coronavirus pandemic that are adopted by the competent authorities, particularly health authorities, data protection regulations should not be used to hinder or limit the effectiveness of the measures that these authorities adopt in the fight against the said pandemic.

Data protection regulations allow adopting the necessary measures to safeguard the vital interests of natural persons, the essential public interest in the field of health, the performance of medical diagnoses, or compliance with legal obligations in the workplace, including the processing of health data without the need for the explicit consent of the affected party.

In any case, the processing of these data must observe the principles established in the RGPD, notably those of minimization, purpose limitation and data minimization.

5. 在接受预防性检疫隔离或感染新型冠状病毒肺炎的情况下，员工是否有义务将这一情况通知雇主？

5. In the case of being subject to preventive quarantine or being affected by the coronavirus COVID-19, is the worker obliged to inform his employer of this circumstance?

员工在接触到新型冠状病毒肺炎病例后，可能感染该传染性疾病的，按照主管卫生当局有关规定，需要采取相应预防性隔离措施以避免引起传染的，在确诊结果出来前，必须告知雇主、健康安全委员会或防疫代表（如果有的话）（基于《1995年11月8日第31号关于职业风险预防的法案》）。休病假的员工没有义务告知公司具体原因。但这种个人权利可能与其他权利的维护相冲突，例如疫情期间员工集体的健康权保护，更不利于维护公众健康。

Workers who, after having had contact with a case of coronavirus, could be affected by said disease and who, by applying the protocols established by the competent Health Authorities, are subjected to the corresponding preventive isolation to avoid the risks of

contagion derived from said situation, until the corresponding diagnosis is available, must inform their employer, the Safety and Health Committee or where appropriate, the prevention representative (in accordance with the Act 31 of 8th November 1995 on Prevention of Occupational Risks) The worker in a situation of sick leave does not have 3 an obligation to inform the company of the reason for the withdrawal, however, this individual right may yield against the defence of other rights such as the right to health protection of the collective of workers in pandemic situations and, more generally, against the defence of the health of the entire population.

6. 安保人员是否可以测量员工体温来筛查感染病例？

6. Can security staff take the temperature of workers to detect coronavirus cases?

根据《1995年11月8日第31号关于职业风险预防的法案》，通过监测员工健康的措施核实员工健康状况是否对自己、其他工作人员或与公司有关的其他人构成威胁是雇主的强制性义务。但无论如何，从温度测量中获得的健康数据的处理必须遵守数据保护规定，包括其他义务，必须基于遏制新型冠状病毒肺炎传播的特定目的，并且仅限于此目的，不得扩展到任何其他目的，且存储时间不得超出收集这些信息时所必要的目的范围。

Verifying if the health status of workers may constitute a danger to themselves, to the rest of the staff or to other persons related to the company constitutes a measure related to monitoring workers' health, which, in accordance with the Act 31 of 8th November 1995 on Prevention of Occupational Risks is mandatory for the employer and should be carried out by medical staff. In any case, the processing of health data obtained from the temperature measurements must respect the data protection regulations and, therefore, and among other obligations, must obey the specific purpose of containing the spread of the COVID-19, limiting itself to that purpose and not extend to any other purpose, and kept no longer than necessary for the purpose for which they are collected.

2.意大利

2.Italy



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emergency

链接: [link](#)

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<https://www.garanteprivacy.it/temi/coronavirus/faq>

1. 雇主可以在其工作场所入口处对员工、用户、供应商、访客和顾客的体温进行测量吗？

1. May an employer take the body temperature of employees, users, suppliers, visitors and customers at the entrance of their premises?

在与流行病紧急情况有关的当前形势下，主管当局迅速采取了许多管制措施并随后下发指导文件，通过制定紧急措施来遏制和管理流行病紧急情况。因此，已确定还未暂停活动的雇主须遵守谅解备忘录中为遏制和管理流行病紧急情况而采取的措施，以打击和控制新型冠状病毒肺炎在工作环境中的传播。该谅解备忘录于 2020 年 3 月 14 日由政府和工人代表共同发起。

特别是，该谅解备忘录预设了对员工体温进行测量以限定能否进入工作场所，以此作为防止病毒传播措施的一部分，该措施也适用于用户、访客、客户以及供应商。但尚未为后者设置单独的管制措施模式。

公共行政部长与公共行政领域最具代表性的工会代表已经达成了类似的安全协议，协议适用于不可延展的公共活动或基本公共服务（例如关于 2020 年 4 月 3 日至 8 日的 COVID-19 卫生紧急情况的预防措施和雇员公共安全的谅解备忘录），因此私营组织制定的安全管控措施被认为与公共行政部长已经提供的指导相一致。

由于实时获取体温与数据主体的身份相关联，这是处理个人数据的典型情况（GDPR 第 4 条第 1 款第 2 项），因此不允许记录所测量的与体温有关的数据；相反，允许记录超过法律规定的阈值的事实，并且也允许对拒绝进入工作场所的原因进行记录。这是满足“数据最小化”原则的体现（GDPR 第 5 条第 1 款（c）项）。

相比之下，在检查顾客（例如大型百货公司）或不定期来访者的体温的情况下，通常无需记录有关拒绝进入的原因的信息，即使温度高于紧急立法中指示的阈值的最高温度也是如此。

In the current situation linked to the epidemiological emergency, a number of regulatory measures and subsequent guidance documents were adopted at a fast pace by the competent authorities in order to set out urgent measures for the containment and management of the epidemiological emergency. Accordingly, it was determined that an employer whose activities were not suspended was required to comply with the measures for the containment and management of the epidemiological emergency laid down in the MoU to combat and control the spread of COVID-19 in working environments that was adopted jointly by the Government and workers' representatives on 14 March 2020.

In particular, the said MoU envisages the taking of the body temperature of employees for access to the premises of the organisation as part of the measures to combat the spread of the virus, which also apply to users, visitors and customers as well as to suppliers - where a separate access mode has not been envisaged for the latter.

Similar security protocols applying to non-deferrable public activities or to essential public services were concluded by the Minister for Public Administration with the most representative trade unions in the public administration (such as the MoU on Preventive Measures and for the Safety of Public Employees in connection with the COVID-19 Health Emergency of 3 and 8 April

2020), on the grounds that the safety measures laid down for the private sector were deemed to be consistent with the guidance already provided by the Minister.

Since the taking of the body temperature in real time, when associated with the data subject's identity, is an instance of processing of personal data (Article 4(1), No (2), of Regulation (EU) 2016/679), it is not permitted to record the data relating to the body temperature found; conversely, it is permitted to record the fact that the threshold set out in the law is exceeded, and recording is also permitted whenever it is necessary to document the reasons for refusing access to the workplace - in compliance with the principle of 'data minimisation' (Article 5(1)(c) of the Regulation).

By contrast, where the body temperature is checked in customers (for example, in large department stores) or occasional visitors, it is not, as a rule, necessary to record the information on the reason for refusing access even if the temperature is above the threshold indicated in the emergency legislation.

2. 行政机构或公司是否可以要求其雇员提供信息，包括通过自我声明，提供有关其可能接触 COVID-19 传染病的信息，以此作为进入工作场所的条件？

2. May an administrative body or a company require their employees to provide information, including through a self-declaration, on their possible exposure to the contagion from COVID-19 as a condition for access to the workplace?

根据保护工作场所健康和安全的法律，雇员有将工作场所中任何可能危害健康和安全的状况通知雇主的特殊义务（2008 年 4 月 9 日第 81 号法令第 20 条）。在这方面，公共行政部长的第 1/2020 号指令明确规定，公务员和以公共行政部门身份工作的人员必须报告他们是否来自危险区域或已经与来自危险区域的人接触。在此框架内，雇主可以在必要时通过专用渠道提倡雇员这样做。

在根据现行法规框架要求雇主采取的预防和控制传染病的措施中，其中一项是对于在过去 14 天与新型冠状病毒肺炎阳性人员有过接触或者根据世卫组织的指示来自于危险区域的人员，禁止其进入工作场所。为此，还考虑到后续通过的控制传染病传播的相关规定（见上述政府和工会代表于 2020 年 3 月 14 日缔结的谅解备忘录），对于来自第三方的人员（例如访问者和用户），也可能要求就上述情况发表声明。

在任何情况下，仅需收集与防止新型冠状病毒肺炎传染有关的必要、充分和相关的信息、而无需提供有关新型冠状病毒肺炎阳性人员所访问的特定地点或其他与之相关的其他涉及该个人私人领域的详细信息。

Under the legislation on the protection of health and safety at work, the employee has a specific obligation to inform the employer of any situation of danger to health and safety at the workplace (Section 20 of Legislative Decree No 81 of 9 April 2008). In this connection, Directive No 1/2020 of the Minister for the Public Administration specifies that a civil servant and persons who work in whatever capacity in the public administration are bound to report that they come from or have been in contact with persons coming from a risk area. Within this framework, the employer may invite employees to do so, where necessary, through dedicated channels.

Among the measures to prevent and contain contagion employers are required to take based on the existing regulatory framework, there is the prohibition to access the workplace applying to those who have been in contact with COVID-19-positive individuals over the past 14 days or come from risk areas according to WHO indications. To this end, also in the light of the provisions adopted subsequently for the containment of contagion (see the MoU referred to

above as concluded on 14 March 2020 between the Government and workers' representatives), a declaration regarding the above circumstances may also be requested from third parties such as visitors and users.

In any case, only the necessary, adequate and relevant data will have to be collected in relation to the prevention of the contagion from COVID-19 without requesting additional information about the COVID-19-positive person, the specific places visited or other details relating to that person's private sphere.

3. 是否可以在官方网站上发布主管官员的联系方式，以使公众能够在当前的流行病紧急情况下预订服务或对给定行政机构进行访问？

3. Is it possible to publish, on the official website, the contact details of the competent officials in order to enable the public to book services or visits at the given administrative body in the current epidemiological emergency?

有关控制和管理流行病学紧急情况的法规规定以及主管机构提供的操作指南要求限制办公室人员的数量，主要是通过智能化的工作安排。关于需要出席工作场所的任务，行政机构应开展对紧急情况管理起有效作用的活动，以及对于“外部人员”而言是“不可延期”的活动。因此，接待访客或直接向公众提供服务应通过电子方式进行，或者在任何情况下均应以排除或限制办公室中实际接触的方式（例如通过电话或虚拟协助）进行，否则通过安排定时访问，包括预约访问。

根据数据保护的原则（第（EU）2016/679 号条例第 5 条），可以通过仅发布相关组织单位的联系方式或在办公室接待的联系方式来实现向用户提供帮助的目的（如电话号码和经认证的电子邮件地址），而不是负责的官员个人。这也符合有关公共行政组织发布的要求。The regulatory provisions for the containment and management of the epidemiological emergency and the operational guidelines provided by the competent bodies require that the presence of staff in the offices be limited, mainly through smart working arrangements. As regards the tasks which require attendance at the workplace, administrative bodies are to carry out activities that are strictly functional to the management of the emergency and those that are 'non-deferrable', also with regard to 'external users'. Therefore, the reception of visitors or the direct provision of services to the public should take place by electronic means or in any case in such a way as to exclude or limit physical presence in the offices (e.g. via telephone or virtual assistance), or else by arranging timed accesses including by way of the booking of visits.

In compliance with data protection principles (Article 5 of Regulation (EU) 2016/679), the purpose of providing users with contact details for assistance or for reception at the offices can be pursued by publishing only the contact details of the relevant organisational units (telephone number and certified email address), and not those of the individual officials in charge. This is also in line with the publication requirements concerning the organisation of public administrations.

4. 在工作场所的指定医生进行哪些个人数据处理？

4. What processing of personal data in the workplace involves the appointed doctor?

仍然禁止指定医生将有关影响员工的特定疾病告知雇主，即便在紧急情况下。在紧急情况下，与指定医生进行的员工健康监视有关的任务，包括由于感染风险增加而可能使员工接受特殊探视的任务被认为是一般预防措施并且必须遵守数据保护原则并遵守卫生部指南中规定的卫生措施（也请参阅 2020 年 3 月 14 日的谅解备忘录）。

在紧急情况下，指定医生与雇主和工人代表合作，以提出新型冠状病毒肺炎控制措施，并将“雇员特定的敏感情况以及当前或过去的医疗状况”告知并警示雇主，这也是其实施健康监测任务的内容（见该谅解备忘录第 12 段）。

根据健康监控领域和个人数据保护方面的规定，指定医生会在某些特殊情况，将员工的特殊敏感状况告知雇主，这也与该员工的健康有关，因此建议将其分配在感染风险较小的地区执行任务。然而，没有必要将影响该雇员的具体病情告知雇主。

在这种情况下，只有在主管机构依法规定或下令或以其他特定方式为依据时，雇主方可根据数据保护原则（参见法规（EU）2016/679 第 5 条）或者根据指定医生在其执行健康监视任务时的特定通知处理员工的个人数据。

The appointed doctor continues to be prohibited from informing the employer about the specific diseases affecting employees, including under emergency circumstances.

In the context of the emergency, the tasks related to the health surveillance of workers by the appointed doctor, including the possibility of subjecting workers to special visits on account of the increased exposure to the risk of infection, are considered to be a general preventive measure and must be discharged in compliance with data protection principles and by respecting the hygiene measures set out in the guidance by the Ministry of Health (see also the MoU of 14 March 2020).

In the context of the emergency, the appointed doctor cooperates with the employer and the workers' representatives in order to propose COVID-19 governance measures and alerts the employer to 'situations of particular fragility and current or past medical conditions of the employees' as part of the relevant health surveillance tasks (see paragraph 12 of the said MoU).

In compliance with the provisions in the field of health surveillance and on personal data protection, the appointed doctor notifies the employer of those specific cases where an employee's particular condition of fragility as also related to that employee's health makes it advisable to assign him or her to tasks in areas less exposed to the risk of infection. To that end, it is not, however, necessary to inform the employer of the specific pathology affecting that employee. In this context, the employer may, in compliance with data protection principles (see Article 5 of Regulation (EU) 2016/679), process the employees' personal data only if it is legally prescribed or ordered by the competent bodies or else on specific notification by the appointed doctor in the performance of his or her health surveillance tasks.

5. 雇主可以安全地通知工人代表有关受影响雇员的身份的信息吗？

5. May an employer inform the workers' representative for safety on the identity of the affected employees?

在采取保护措施和履行与工作场所安全有关的职责的情况下，除非国家法律允许，否则雇主不得传达受病毒感染的雇员的姓名。

在国家法律框架下，雇主必须将感染人员的姓名告知卫生主管部门，并与他们合作确定“密切接触者”，以便及时实施疾病预防措施。

另一方面，针对工人代表，没有基于安全性提供此类信息要求，上述任务也不属于基于特定行业立法的该代表的特定职权范围。

在当前的流行病紧急情况下，负责安全的工人代表将继续执行其咨询、控制和协调任务，并与指定的医生和雇主合作-例如，通过帮助确定在特定工作环境中采取预防措施保护工人健康的最合适措施；更新风险评估文件；并验证是否符合内部协议。

如果工人代表了解到履行相关职责的信息（该代表通常以汇总形式处理该信息，例如风险评估文件中包含的信息），可以直接或间接地识别某些数据主体，则他或她应遵守数据保护的规定。

Employers may not, in the context of the adoption of protective measures and of their duties relating to the safety of workplaces, communicate the name(s) of the employee(s) infected by the virus, unless national law so permits.

Under the national legal framework, the employer has to inform the competent health authorities of the names of the personnel infected and to cooperate with them in identifying ‘close contacts’ in order to allow timely implementation of disease prevention measures.

On the other hand, such an information requirement is not provided for with regard to the workers’ representative for safety, nor do the tasks described above fall within that representative’s specific remit based on sector-specific legislation.

In the current epidemiological emergency, the workers’ representative for safety will have to continue to carry out his/her consultative, control and coordination tasks and cooperate with the appointed doctor and the employer - for example, by helping in the identification of the most appropriate prevention measures to protect workers’ health in the specific working environment; updating the risk assessment document; and verifying compliance with internal protocols.

Where the workers’ representative for safety becomes aware of information in discharging the relevant duties — which information the representative usually processes in aggregate form, e.g., the information included in the risk assessment document —, he or she complies with data protection provisions if it is possible, even indirectly, to identify certain data subjects.

6. 雇主可否向其他员工披露受新型冠状病毒肺炎影响的员工的身份？

6. May an employer disclose the identity of an employee affected by COVID-19 to other workers?

不可以。为了保护其他员工的健康，主管卫生当局应告知患病员工的“亲密接触者”，以实施所需的预防措施。

相反，雇主必须向主管机构和卫生当局提供必要的信息，以便他们可以执行针对当前疫情而通过的紧急立法中规定的任务和职责（见上述谅解备忘录第 12 段）。

仅在法律规定或主管当局根据法定权力下令的情况下，才可以披露员工有关健康的数据，无论是在与之相关的组织内部还是在外部，例如，仅出于预防新型冠状病毒肺炎感染的目的，并应卫生当局要求追溯对新型冠状病毒肺炎检测呈阳性的员工的“亲密接触者”。

在所有情况下，如果受新型冠状病毒肺炎影响的人员在组织的场所内，则雇主必须采取具体措施，并按照卫生部的指示进行场所的清洁和消毒（见上述谅解备忘录第 4 点）。

No. With a view to the protection of the health of other workers, it is for the competent health authorities to inform the ‘close contacts’ of the diseased employee in order to implement the required prevention measures.

Conversely, the employer is required to provide the competent institutions and health authorities with the necessary information so that they can carry out the tasks and duties set out also in the emergency legislation adopted in connection with the current outbreak (see paragraph 12 of the MoU mentioned above).

Data concerning health may only be disclosed, whether externally or within the organization an employee or collaborator pertains to, if this is provided for in the law or ordered by the competent authorities on the basis of statutory powers - for example, solely for the prevention of

contagion from COVID-19 and upon a request by the health authority for tracing back the ‘close contacts’ of a worker who tested positive for COVID-19.

In all cases the employer must take specific measures if persons affected by COVID-19 are present within the premises of the organization, relating to the cleaning and sanitising of the premises in accordance with the instructions given by the Ministry of Health (see point 4 of the MoU mentioned above).

3.爱尔兰

3.Ireland



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<https://www.dataprotection.ie/en/news-media/blogs/data-protection-and-covid-19>

1. 雇主可否要求所有员工及建筑物访客填写问卷，以获取涉及受病毒感染国家的最近旅行历史的信息以及医疗信息，例如：发烧，高温等症状？

1. Can an employer require all staff and visitors to the building to fill out a questionnaire requesting information on their recent travel history concerning countries affected by the virus, and medical info such as; symptoms of fever, high temperature, etc?

雇主有法律义务保护雇员的健康并维护工作场所的安全。在当前情况下，在这方面，雇主有理由要求雇员和访客告知他们是否曾去过受感染地区和/或是否有相关症状。

实施更严格的要求（例如要求填写调查表）必须基于必要性和相称性以及基于风险的评估有充分的理由。这应考虑到特定的组织因素，例如，工作人员的出差活动，工作场所中弱势群体的存在以及公共卫生当局的任何指示或指导。

如果员工和访客最近去过受灾地区和/或有相关症状，要求他们采取任何适当的防控措施，并提请员工和访客注意 HSE 建议，不会对数据保护产生任何影响。

有关应采取哪些适当措施防止新型冠状病毒肺炎传播的任何问题，应向公共卫生当局提出。

As noted above, employers have a legal obligation to protect the health of their employees and maintain a safe place of work. In this regard, and in the current circumstances, employers would be justified in asking employees and visitors to inform them if they have visited an affected area and/or are experiencing symptoms.

Implementation of more stringent requirements, such as a questionnaire, would have to have a strong justification based on necessity and proportionality and on an assessment of risk. This should take into consideration specific organizational factors such as the travel activities of staff attached to their duties, the presence of vulnerable persons in the workplace, and any directions or guidance of the public health authorities.

There would be no data protection implications in bringing the HSE recommendations to the attention of staff and visitors, if they have recently travelled to an affected area and/or are experiencing symptoms, and requesting that they take any appropriate actions.

Any questions about the appropriate measures that should be implemented to protect against COVID-19 should be addressed to the public health authorities.

2. 雇主是否可以根据与新型冠状病毒肺炎有关的情况在医疗证明中要求提供其雇员疾病的更多具体信息？

2. Can an employer request more specific details of their employee's illness on medical certificates in light of the situation in relation to COVID-19?

雇主有保护员工健康的法律义务，而员工也有义务采取合理的措施保护自己的健康以及工作场所其他任何人的健康。在这方面，雇主有理由要求雇员告知他们是否有新型冠状病毒肺炎的医学诊断，以便采取必要的措施。

但是，重要的是要记住，任何健康信息的记录都必须是合理和真实的，并且必须限于为使雇主能够实施健康和安全措施所必需的内容。

雇主应遵循公共卫生当局的建议和指示，这可能出于公共利益而要求披露个人数据，以防止严重威胁公共卫生。

在这种情况下，员工应听从医护人员和公共卫生部门的建议，他们将指导其在出现新型冠状病毒肺炎的症状后该怎么办。

While employers have a legal obligation to protect the health of their employees, employees also have a duty to take reasonable care to protect their health and the health of any other person in the workplace. In this regard, employers would be justified in requiring employees to inform them if they have a medical diagnosis of COVID-19 in order to allow necessary steps to be taken.

However, it is important to keep in mind that the recording of any health information must be justified and factual, and must be limited to what is necessary in order to allow an employer to implement health and safety measures.

Employers should follow the advice and directions of the public health authorities, which may require the disclosure of personal data in the public interest to protect against serious threats to public health.

Employees should follow the advice of their healthcare practitioners and the public health authorities in these circumstances, who will instruct them as to what they need to do if they present symptoms of COVID-19.

3. 如果雇主确认其雇员感染了这种病毒，雇主可以将其遣送回家吗？

3. Can an employer send employees home from work if they are confirmed to have the virus?

雇主有义务为雇员提供安全的工作场所，这可能要求雇主对于雇员在进入场所要谨慎行事。在确认雇员患有新型冠状病毒肺炎的情况下，应紧急寻求公共卫生当局建议，以决定采取哪些步骤。

将雇员遣送回家的决定不是数据保护事宜，并且可能对雇主产生与就业法有关的其他后果，例如，雇员享有病假的权利。

Employers have a duty of care to employees to provide a safe place of work, which may require them to exercise discretion regarding access to premises. In a situation where an employee has confirmed that they have COVID-19, advice should be sought as a matter of urgency from the public health authorities as to what steps should be taken.

The decision to send employees home from work is not a data protection matter and may have other consequences for employers relating to employment law e.g. entitlement to sick pay.

4. 雇主可以向其他雇员透露某雇员感染了该病毒吗？

4. Can an employer disclose that an employee has the virus to their colleagues?

为了维护雇员的个人数据的保密性，应避免这种情况。例如，雇主有理由通知所有雇员他们中有新型冠状病毒肺炎案例或疑似案例，并要求他们在家工作。该通信不应提及受影响的个人。

公共卫生部门可能需要披露此信息以执行其功能。

This should be avoided, in the interests of maintaining the confidentiality of the employee's personal data. For example, an employer would be justified in informing staff that there has been a case, or suspected case, of COVID 19 in the organization and requesting them to work from home. This communication should not name the affected individual.

Disclosure of this information may be required by the public health authorities in order to carry out their functions.

5. 因新型冠状病毒肺炎而暂时关闭组织或处理请求的能力受到限制时，对 GDPR 数据主体请求做出响应的时间限制是否仍然适用？

5. Do the timelines for responding to GDPR data subject requests still apply where an organisation is temporarily closed or capacity to handle requests is curtailed because of COVID-19?

数据保护委员会承认新型冠状病毒肺炎的健康危机的重大影响，这可能会影响组织应对个人 GDPR 请求（例如访问请求）的能力。GDPR 在法律中规定了回应个人请求的时间限制，并且不能更改，但我们意识到，新型冠状病毒肺炎的影响可能直接导致不可避免的延误。

对于个人

公众应该意识到，一线和关键服务组织，例如医疗工作者、政府部门，特别是就业部和社会保障部、税务局和地方政府，可能需要将资源转移到优先工作领域，从而对其他领域产生影响，例如访问请求的处理。诸如学校和大学之类的教育机构和私营部门组织可能关闭或能力降低，因此对请求的响应可能会大大延迟。如果您在与这些组织打交道或考虑向数据保护委员会投诉时遇到任何此类可以理解的延误，请记住这一点。我们还提醒您，对于要访问的个人数据，请尽可能具体。

对于组织

我们赞同许多组织，特别是诸如医疗保健和社会服务之类的一线和关键服务组织可能需要将资源转移到优先工作领域，从而对诸如访问请求的处理等其他领域产生影响。我们对组织面临的前所未有的挑战以及为应对这些特殊情况而需要采取适当的监管方法充满包容性。

任何在响应请求方面遇到困难的组织都应在可能的情况下与有关个人沟通，以处理请求，包括延长响应时间以及延迟响应的原因。GDPR 提供了两个月的延期，以便在必要时考虑到请求的复杂性和数量来响应请求。

在处理请求方面遇到困难的组织还应考虑是否有可能分阶段响应请求。例如，员工在远程工作的组织可能在访问硬拷贝记录时遇到困难。在这种情况下，有可能的话，向请求者提供电子记录，并在稍后阶段提供纸质副本。同样，组织应与有关个人明确沟通。组织可能还希望与个人互动，以确保该请求相对于所寻求的个人数据而言尽可能具体。

如果组织由于新型冠状病毒肺炎的影响而无法在法定时限内完全或部分响应请求，但它仍有义务这样做，并确保尽快处理该请求。出于问责制和透明度的目的，组织应记录不遵守时间限制的原因，并明确告知受影响的个人。

尽管不能免除法定义务，但如果向数据保护委员会投诉，则将充分考虑每个案件的事实，包括任何组织特定的裁员情节。

The Data Protection Commission acknowledges the significant impact of the Covid-19 health crisis which may affect organizations' ability to action GDPR requests from individuals, such as access requests. While the time lines for responding to requests from individuals are set down in law in the GDPR and can't be changed, we recognize that unavoidable delays may arise as a direct result of the impacts of COVID-19.

For Individuals

Members of the public should appreciate that front line and critical services organizations such as health care providers, government departments, in particular the Department of Employment Affairs and Social Protection, Revenue and local authorities may need to divert resources to priority work areas with consequential impacts on other areas such as the handling of access requests. Educational bodies such as schools and universities, and private sector organizations may be closed or have reduced capacity so that responding to requests may be significantly delayed. We ask you to bear this in mind in the event that you experience any such understandable delays when dealing with these organizations or considering making a complaint to the DPC. We also remind you to please be as specific as possible in relation to the personal data you wish to access. Where a complaint is made to the DPC, the facts of each case including any organization specific extenuating circumstances will be fully taken into account.

For organizations

We appreciate that many organizations, especially front line and critical services organizations such as health care and social services may need to divert resources to priority work areas with consequential impacts on other areas such as the handling of access requests. We are very alive to the unprecedented challenges facing organizations and the need for a proportionate regulatory approach in response to these extraordinary circumstances.

Any organization experiencing difficulties in responding to requests should, where possible, communicate with the individuals concerned about the handling of their request, including any extension to the period for responding and the reasons for the delay in responding. The GDPR provides for an extension of two months to respond to a request where necessary taking into account the complexity and number of requests.

Organizations experiencing difficulties in actioning requests should also consider whether it is possible to respond to requests in stages. For example, an organization whose staff are working remotely may have difficulties in accessing hard copy records. In this case, it may be possible to provide the requester with electronic records, with hard copies provided at a later stage. Again, organizations should communicate clearly with the individuals concerned. Organizations may also want to engage with individuals in order to ensure that the request is as specific as possible in relation to the personal data sought.

Where an organization, due to the impact of COVID-19, cannot respond to a request in full or in part within the statutory time lines, they remain under an obligation to do so and should ensure that the request is actioned as soon as possible. For accountability and transparency purposes, the reasons for not complying with the time lines should be documented by the organization and clearly communicated to the affected individuals.

While the statutory obligations cannot be waived, should a complaint be made to the DPC, the facts of each case including any organization specific extenuating circumstances will be fully taken into account.

4.英国

4.United Kingdom



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File Name: Workplace testing – guidance for employers

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Link: [link](#)

<https://ico.org.uk/global/data-protection-and-coronavirus-information-hub/data-protection-and-coronavirus/workplace-testing-guidance-for-employers/>

1. 当他们恢复工作时，我想进行测试以检查我的员工是否患有新型冠状病毒肺炎症状或病毒本身。我需要考虑数据保护法吗？

1. When they return to work, I want to carry out tests to check whether my staff have symptoms of COVID-19 or the virus itself. Do I need to consider data protection law?

是。您将处理与已识别或可识别个人有关的信息，因此，您需要遵守 GDPR 和《2018 年数据保护法》。这意味着要合法、公平和透明地处理个人数据。与健康相关的个人数据更加敏感，被归类为“特殊类别数据”，因此必须更加仔细地保护它们。数据保护法不会阻止

您在当前的公共卫生突发事件中采取必要的步骤来确保员工和公众的安全反而会支持您。但这确实需要您对员工的个人数据负责，并确保谨慎处理。ICO 发布了一份文件，阐明了我们在新型冠状病毒肺炎大流行期间的监管方法。

Yes. You will be processing information that relates to an identified or identifiable individual, so, you need to comply with the GDPR and the Data Protection Act 2018. That means handling it lawfully, fairly and transparently. Personal data that relates to health is more sensitive and is classed as ‘special category data’ so it must be even more carefully protected. Data protection law does not prevent you from taking the necessary steps to keep your staff and the public safe and supported during the present public health emergency. But it does require you to be responsible with people’s personal data and ensure it is handled with care. The ICO has published a document setting out our regulatory approach during the coronavirus pandemic.

2. 我可以依据哪些合法依据来测试员工？

2. Which lawful basis can I use for testing employees?

只要有充分的理由，您就应该能够处理有关新型冠状病毒肺炎的运行状况数据。对于履行其职能的公共当局，公共职责很可能适用。对于其他公共或私人雇主，合法权益可能比较合适，但是您应该对自己的组织进行评估。由于其敏感性，健康数据在数据保护法下具有“特殊类别数据”的受保护状态。因此，雇主还必须确定符合第 9 条的处理条件。相关条件将是第 9 条第 2 款（b）项中的雇佣条件，以及《2018 年数据保护法》的附表 1 条件 1。这是由于其雇主的健康和安全义务而适用的。只要雇主不收集或共享不相关或不必要的数据，此条件就可以满足雇主的大部分要求。

As long as there is a good reason for doing so, you should be able to process health data about COVID-19. For public authorities carrying out their function, public task is likely to be applicable. For other public or private employers, legitimate interests is likely to be appropriate, but you should make your own assessment for your organisation. Due to its sensitivity, health data has the protected status of ‘special category data’ under data protection law. As such, employers must also identify an Article 9 condition for their processing. The relevant condition will be the employment condition in Article 9(2)(b), along with Schedule 1 condition 1 of the DPA 2018. This applies due to their employer health and safety obligations. This condition will cover most of what employers need to do, as long as they are not collecting or sharing irrelevant or unnecessary data.

3. 如何证明我们的测试方法符合数据保护法？

3. How can I show that our approach to testing is compliant with data protection law?

为了表明您对测试数据的处理是合规的，您将需要使用责任制原则。它使您有责任遵守 GDPR，并能够证明您的遵守情况，例如在处理敏感数据时要遵守其他记录保存要求。证明责任的一种方法是通过数据保护影响评估（DPIA）。如果您的组织将要进行测试和处理健康信息，那么您应该进行 DPIA，重点关注新的风险领域。

该 DPIA 应规定：

- 拟进行的处理活动；
- 数据保护风险；
- 拟进行的处理活动是否必要和适当；
- 可以采取的降低风险的缓解措施；和
- 缓解措施有效的计划或确认。

DPIA 被设计为适合于背景的灵活性。我们有一个模板组织可以用来帮助他们专注于最低要求。重要的一点是，应该定期审查和更新最初的 DPIA。随着新的风险和利益的出现，这在快速变化的危机形势下尤其重要。

To show that your processing of test data is compliant, you will need to use the accountability principle. It makes you responsible for complying with the GDPR and says that you must be able to demonstrate your compliance such as additional recording keeping requirements when processing sensitive data. One way of demonstrating accountability is through a data protection impact assessment (DPIA).

If your organization is going to undertake testing and process health information, then you should conduct a DPIA focusing on the new areas of risk.

This DPIA should set out:

- the activity being proposed;
- the data protection risks;
- whether the proposed activity is necessary and proportionate;
- the mitigating actions that can be put in place to counter the risks; and
- a plan or confirmation that mitigation has been effective.

DPIAs are designed to be flexible, as appropriate to the context. We have a template organizations can use to help them focus on the minimum requirements. One important point is that the initial DPIA should be regularly reviewed and updated. This is especially important in a fast-moving crisis situation, as new risks and benefits emerge.

4. 如何确保我不会收集太多数据？

4. How do I ensure that I don't collect too much data?

对于特殊类别数据（例如健康数据），仅收集和保留实现目标所需的最少信息量尤其重要。

为了不收集太多数据，您必须确保它是：

- 足够 - 足以正确实现您指定的目的；
- 相关 - 与该目的有合理联系；和
- 仅限于必要的内容 - 您所拥有的不超过您为此目的所需要的。

在测试结果的上下文中，您需要确保您不会从数据主体那里收集不必要或过多的信息。例如，您可能只需要有关测试结果的信息，而不是有关基础条件的其他详细信息。考虑可用的测试选项，以确保您仅收集必要且适当的结果。作为雇主，您应该能够证明测试个人或从测试中获得结果的原因。数据保护法还要求您拥有的任何个人数据都是准确的。因此，您应记录任何测试结果的日期，因为个人的健康状况可能会随着时间而改变，并且测试结果可能不再有效。

For special category data, such as health data, it is particularly important to only collect and retain the minimum amount of information you need to fulfil your purpose.

In order to not collect too much data, you must ensure that it is:

- adequate - enough to properly fulfil your stated purpose;
- relevant - has a rational link to that purpose; and
- limited to what is necessary - you do not hold more than you need for that purpose.

In the context of test results, you need to ensure you do not collect unnecessary or excessive information from people. For example, you will probably only require information about the result of a test, rather than additional details about underlying conditions. Consider which testing options

are available, to ensure that you are only collecting results that are necessary and proportionate. As an employer, you should be able to demonstrate the reason for testing individuals or obtaining the results from tests.

Data protection law also requires that any personal data you hold is accurate. As such, you should record the date of any test results, because the health status of individuals may change over time and the test result may no longer be valid.

5. 我可以保留有症状或经检测为阳性的员工名单吗？

5. Can I keep lists of employees who either have symptoms or have been tested as positive?

是。如果您需要收集有关员工的特定健康数据，则需要确保对数据的使用实际上是必需的，并且与您指定的目的相关。您还应该确保数据处理的安全性，并考虑对雇员的保密责任。作为雇主，您还必须确保此类清单不会对雇员造成任何不公平或有害的待遇。例如，这可能是由于记录的信息不正确，或者是由于无法确认个人的健康状况随时间而变化。使用或保留您所收集的有关报告了新型冠状病毒肺炎症状的人员数量的信息对于他们出于合理预期的目的也是不公平的。

Yes. If you need to collect specific health data about employees, you need to ensure the use of the data is actually necessary and relevant for your stated purpose. You should also ensure that the data processing is secure, and consider any duty of confidentiality owed to employees.

As an employer, you must also ensure that such lists do not result in any unfair or harmful treatment of employees. For example, this could be due to inaccurate information being recorded, or a failure to acknowledge an individual's health status changing over time. It would also not be fair to use, or retain, information you have collected about the number of staff who have reported symptoms of COVID-19 for purposes they would not reasonably expect.

6. 我需要告诉我的员工什么？

6. What do I need to tell my staff?

透明度非常重要。作为雇主，您从一开始就应该对员工保持清晰、开放和诚实的态度，以了解您希望如何以及为什么使用其个人数据。这在处理健康信息时至关重要。如果您要测试或检查员工的新型冠状病毒肺炎症状，则应清楚将使用该信息做出哪些决定。在可能的情况下，在开始任何健康数据处理之前，您应该为员工准备了清晰且可访问的隐私信息。但是，我们认识到，在这个特殊的时间段内，可能无法提供详细的信息。在进行任何测试之前，您至少应让您的员工知道需要什么个人数据，该数据将用于什么以及与谁共享。您还应该让他们知道打算保留数据多长时间。如果您有任何疑问，让员工有机会讨论此类数据的收集也将对您有所帮助。

Transparency is very important. As an employer, you should be clear, open and honest with employees from the start about how and why you wish to use their personal data. This is crucial when processing health information. If you are testing employees for COVID-19 or checking for symptoms, you should be clear about what decisions you will make with that information. Where possible, you should have clear and accessible privacy information in place for employees, before any health data processing begins. We recognize, however, that in this exceptional time it may not be possible to provide detailed information. Before carrying out any tests, you should at least let your staff know what personal data is required, what it will be used for, and who you will share it with. You should also let them know how long you intend to keep the data for. It would also be helpful for you to provide employees with the opportunity to discuss the collection of such data if

they have any concerns.

5. 在此过程中，我如何确保员工能够行使其信息权？

7. How do I ensure that staff are able to exercise their information rights as part of this process?

为了使数据主体能够行使自己的权利，他们需要了解您拥有哪些个人数据以及用途。因此，透明性至关重要，您应该让您的员工知道如何以易于访问和易于理解的方式使用他们的数据。您还应确保员工能够行使其信息权。为简化此过程，您可能希望采用适当的流程或系统，以帮助您的员工在新型冠状病毒肺炎危机期间行使其权利。例如，关于访问权，您可以考虑设置安全的门户或自助服务系统，以允许员工在适当的情况下管理和更新其个人数据。这也可以使个人行使其他权利，例如更正或删除其数据的权利。如果无法做到这一点，则应确保制定了基本政策和程序，以便在需要时可以随时获得员工数据。

In order for individuals to exercise their rights, they need to understand what personal data you hold, and what you are using it for. As such, transparency is crucial and you should let your staff know how you will use their data in a way that is accessible and easy to understand. You should also ensure that staff are able to exercise their information rights. To make this easier you may wish to put processes or systems in place that will help your staff exercise their rights during the COVID-19 crisis. For example, in relation to the right of access (also known as Subject Access), you might consider setting up secure portals or self-service systems that allow staff to manage and update their personal data where appropriate. This may also allow individuals to exercise other rights such as the right to rectification or erasure of their data. Where this is not possible, you should make sure that basic policies and procedures are in place to allow employee data to be readily available when needed.

6. 一些员工已经有了自己安排的测试的结果。如果他们向我透露这些结果，那么数据保护的考虑是什么？

8. Some staff already have the results of tests that they have arranged for themselves. If they disclose these results to me, what are the data protection considerations?

对于自愿向您披露的任何测试结果，作为雇主，您应充分考虑该数据的安全性，并考虑对提供测试结果的个人应承担的保密义务。您的重点应该放在确保对数据的使用是必要和相关的，并且如果不需要的话，您不会收集或与当局共享无关或过多的数据。

For any test results that are voluntarily disclosed to you, as an employer you should have due regard to the security of that data, and consider any duty of confidentiality owed to those individuals who have provided test results. Your focus should be on making sure your use of the data is necessary and relevant, and you do not collect or share irrelevant or excessive data to authorities if this is not required.

7. 作为人员测试或持续监控的一部分，在现场使用温度检查或热像仪是否合适？

9. Would it be appropriate to use temperature checks or thermal cameras on site, as part of testing or ongoing monitoring of staff?

在考虑使用更具侵入性的技术时，尤其是在捕获健康信息时，需要对使用它的目的和适用情境进行具体考虑，并能够为使用它辩护。对员工的任何监视都必须是必要的，并且要符合他们的合理期望。同样，透明度是关键。您还应该考虑是否可以通过其他较少侵犯隐私的方法来达到相同的结果。如果是这样，则可能无法将监视视为成比例的。监控摄像机专员

(SCC) 和信息专员办公室 (ICO) 共同更新了 SCC DPIA 模板，特定于监视系统。在考虑使用热像仪或其他监视设备之前，这将有助于您进行评估。

When considering the use of more intrusive technologies, especially for capturing health information, you need to give specific thought to the purpose and context of its use and be able to make the case for using it. Any monitoring of employees needs to be necessary and proportionate, and in keeping with their reasonable expectations. Again, transparency is key. You should also think about whether you can achieve the same results through other, less privacy intrusive, means. If so, then the monitoring may not be considered proportionate. The Surveillance Camera Commissioner (SCC) and the Information Commissioner's Office (ICO) have worked together to update the SCC DPIA template, which is specific to surveillance systems. This will assist your thinking before considering the use of thermal cameras or other surveillance.

5. 丹麦

5. Denmark



发布机构： 丹麦数据保护局

Issued by: Danish Data Protection Agency (Datatilsynet, DPA)

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Release time: March 5, 2020

文件名称： GDPR 与新型冠状病毒

File name: How about GDPR and coronavirus?

链接： [link](#)

Link: [link](#)

<https://www.datatilsynet.dk/presse-og-nyheder/nyhedsarkiv/2020/mar/hvordan-er-det-med-gdpr-og-coronavirus/>

丹麦数据保护局已收到许多雇主的询问，这些雇主想知道他们在多大程度上可以记录和披露与新冠病毒有关的雇员信息。

雇主可以要求雇员提供的信息以及要求雇员披露的信息是受雇佣法规则和任何有关健康的公法规则所管辖的问题。

如果这不违反上述规则，则丹麦数据保护局认为，在数据保护规则的框架内，雇主可以在很大程度上记录和披露必要的非具体的健康信息。例如：

- 员工已从所谓的“风险区域”返回
- 一名雇员正在家庭隔离中（未说明原因）
- 雇员生病（未说明原因）

雇主根据具体情况，也可以合理记录和披露可能被视为健康信息的内容，例如：某员工感染了新冠病毒，此处考虑的是管理人员及其同事可以采取必要的预防措施。但是，要记住的是，记录或披露的必须是事实内容，并且记录和披露的信息必须限于必要的内容。因此，雇主应考虑：

- 是否有充分的理由记录或披露有关信息
- 是否需要具体信息，包括是否可以通过“最小化披露”来达到目的
- 是否需要显名化-例如披露被感染者的姓名和/或家庭隔离区

The Danish Data Protection Agency has received a number of inquiries from employers who want to know the extent to which they can register and disclose information about their employees in connection with a new coronavirus.

What an employer can ask the employee to provide, and what the employee is required to disclose, are issues that are governed by employment law rules and any public law rules on health, etc.

If this does not contravene the aforementioned rules, the Danish Data Protection Agency considers that, within the framework of the data protection rules, an employer can to a large extent record and disclose information that is not so specific and specific that it can be considered as health information when the situation necessitates that. It could, for example, be:

- that an employee has returned from a so-called "risk area"
- that an employee is in the home quarantine (without stating the reason)
- that an employee is ill (without stating the reason)

As the case may be, it will also be justified for the employer to record and disclose information that may be considered health information, e.g. that an employee is infected with new coronavirus. The consideration here may be, for example, that management and colleagues can take the necessary precautions.

However, it is important to keep in mind that the registration or disclosure must be factual, and the information recorded and disclosed must be limited to what is necessary. The employer should therefore consider:

- whether there is a good reason to record or disclose the information in question
- whether it is necessary to specify the information, including whether the purpose can be achieved by "telling less"
- whether it is necessary to name names - e.g. the name of the person infected and / or in the home quarantine.

6.德国

6.Germany

发布机构: 北莱茵-威斯特法伦州负责数据保护和信息自由的国家代表

Issued by: landesbeauftragte für datenschutz und informationsfreiheit nordrhein-westfalen

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文件名称: 关于雇主和雇主处理与新型冠状病毒肺炎有关的个人数据的数据保护法信息

File Name: Datenschutzrechtliche Informationen zur Verarbeitung von personenbezogenen Daten durch Arbeitgeber und Dienstherren im Zusammenhang mit der Corona-Pandemie

链接: [link](#)

Link: [link](#)

https://www.lidi.nrw.de/mainmenu_Aktuelles/Inhalt/Corona-und-Datenschutz/Corona-und-Datenschutz.html

★鉴于德国是联邦制，各州数据保护监管机构发布了不同的指引，此处选取了北莱茵-威斯特法伦州作为代表。In view of the federal system in Germany, the state data protection regulators issued different guidelines, and North Rhine Westphalia was selected as the representative.

1. 雇主可以询问雇员可能的新型冠状病毒肺炎症状吗？

1. Can an employer ask employees about symptoms of a possible corona infection?

仅在局限于新冠感染的典型症状且感染风险增加的情况下(例如,如果其他员工有感染),才允许进行此类调查。根据联邦健康教育中心的说法,新型冠状病毒肺炎的感染可导致发烧和咳嗽等症状。

注意:但是,根据当前可用的信息,除医学检查之外,没有任何症状可以明确表示感染新型冠状病毒肺炎。相反,其他疾病也可能引起新型冠状病毒肺炎的常见症状;无症状也可发展为新冠感染。

Such a survey is only permitted if it is restricted to typical symptoms of novel coronavirus (2019-nCoV) infection and there is an increased risk of infection, for example if there was an infection in other employees. According to the Federal Center for Health Education, infection with the novel corona virus can lead to symptoms such as fever and cough.

Note: According to the information currently available, however, there are no symptoms that - outside of medical examinations - clearly speak for a corona infection. Rather, frequently occurring symptoms can also be caused by other diseases; Corona infections can also develop without symptoms.

2. 雇主可以询问雇员有关新冠测试呈阳性的问题吗？

2. Can an employer ask employees about positive corona testing?

是。由于感染风险增加,员工有义务在感染时通知雇主或雇主有权就此进行询问。

Yes. Due to the increased risk of infection, the employees are obliged to inform the employer in the event of an infection or the employer has the right to ask questions.

3. 雇主可以询问雇员有关旅行目的地的信息吗？

3. Can an employer ask employees about travel destinations?

有关旅行目的地的问题一般涉及员工的隐私。这样的问题对于建立雇佣关系不是必需的,因此是不可接受的。然而,在公认的风险区域(目前是中国和意大利)停留的具体问题是可以接受的。就这一点而言,由于感染风险增加,因此雇员有义务通知雇主或雇主有权提出问题。

A general question about travel destinations only concerns the privacy of employees. Such a question is not necessary to carry out the employment relationship and is therefore inadmissible. However, the specific question of stays in recognized risk areas (currently e.g. China and Italy) is

permissible. In this regard, there is an increased risk of infection, so that employees are obliged to inform the employer or have the right to ask questions.

4.雇主可以询问雇员与感染者的接触情况吗？

4. Can an employer ask employees about contacts with infected people?

如果该问题是针对员工在过去 14 天内与直接环境中的人员（例如家庭成员，熟人，医生等）直接接触的人员的感染和可疑病例，则是允许的。

Such a question is permissible if it is directed towards infections and suspected cases in persons with whom employees or persons from their immediate environment (e.g.family members, close acquaintances, doctors, etc.) have had direct contact within the last 14 days .

5.雇主可以对雇员进行发烧测量吗？

5. Can the employer carry out fever measurements on the employees?

根据 BDSG 第 26 条第（3）款第 1 条，在严格的条件下在公司场所或建筑物的入口处进行非接触式发烧测量被认为是合理的。目前尚无关于发烧是否为确定新型冠状病毒肺炎感染的确定标准的可靠信息。但是，温度控制可能是获取有关可疑新冠病例信息的合适方法。

是否允许测量发烧取决于具体情况。具体情况在这里起着决定性的作用，例如公司中是否已经存在明显感染者的案例，公司是否位于危险区域或员工是否与感染者接触过。

如果发烧测量仅用于确定某人是否在所述日期入院，则不必存储数据。出现高温，雇员应去医院或就医以查明原因。

建议雇主找到一个可以相互接受的解决方案，其中涉及雇员，工作员工委员会以及数据保护官。该措施也可以在有关雇员的自愿同意的基础上执行。前提条件是必须充分告知他们有关健康数据处理的信息。在公司协议中，可以透明地规定有关措施实施方式（包括处理可疑案件）的基本规则。

Contactless fever measurements at the entrance to company premises or buildings can be justified under strict conditions in accordance with section 26 (3) sentence 1 BDSG. There is currently no reliable information about whether fever is a definite criterion for determining a corona infection. However, temperature control can be a suitable means of obtaining information about suspected corona cases.

Whether the fever measurement is permitted depends on the individual case. The specific circumstances play a decisive role here, for example whether there are already cases of demonstrably infected people in the company, whether the company is located in a risk area or whether employees have or have had contact with infected people.

Storage of the data should not be necessary if the fever measurement is only used to determine whether someone is admitted for the day in question or not. At an elevated temperature, the worker should go to a hospital or doctor to clarify the cause.

Employers are advised to find a mutually acceptable solution that includes the employees, the works or staff council and the data protection officer. The measure can also be carried out on the basis of voluntary consent from the employees concerned. The prerequisite is that they are fully informed about the processing of their health data. In a company agreement, the essential rules regarding the "how" of the implementation of the measure including the handling of suspected cases can be regulated transparently.

6.雇主对雇员或第三方有什么信息义务？

6. What information obligations does the employer have towards employees or third parties?

如果感染风险增加（例如，由于检测到员工感染），雇主可能有义务告知其他与该感染者接触过的员工或第三方有关感染风险的信息。在这种情况下，只要有必要保护他人，也允许相应的数据处理。但是，通常无需点名感染者。

If there is an increased risk of infection (e.g. due to a detected infection of an employee), an employer may be obliged to inform other employees or third parties who have been in contact with the infected person about the resulting infection risk. In this context, corresponding data processing is also permitted, insofar as it is necessary to protect other people. However, it is usually not necessary to name an infected person.

7. 奥地利

7. Austria



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File Name: FAQ zum Thema Datenschutz und Coronavirus (COVID-19)

链接： [link](#)

Link: [link](#)

https://www.dsb.gv.at/documents/22758/23115/faq_zum_thema_datenschutz_und_coronavirus_covid-19_Stand_24_4_2020/7c0f6131-aed3-4bf5-8515-b724c82915a9

1. 雇主可以问雇员是否曾经在危险地区或与感染者接触过吗？

1. Can an employer ask its employees whether they have been in a risk region or whether they have had contact with infected people?

根据劳动法的规定（包括私法和公法），雇主有谨慎义务，并且必须确保排除工作场所的健康风险。排除健康风险还包括预防感染和控制在工作场所的病毒传播。

在这一背景下，根据 GDPR 第 9 条第 2 段 b 项，雇主（责任人）确定健康状况可以是履行《劳动法》的义务。

社会事务部提供了关于以下风险领域和感染病例的进一步资料： [link](#)

Employers have a duty of care due to labor law provisions (both private and public) and must ensure that health risks in the workplace are excluded. The exclusion of health risks also includes

the prevention of infections and the containment of virus spread at the workplace.

Against this background, the ascertainment of the state of health by employers (responsible persons) can be based in particular on the fulfillment of labor law obligations in accordance with Art. 9 Para. 2 lit. b GDPR are supported.

The Ministry of Social Affairs offers further information on risk areas and infection cases under:[link](#)

2. 如果雇主口头询问其雇员的健康状况，则数据保护法不适用。那是对的吗？

2. If an employer orally asks its employees about their state of health, data protection law does not apply. Is that correct?

不对，应该注意的是，GDPR 也适用于口头通讯。这意味着无论数据是以实物问卷调查（文件系统）或口头形式收集，都必须遵守数据保护法规。

No. It should be noted that GDPR also applies to oral communications. This means that data protection regulations must be observed, regardless of whether the data are collected electronically, in the form of physical questionnaires (file system) or orally.

3. 雇主可以命令所有雇员在进入公司之前进行温度测量（“发烧测量”）吗？

3. Can an employer order that all employees take a temperature measurement (“fever measurement”) before entering the company?

这主要是劳动法问题。从数据保护的角度来看，有更温和的方式来收集健康数据（即检查健康状况），例如询问员工（请参阅问题 1），尤其是因为发烧只是感染新型冠状病毒肺炎（COVID-19）的几种可能症状之一。

作为对雇主忠诚义务的一部分，员工必须主动并报告可疑感染，可以向员工指出这一点。

如果法律规定了检查义务（能力和后续检查），则可能存在例外。对于存在职业病风险的《雇员保护法》第 49 条所指的活动，可能就是这种情况。

This is primarily a labor law question. From a data protection perspective, there are more moderate means of collecting health data (i.e. checking the state of health), such as questioning the employee (see question 1), especially since fever is only one of several possible symptoms of a possible infection with COVID-19.

As part of the duty of loyalty to the employer, employees have to take the initiative and report suspected infection. This can be pointed out to the workforce.

An exception can exist if an obligation to examine (aptitude and follow-up examination) is prescribed by law. This can be the case for activities within the meaning of Section 49 of the Employee Protection Act where there is a risk of an occupational disease.

4. 公司可以保留访客名单吗？

4. Can a company keep visitor lists?

访客名单（公司访客姓名和联系方式）中的数据可用于向访问者通报公司感染情况（警告可能与受感染的人接触）。处理目的是为了更方便与访客的联系并遏制感染的蔓延。

The data from visitor lists (name and contact details of a company's visitor) can be used to the extent necessary to inform visitors about an infection in the company (warning that there was a potential contact with an infected person). The purpose of processing is to make it easier to contact visitors and reduce the spread of infections.

5. 雇主可以向卫生部门提交有关感染病例的数据吗？

8. Can an employer submit data on infection cases to health authorities?

为了将有关特定感染病例的数据传输给卫生部门，DSGVO 第 9 条第 2 款 i 项结合 DSG 第 10 条第 2 段提供相应的法律依据。

此外，应地区行政部门的要求，根据 GDPR 第 9 条第 2 款第 i 项和《1950 流行病法案》第 5 (3) 条，雇主有义务提供关于疑似病例和感染的信息。

如有任何问题，请与卫生部门联系。

For the transmission of information about specific cases of infection to the health authorities, Art. 9 Para. 2 lit. i DSGVO in conjunction with § 10 para. 2 DSG a corresponding legal basis.

In addition, at the request of the district administrative authorities, an obligation of the employer to provide information about suspected cases and infections according to Art. 9 para. 2 lit. i GDPR in conjunction with Section 5 (3) Epidemic Act 1950.

Please contact the health authorities if you have any questions as to whom infections or suspected cases should be reported.

9. 雇主可以收集员工的私人联系方式，以便在短时间内通知他们有关工作场所的疑似感染或感染吗？

6. Can an employer collect the private contact details of employees in order to be able to inform them at short notice about suspicions or an infection at the workplace?

为了预防风险，允许雇主要求并临时保存其雇员的私人联系信息，以便可以收到有关在工作场所的疑似或感染的短期警告，从而使他们不必出现在工作地点。但是，不能强迫员工告知这一信息。

数据保护机构在其网站上提供了一个样本表格，用于收集员工的私人联系方式。样本表格涵盖了所有数据保护要求，特别是根据 GDPR 第 13 条的信息告知义务。

For risk prevention, it is permissible for employers to request and temporarily save their employees' private contact details so that they can be given a short-term warning about a suspicious event or an infection at the workplace so that they do not have to appear at the workplace. However, workers cannot be forced to make this announcement.

The data protection authority provides a sample form for the collection of private contact details of employees on its website. The sample form covers all data protection requirements, in particular the information requirements according to Art. 13 GDPR.

7. 雇主可以向员工提供感染新型冠状病毒肺炎（COVID-19）的个人的具体姓名吗？

7. Can an employer give the workforce the specific name of individuals who have been infected with the coronavirus (COVID-19)?

有关感染和疑似病例的数据是敏感数据，数据保护法为其提供了特殊保护。目的是为了阻止工作场所中的个人因被怀疑感染或感染而受到污名化。

同时，数据保护法规定，可以在限制病毒传播和保护人们所必需的程度上使用健康状况数据。

按照 GDPR 第 5 条第 1 款 c 项的数据最小化原则，在个别情况下，必须仔细考虑是否有必要向工作人员提供被感染者的具体姓名或工作场所中已发生感染的一般信息。如果必须确定在感染已知之前谁曾与这些人接触，则可以单独指明被感染者。

Data on infections and suspected cases are sensitive data for which data protection law provides special protection. In particular, the aim is to prevent individual people at the workplace

from being stigmatized due to suspicion or infection.

At the same time, data protection law stipulates that data on health status can be used to the extent that is necessary to curb the spread of the virus and to protect people.

In accordance with the principle of data minimization in accordance with Art. 5 Para. 1 lit. c GDPR must therefore be carefully considered in individual cases whether it is necessary to provide the workforce with the specific name of an individual who has become infected or with the general information that an infection has occurred in the workplace. An individual naming of infected persons can prove to be permissible if it has to be ascertained who had contact with these persons before the infection became known.

8. 我被怀疑感染了，卫生部门可以处理关于我的哪些数据？

8. I am suspected of being infected or infected. What data can the health authorities process about me?

可以在限制病毒传播和保护他人所需的程度上使用健康数据。

根据 GDPR 第 9 条第 2 款 i 项结合《1950 年流行病法》第 4 (4) 条，在任何情况下都要处理您的以下数据类别：

- 用于识别病人的数据（姓名、性别、出生日期、社会保险号以及根据 E-GovG 第 9 条进行的特定地区的个人识别），
- 与应报告疾病有关的临床数据（疾病的病史和病程）和实验室数据，
- 有关应报告疾病的患者环境数据，以及
- 有关所采取的预防措施的数据。

为了保护您的数据，《1950 年流行病法》第 4 条规定了卫生部门必须遵守的特殊安全要求。

Health data can be used to the extent necessary to curb the spread of the virus and to protect others.

According to Art. 9 Para. 2 lit. i GDPR in conjunction with Section 4 (4) Epidemic Act 1950 in any case process the following data categories from you:

- Data for the identification of sick people (name, gender, date of birth, social security number and area-specific personal identification according to § 9 E-GovG),
- The clinical data relevant to the notifiable disease (history and course of the disease) and laboratory data,
- Data on the patient's environment, insofar as they relate to the notifiable illness, and
- Data on the precautionary measures taken.

To protect your data, section 4 of the 1950 Epidemic Act stipulates special security requirements that health authorities must comply with.

9. 举办大型活动（交易会，剧院，体育赛事等）的企业是否必须向卫生部门提供访客数据？

9. Do entrepreneurs who have organized mass events (trade fairs, theaters, sports events, etc.) have to provide visitor data to the health authorities?

应地区行政部门的要求，根据第 9 条第 2 款 i 项，结合 1950 年《流行病法》第 5 条第 3 款，组织者有义务提供有关可疑病例和感染的信息。提供信息的义务还涵盖了在必要范围内访问者数据的传输。如果将来再次加强出行限制，则此信息提供将变得尤为重要。

At the request of the district administrative authorities, organizers are obliged to provide information on suspected cases and infections in accordance with Art. 9 Para. 2 lit. i GDPR in conjunction with Section 5 (3) of the 1950 Epidemic Act. The obligation to provide information

also covers the transmission of visitor data to the extent necessary. This provision of information can become particularly relevant if the exit restrictions are tightened again in the future.

10. 在当前特殊情况下，市长可以使用哪些数据来支持其社区中的公民？

10. What data can a mayor use to support citizens in his community in the current exceptional situation?

立法者通过 COVID-19 第 3 号法案（《联邦法律公报》第 23/2020 号）修订了《1950 年流行病法案》，并为数据处理引入了另一个法律依据。

现在，《1950 年流行病法》第 3a 条规定，地区行政当局有权将因 1950 年《流行病法》而受到隔离措施影响的人的姓名和所需联系方式通知市长，原因是新型冠状病毒肺炎出现在其所在地区（如果有），需要为其提供必要的保健服务或日常需要的商品或服务。

此法律依据应根据 GDPR 第 5 条的数据保护原则进行解释。《1950 年流行病法》第 3a 条第 3 款至第 4 款也对此进行了表述。因此，禁止将数据用于其他目的，如果不再需要对数据进行处理，则必须立即将其删除。另外，必须根据 GDPR 第 32 条第 1 款采取适当的数据安全措施。

最后，应该指出的是，根据《1950 年流行病法》第 50 条第（8）款，该法律依据将于 2020 年 12 月 31 日到期，因此时间有限。

With the 3rd COVID-19 Act, Federal Law Gazette I No. 23/2020, the legislator amended the 1950 Epidemic Act and introduced another legal basis for data processing.

Section 3a of the 1950 Epidemic Act now stipulates that the district administrative authority is authorized to notify the mayor of the name and the required contact details of a person affected by a segregation measure under the 1950 Epidemic Act due to COVID-19 who lives in his or her area, if and insofar as it is available, providing this person with necessary health services or with goods or services of daily needs is absolutely necessary.

This legal basis is to be interpreted in the light of the data protection principles of Art. 5 GDPR, which is also expressed in § 3a Paragraph 3 to Paragraph 4 of the 1950 Epidemic Act. Accordingly, data processing for other purposes is prohibited and the data must be deleted immediately if their processing is no longer necessary. In addition, suitable data security measures must be taken in accordance with Art. 32 Para. 1 GDPR.

Finally, it should be noted that this legal basis according to Section 50 (8) of the 1950 Epidemic Act expires on December 31, 2020 and is therefore limited in time.

11. 从数据保护的角度来看，居家办公时应考虑什么？

11. From a data protection point of view, what should be considered when using home offices?

从数据保护的角度来看，应根据 GDPR 第 32 条第 1 款考虑对数据安全的要求。

数据保护机构在其网站上提供了相应的信息表。建议雇主与雇员使用此信息表。

From a data protection perspective, the requirements for data security in accordance with Art. 32 Para.

The data protection authority provides a corresponding information sheet on its website. It is suggested that employers share this information sheet with their employees.

12. 通信提供商可以向政府提供移动用户的移动档案来遏制感染传播吗？

12. Can communications providers provide government government mobile user movement

profiles to curb infection spread?

这是根据 GDPR 第 9 条第 2 款 e 项结合 TKG 2003 第 102 (1) 1 条的规定，前提是仅传输没有个人指向性的数据（“匿名数据”）。基于此匿名数据，可以分析行踪轨迹，并因此可以检查出行限制遵守的程度。必须使用适当的匿名化技术来确保不再可能或者仅通过极不相当的成本得出有关特定人员的结论。

在当前情况下，根据当前的国家法律规定--GDPR 第 9 条第 2 款 e 项结合 TKG 2003 第 102 (1) 2 条，只有根据特定个人可撤销的同意，才可以转让可以识别到特定个人的行踪轨迹档案。

This is permissible in accordance with Art. 9 e-GDPR in conjunction with Section 102 (1) 1 TKG 2003, provided only data without personal reference ("anonymous data") are transmitted. On the basis of this anonymous data, flows of motion can be analyzed and consequently it can be checked to what extent the exit restrictions are complied with. Appropriate anonymization techniques must be used to ensure that it is no longer possible to draw conclusions about specific persons or only with disproportionate effort.

In the present context and according to the current national legal situation, the transfer of an individual movement profile, which can be assigned to a specific person, is only possible on the basis of a revocable consent of the specific person in accordance with Art. 9 e-GDPR in conjunction with Section 102 (1) 2 TKG 2003 .

13. 到目前为止，欧洲数据保护委员会发布了哪些有关数据保护和新型冠状病毒肺炎的准则？

13. What guidelines has the European Data Protection Board published on data protection and COVID-19 so far?

欧洲数据保护委员会一方面在其《关于使用位置数据和工具确定与新型冠状病毒肺炎爆发有关的联系人的准则 04/2020》中发表了有关位置数据和匿名化的声明（请参阅问题 12），另一方面针对制定的“Corona 应用”（电子联系日志）提出了建议和功能要求。

此外，欧洲数据保护委员会在其《关于为与新型冠状病毒肺炎爆发有关的科学研究而进行的健康数据处理的准则 3/2020》中，根据 EU-GRC 第 13 条对数据保护的基本权利与科学自由之间的关系发表了意见。

两种指南目前都以英文提供。b

In its guidelines 04/2020 on the use of location data and tools for the determination of contact persons in connection with the outbreak of COVID-19, the European Data Protection Committee on the one hand made statements about location data and anonymization (see question 12) and on the other hand recommendations and functional requirements for so-called "Corona apps" (electronic contact diaries) formulated.

In addition, in its guidelines 3/2020 on the processing of health data for the purpose of scientific research in connection with the outbreak of COVID-19, the European Data Protection Committee made statements on the relationship between the fundamental right to data protection and the freedom of science according to Art. 13 EU-GRC.

Both guidelines are currently available in English.

8.匈牙利

8.Hungary



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文件名称：关于新型冠状病毒肺炎疫情相关数据处理的信息

File Name: Information on processing data related to the coronavirus epidemic

链接： [link](#)

Link: [link](#)

https://naih.hu/files/NAIH_2020_2586_EN.pdf

自然人数据主体、雇主和医疗专业人员联系了Nemzeti Adatvédelmi és Információszabadság Hatóság（匈牙利国家数据保护和信息自由管理局）进行询问，因新型冠状病毒肺炎的快速跨境传播导致的医疗保健危机，依据数据保护要求可以实施的疫情防护措施的类型以及这些防护措施处理个人数据是否合理——尤其是作为特殊类型个人数据之一的健康数据。

据管理局收到的咨询，为了在医疗确诊和治疗之前就对可能危及同事健康的潜在感染者进行筛查，某些组织使用调查问卷或测量设备收集个人数据，包括敏感数据（健康数据）。数据收集范围包括工作时间以外的旅行和活动，侵犯了数据主体的隐私；某些地方甚至要求对全体工作人员进行强制性体温测量。

有鉴于此，管理局发出以下有关处理冠状病毒相关数据的资料，以敦促数据控制者和处理者采取符合规定的数据处理方法，并确保能够有效保护数据主体的隐私。该指南适用于于公共和私营组织，以及雇佣关系或其他为执行工作的法律关系，亦或与其他第三人（如客户、访客）的关系中处理个人数据。

Natural person data subjects as well as employers and health care professionals contacted the Nemzeti Adatvédelmi és Információszabadság Hatóság (Hungarian National Authority for Data Protection and Freedom of Information, hereinafter: the Authority) in relation to the health care crisis due to the coronavirus (COVID-19) spreading exceedingly fast across borders inquiring about the kind of measures that can be implemented to contain the virus that are compliant with the data protection requirements in force and whether it is possible to process personal data – particularly health data which constitute a special category of personal data – in relation to the development and implementation of these measures.

Based on the queries received by the Authority, with a view to screening those possibly

infected who may jeopardise the health of their colleagues even before diagnosing the disease by a physician and its treatment, certain organizations collect personal data,¹ including sensitive data² (health data), using questionnaires or measuring devices. Such data collections extend to trips and events outside working hours intruding upon the privacy of the data subjects; even demanding mandatory body temperature measurements for the entire staff in some places.

In view of the above, the Authority issues the following information on processing data related to the coronavirus with a view to developing compliant data processing practices by data controllers and processors, and to ensuring the efficient protection of the privacy of the data subjects. This guidance extends to organization both in the public and the private sector and the processing of the personal data of individuals in an employment relationship or other legal relationship aimed at the performance of work and of other third persons (such as clients, visitors)

1、根据现行数据保护规定，数据控制者（即雇主和提供医疗健康服务的医生）对数据处理的合规性负有主要责任。除《匈牙利 2011 年关于信息自决权和信息自由的第 CXII 号法案》（以下简称“《隐私法案》”）规定的处理个人数据的组织机构（尤其指执法机关、国家安全和国防机关）以外，大部分数据控制者，包括大部分雇主，需要遵守《通用数据保护条例》的规定。在计划进行任何数据处理的过程中，包括收集、传递和使用敏感个人数据（健康数据）等数据处理，应当考虑到数据处理的一般原则，尤其是责任原则。在计划进行任何数据处理的过程中，包括收集、传递和使用敏感个人数据（健康数据）等数据处理，应当考虑到数据处理的一般原则，尤其是责任原则。在计划进行任何数据处理的过程中，包括收集、传递和使用敏感个人数据（健康数据）等数据处理，应当考虑到数据处理的一般原则，尤其是责任原则。

重要的是，只有在其他不需要处理个人数据的手段无法实现既定目的的情况下，才可以处理个人数据。并且在任何情况下，都需要检视是否采取了足够的措施以减少对数据主体的隐私威胁。在某些情况下，服务处可以提供有效的解决方案，而无需处理数据，例如，详细制定基本卫生措施，更彻底地清洁办公工具和办公室，提供消毒剂并要求更频繁地使用或调整接待客户的顺序，并在客户服务处使用玻璃隔板。

如果证明所提到的措施不充分，且处理个人数据似乎是绝对必要的，则数据控制者必须首先说明数据处理的明确目的和遵守的法律依据。不可忽视数据最小化原则，数据收集必须绝对必要，处理（收集和储存）需数据符合相称性原则。数据控制者还必须保证数据处理的透明度以及数据的准确性和安全性。

根据《通用数据保护条例》第 13 条以及《隐私法案》第 16 节（基于执法目的、国家安全和国防方面的数据处理），为所有数据处理目的起草隐私政策文件是必须的。隐私政策必须以数据主体容易理解的方式详细说明与数据主体有关的数据处理的目的和法律依据、数据存储的期限、授权访问数据的人员范围；如果是基于合法利益的数据处理【《通用数据保护条例》第 6（1）（f）条】，则有必要进行利益平衡测试，以验证与处理目的相关的利益是否优先于数据主体的合法权利、自由或利益。

1. Pursuant to the data protection rules in force, the data controller⁴ – that is, the employer calling for control and the physician providing health care – carries primary responsibility for the compliance of data processing. A substantial part of data controllers, including the majority of employers, are required to apply the provisions of the General Data Protection Regulation (hereinafter: GDPR), excluding the bodies involved in the processing of data subject exclusively to Act CXII of 2011 on the Right to Informational Self-Determination and on the Freedom of

Information (hereinafter: Privacy Act), thus in particular the bodies of law enforcement, defence and national security.

Just as in the course of planning any data processing, data processing including the collection, forwarding and use of sensitive personal data (health data), subject to this information, has to be developed taking into account the principles of data protection in general and the principle of accountability in particular.

It is an important expectation that the processing of personal data is warranted only if and to the extent that the purpose of data processing cannot be achieved by other means not requiring data processing, and it must be examined in every case whether there are efficient solutions that pose less threat to the privacy of the data subjects. Thus, for instance, specifying basic hygienic measures, cleaning work implements and offices more thoroughly, providing disinfectants and requiring their more frequent use or regulating the order of receiving clients and using glass partitions at customer service desks may, in some cases, provide efficient solutions without the processing of personal data.

If the means referred to prove to be inadequate and the processing of data seems absolutely necessary, the data controller has to specify first and foremost the accurate purposes of data processing and the legal basis for compliance. The principle of data minimisation should not be left unconsidered as it stipulates that data to be processed (collected and stored) must be absolutely necessary and proportionate for the purpose to be achieved. Data controllers must also provide for the transparency of data processing as well as the accuracy and security of the data.

Pursuant to Article 13 of GDPR (and Section 16 of the Privacy Act in the case of data processing for the purposes of law enforcement, national security and defence) drawing up a privacy policy document is mandatory for all data processing purposes. The privacy policy must detail the purpose and legal basis of the data processing affecting data subjects, the period of storing the data, the range of individuals authorised to access the data in a manner that is easily understood by the data subjects; in the case of data processing based on legitimate interest [GDPR Article 6(1)f)] it is necessary to perform an interest evaluation test to verify whether the interest linked to the purpose to be achieved through data processing overrides the rights, freedoms or legitimate interests of the data subjects.

2. 信息管理局现已查明现行法律条例对于一些常见的数据处理的要求。

1. 在涉及工作的法律关系中（就业、公务员、政府雇员、政府和公共服务机构员工及其他劳动关系）的数据处理中，雇主有责任部署和采取相应的数据处理流程以避免危害健康、确保劳动安全。

在此前提下，雇主应采取的措施包括：

- 制定疫情/业务持续性行动计划（以下简称：行动计划）（建议该计划应扩展到为降低风险采取的预防步骤、对最终出现感染采取的措施、初步考虑所采取的措施的数据保护风险、组织机构内的责任问题、建立高效和充分的沟通渠道以向数据主体提供信息）；
- 作为行动计划的一部分，就降低威胁的初步措施，必须起草一份详细的信息文件提供给雇员，内容包括与新型冠状病毒有关的重要问题（感染来源、传播方式、潜伏期、症状、预防措施），以及如果与冠状病毒有接触，或有上述信息文件中规定的其他情形出现应当向谁寻求帮助；

- 如有必要，重新安排业务、商务/服务旅行及活动，并确保最终采取远程办公的可能性；
- 需要特别注意的是，在与冠状病毒发生任何指称的接触时，以及在信息材料中规定的其他状况出现时，个人应立即向指定人员报告、及时就医，以保障自身和其他同事健康安全。

如果雇员主动向雇主报告可能感染或雇主根据员工提供的数据认为存在感染的可能性，雇主可以记录该报告的日期以及识别该员工身份的个人数据、该员工是否有信息材料中所列明的时间范围内和国家的旅行史，如果有，具体的日期和地点，即使是出于私人原因，与来自信息材料中所列国家或地区人员的接触信息以及基于雇主提供给雇员的信息，雇主所采取的措施（如提供企业医生处就医的机会、允许员工在家自主隔离）。在本报告所指出的数据范围内，信息管理局认为，在雇主预先进行了风险评估，认为采取一定程度上限制员工隐私权的措施是有必要的，那么可以让员工完成问卷调查。但是，管理局明确地强调，调查问卷不可以包括关于数据主体的病历数据，并且雇主不得要求雇员附上健康资料文件。

在这些情形下，数据处理的合法性基础可以是根据《通用数据保护条例》第 6 (1) (f) 条规定的合法利益。组织机构履行公共职责或行使公共职权的情形，则可以是《通用数据保护条例》第 6 (1) (e) 条。在这种情况下，如果考虑到前款，则可以根据《通用数据保护条例》第 9 (2) (b) 条确定处理健康数据的条件，因为劳动法的规定要求雇主确保雇员的健康和工作环境的安全。

但根据其他成员国监管机构的立场，信息管理局考虑到匈牙利疫情发展的现状，雇主用诊断设备对员工进行检测筛查（包括但不限于体温计测量）或是要求对员工体温进行强制性测量是不符合比例原则的，因为考虑到收集和评估与冠状病毒症状有关的信息并从中得出诊断结论是医疗专业人员和主管当局的责任。

如果在员工报告、个案情形考量、风险评估的基础上，雇主认为对于某些感染风险比较大的职业来说有必要的，可以根据前述《通用数据保护条例》第 6 (1) (f) 条、第 6 (1) (e) 条、第 9 (2) (h) 条、第 9 (3) 条采取相应措施。从而雇主只能要求由医疗健康专业人员或在其职责范围内进行检测，并且雇主仅能被告知检测结果。

II. 必须明确的是，医疗保健服务提供商以及公司医生，作为独立的数据控制者，必须遵守有关其行为的数据保护要求。

除 1997 年《关于处理和保护健康医疗有关个人数据的第四十七号法令（以下简称《健康数据法》）外，还可适用《通用数据保护条例》第 6 (1) (c) 条和第 9 (2) (i) 条规定作为合法性基础。例如，这包括《关于预防传染病和疫情的必要流行病学措施的第 18/1998 号法令》第 25 条，要求健康医疗服务提供商报告和记录感染病历或疑似感染病历，特别是，根据 98 法令附件一中的关于病历识别的详细规定（该法案也包括非典型肺炎的识别），除此之外，还有《关于报告和预防传染病法令》以及《健康数据法》的规定。

此外，根据《关于报告和预防传染病法令》，国家公共卫生中心于 2020 年 3 月 2 日制定的与新型冠状病毒有关的程序令载有主治医师需遵循的流行病学和感染病的规定，该法令是根据世界卫生组织欧洲疾病预防和控制中心的建议和要求汇编的，因此并非法律要求，但主治医师必须在其活动过程中加以实施。

III. 根据该局采取的立场，从适用于雇主和雇佣关系中的人员的一般行为要求来看，雇员必须向雇主通报影响工作场所、其他雇员或第三人的健康或其他风险。该局强调在雇主进行上述数据处理时雇员有权根据《通用数据保护条例》第三章的规定行使应有的权利。

IV. 关于处理法定工作关系以外的第三方（例如客户和来访者）的数据，管理局强调：

- 在对进入组织机构工作场所的人员实施强化管控措施的过程中，作为行动计划的一

部分,应特别注意权衡预先实施的措施的数据保护风险和建立有效和充分的沟通渠道,以便向数据主体提供信息;

- 作为行动计划一部分,采取降低风险的预防措施,必须起草详细的信息通知提供给第三方,其中包括与冠状病毒有关的最重要信息(感染来源、传播方式、潜伏期、症状、如何预防),以及向他们发出呼吁,要求他们在进入工作场所时立即将任何推定的与冠状病毒有关或其他规定的状况告知访问管理工作人员。

根据管理局采取的立场,第一节规定的数据处理的法律基础也可适用于为此目的处理第三人的数据。

在行动计划中,各组织机构可规定针对这些人员的管控措施,这些措施最终可能与专门规定雇佣关系中的规则不同,而可能与个人数据处理(例如,禁止进入)相关。

2. The Authority has identified certain requirements stemming from the legal regulation in force in relation to some frequent cases of data processing.

I. In the case of data processing related to legal relationships aimed at the performance of work (employment, the legal relationship of public employees, public servants, government employees and public service employees, as well as other legal relationships aimed at the performance of work), the employer is responsible for ensuring the conditions for the safe performance of work which do not endanger health and for planning and developing the related processes of data processing.

Under this, the measures expected from the employer include:

- the development of the so-called pandemic/business continuity action plan (hereinafter: action plan) (it is recommended that it should extend to preventive steps to be taken to reduce threats, measures to be taken upon the eventual appearance of the infection, preliminary

consideration of the data protection risks of the measures applied, issues of responsibility within the organization and building efficient and adequate channels of communication facilitating the provision of information to the data subjects);

- as part of the action plan, in terms of the preliminary measures reducing threats, a detailed information document has to be drafted and made available to the employees concerning the most important issues to be known in relation to the coronavirus (source of the infection, mode of spreading, period of incubation, symptoms, prevention), and who to turn to in the event of any alleged contact with the coronavirus or upon the onset of other conditions specified in the information material;

- if needed, conduct of business and business/service trips and events may eventually have to be reorganized and the possibility of eventually working from outside the workplace must be ensured;

- attention needs to be called with emphasis to the fact that in the event of any alleged contact with the coronavirus and upon the onset of other conditions specified in the information material individuals should report this to the designated person and visit the company doctor or another physician immediately in order to protect their own and their colleagues' health.

If an employee reports possible exposure to the employer or the employer deems that the suspicion of exposure can be established from the data provided by the employee, the employer may record the date of the report and the personal data of the employee concerned for the establishment of their identity, the fact of whether or not the venue and date of the employee's foreign travel, even if for a private purpose, coincides with the territories (countries) and periods

listed in the employer's information material; the data concerning the fact of having contact with a person arriving from the territories indicated in the employer's information material; and based on information made available to the employer, the measures taken by the employer (e.g. ensuring the possibility of visiting the company doctor, permission for a voluntary quarantine at home). With respect to the range of data herein indicated, the Authority deems it acceptable to have the employees complete questionnaires, if based on a preliminary risk assessment carried out by the employer in advance, the employer concludes that the application of this method is necessary and it proportionately restricts the right of employees to privacy; however, the Authority expressly

underlines that the questionnaires may not include data concerning the medical history of the data subject and the employer may not require employees to enclose health documentation.

In such cases, the legal basis for the processing of the data referred to above can be legitimate interest according to GDPR Article 6(1)f); or in the case of data processing by organizations performing public tasks or exercising public powers, it may be GDPR Article 6(1)e) in view of the need to perform their basic duties. In this case and exclusively if the previous paragraph is taken into account, the fact that the condition according to GDPR Article 9(2)b) may be established for the processing of health data because the provisions of labour law require the employer to ensure healthy and safe conditions of work for the employees. In accordance with the positions taken by the supervisory authorities of other Member States, the Authority, however, with a view to the current situation of the epidemic in Hungary, regards disproportionate the requirement of screening tests with any diagnostic device (in particular, but not exclusively, with a thermometer) or the introduction of mandatory measurement of body temperature generally involving all employees called for by a measure of the employer, in view of the fact that the collection and evaluation of information related to the symptoms of coronavirus and drawing conclusions from them is the task of health care professionals and authorities.

If based on the report of an employee, or in an individual case upon consideration of all the circumstances, or on the basis of a risk assessment, the employer finds it absolutely necessary for certain jobs, particularly affected by exposure to the disease, the employer can act in compliance with the law by applying the legal basis according to GDPR Article 6(1)f) or e) (see above) as well as the conditions set forth in GDPR Article 9(2)h) and (3); thus the employer may only call for tests to be carried out by health care professionals or under their professional responsibility and the employer is entitled to be informed only about the results of these examinations.

II. It is important to stipulate that health care providers as well as company doctors – as independent data controllers – must comply with the data protection requirements governing their actions.

Besides Act XLVII of 1997 on the Processing and Protection of Health and Related Personal Data (hereinafter: Health Data Act), the legal obligation according to GDPR Article 6(1)c) and GDPR Article 9(2)i) can also be identified. This includes, for instance, Section 25 of Decree 18/1998. (VI. 3.) NM on epidemiological measures necessary to prevent infectious diseases and epidemics, which requires health care providers to report and keep records of infectious patients and persons under the suspicion of having an infectious disease, inter alia, in accordance with the case definitions specified in Annex 1 to the Decree (which also includes the SARS-coronavirus), furthermore, in accordance with the provisions of the legal regulation on the order of reporting infectious diseases and the prevention of infections related to health care as well as the provisions of the Health Data Act.

In addition to the above, the procedural order related to the new coronavirus identified in 2020 drawn up by the National Public Health Centre on 2 March 2020 contains the epidemiological and infection control rules to be followed by attending physicians; this was compiled on the basis of the recommendations and requirements of the World Health Organisation, the European Centre for Disease Prevention and Control, hence it does not qualify as a legal regulation, nevertheless, attending physicians must apply it in the course of their activities.

III. According to the position taken by the Authority, it follows from the general requirements of conduct applicable to employers and persons in an employment relationship aimed at performing work, thus in particular, the obligation to cooperate and the principles of bona fide action and fairness that employees must inform the employer of any health or other risk affecting the workplace, other employees or third persons in contact with them in the course of performing work, including the risk of themselves being potentially infected (and also the fact of any presumed contact with an infected person).

The Authority emphasizes that in the case of data processing by the employer as described above, the employee is entitled to exercise the rights due to him as data subject in accordance with the provisions of GDPR Chapter III, the facilitation of which is the employer's obligation arising from GDPR.

IV. In relation to the processing of data related to third persons outside any legal relationship aimed at the performance of work (thus, for instance, clients and visitors), the Authority underlines that

- in the course of implementing enhanced control of persons entering the organisation's site and restrictions related to this as part of the action plan particular attention should be paid to weighing the data protection risks of the measures applied in advance and building efficient and adequate channels of communication to facilitate the provision of information to the data subjects;
- in terms of the advance measures to reduce risks as part of the action plan, detailed information and a notice has to be drafted and made available to third persons, which contains the most important information related to the coronavirus (source of infection, mode of spreading, period of incubation, symptoms, prevention), together with an appeal addressed to them to immediately notify the access control staff about the fact of any presumed contact with the coronavirus or the onset of other conditions specified in the information material upon entering the site of the organization.

According to the position taken by the Authority, the legal basis for data processing specified under Section I can also be applied to the processing of the data of third persons for this purpose as described therein.

In their action plans, organizations may regulate the measures related to these persons, which may eventually be different from rules specified for those in an employment relationship, which may necessarily be concomitant with the processing of personal data (for instance, prohibition of entry to the site of the organization).

3. 最后，鉴于数据处理的相互关系，管理局呼吁引起注意，根据 2012 年<刑法>C 号法案，不接受主管有权机构下令采取的流行病学防控措施的人可能构成刑事违法犯罪。更严重的情况是，故意导致他人感染致使他人严重身体损害或导致死亡的，将承担相应刑事责任。

在这种情况下，警察有权根据 1994 年《关于警察部队的第三十四号法令》、2017 年《关

于刑事诉讼程序的第十一号法令》和《隐私法案》的规定采取行动和处理个人数据，并且在诉讼过程中，他们还可根据法律要求在公共场所使用录像监视。

3.Finally, in view of the data processing interrelations, the Authority calls attention to the fact that according to Act C of 2012 on the Penal Code, the person who fails to subject himself to the epidemiological measures ordered by the competent organisation perpetrates a criminal act; furthermore, the criminal liability of individuals who infect someone through their wilful behaviour causing severe bodily harm or death can also be established.

In such cases, the police is entitled to take action and to process personal data pursuant to Act XXXIV of 1994 on the Police Force, Act XC of 2017 on Criminal Procedure and the provisions of the Privacy Act, and in the course of their actions they may also use video surveillance in public spaces in accordance with the legal requirements governing it.

9.法国

9.France

CNIL.

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1. 雇主承担什么安全义务？

1. What safety obligations does the employer assume?

雇主根据《劳动法》（特别是《劳动法》第 L. 4121-1 和 R. 4422-1 条，1982 年 5 月 28 日第 82-453 号修改）和有关公共服务的法规对雇员/代理人的健康和安全负责。因此，应由雇主采取措施，包括提供信息、培训以及适合工作条件的工作组织和资源，来防止职业风险。CNIL 邀请雇主定期查阅劳工部（劳工总局-DGT）在线发布的这方面的信息，以了解他们在危机期间的义务。雇主有权根据 GDPR，在严格遵守相关法律义务的必要条件下，处理个人数据。在以下情况下，雇主的行为是合法的：

- 提醒与他人接触的员工，如果有感染或怀疑有感染，他们有义务向雇主或主管卫生当局提供个人信息，其唯一目的是使他能够适应工作条件；
- 通过在必要时建立专用、安全的渠道来进行数据传输；

- 鼓励使用远程办公的方法，并鼓励使用职业的医疗。

Employers are responsible for the health and safety of their employees / agents in accordance with the Labor Code and the texts governing the public service (particularly articles L. 4121-1 and R. 4422-1 of the Labor Code or the decree n ° 82-453 of May 28, 1982 modified).

As such, it is up to them to implement actions to prevent professional risks, information and training actions, as well as work organization and resources adapted to working conditions.

The CNIL invites employers in this regard to regularly consult the information posted online by the Ministry of Labor (Directorate General of Labor - DGT), in order to know their obligations during this period of crisis. Employers have the right, in accordance with the GDPR, to process personal data when it is strictly necessary for compliance with their legal obligations.

In this context, the employer is notably legitimate:

- to remind its employees, working in contact with other people, of their obligation to provide individual information in the event of contamination or suspected contamination, to him or to the competent health authorities, for the sole purpose of enabling him to " adapt working conditions;
- to facilitate their transmission by setting up, if necessary, dedicated and secure channels;
- to encourage methods of working at a distance and encourage the use of occupational medicine.

2. 员工/代理人承担什么安全义务？

2. What safety obligations do employees / agents assume?

就其本身而言，每位员工/代理人都必须注意维护自己的健康/安全，也要维护他们在专业活动中可能与之接触的人们的健康/安全（《劳动法》第 L.4122-1 条）。通常，当雇员受感染时，他应该只向雇主传达他可能会请病假的信息，而没有报告其他任何有关其健康状况或病理性质的详细信息。但是，在像 COVID-19 这样的大流行病中，与其他人（同事和公众）保持联系的员工如果发现同事感染或被怀疑感染，必须及时通知其雇主。另一方面，例如被安排从事远程工作或在不与同事或公众接触的情况下孤立地工作的雇员不必将该信息发送给其雇主。确实，在没有危害他人的情况下，必须按照正常的停工程序处理与可能的暴露有关的事件，特别是由此而导致的停工。

For its part, each employee / agent must take care to preserve his own health / safety but also those of the people with whom he could be in contact during his professional activity (article L.4122-1 of the Labor code).

Normally when an employee is sick, he should only communicate to his employer any sick leave he may have, without any further details on his state of health or the nature of the pathology being communicated. However, in a pandemic context such as that of COVID-19, an employee who works in contact with other people (colleagues and the public) must, whenever he has been able to expose some of his colleagues to the virus, inform his employer in the event of contamination or suspected contamination of the virus.

On the other hand, an employee who would be, for example, placed in telework or who would work in isolation without contact with his colleagues or the public does not have to forward this information to his employer. Indeed, in the absence of danger to other people, events related to a possible exposure, particularly a work stoppage which would result therefrom, must be treated in accordance with the normal work stoppage procedure.

3. 雇主如何处理安全报告？

3. How employers handle safety reports?

雇主只能处理对于履行其法律和合同义务严格必要的的数据，也就是说，采取组织措施（远程办公、转诊到专业医生等）是必需的，包括提供信息、培训等，来防止职业风险。这就是为什么雇主只能处理与日期、身份、已表明疑似感染的事实以及与所采取的组织措施有关的要素。如有必要，用人单位是能够与相关卫生当局进行沟通，以了解可能对暴露者进行治疗的必要要素。无论如何，不得将可能被感染者的身份告知其他员工。

Employers can therefore only process data that is strictly necessary for the fulfillment of their legal and contractual obligations, that is to say necessary to take organizational measures (telecommuting, referral to the occupational doctor, etc.), training and information, as well as certain actions to prevent occupational risks. This is why the employer can only deal with the elements linked to the date, the identity of the person, the fact that he indicated that he was contaminated or suspected of being contaminated, as well as the organizational measures taken. If necessary, the employer will be able to communicate to the health authorities which have the authority, the elements necessary for possible health or medical care of the exposed person. In any event, the identity of the person likely to be infected must not be communicated to other employees.

4. 健康类数据的处理范围是什么？

4. What are the processing scopes of health related data?

如果每个人都应采取适当措施，如限制出差和开会，须遵守卫生措施和隔离措施，则雇主不能不成比例地收集健康数据，从而侵犯了有关人员的隐私。《劳动法》第 L. 1121-1 条也重申了这一原则，该条规定：“任何人都不得对个人权利以及个人和集体自由以当前任务的性质为依据施加限制。”

有关一个人健康状况的个人数据，由于对其预设的敏感性，实际上会受到非常具体的法律保护，即原则上禁止处理此类数据。为了能够实现处理，必须要满足 GDPR 规定的例外之一，从而在确保人民安全的愿望与尊重其基本权利和自由之间取得平衡。此外，他们的敏感性使得只有得到授权的人，在非常严格的安全性和保密性条件下，才能对健康数据进行处理。

在工作范围内可以使用的例外是有限的，通常可以是：

- 雇主需要处理这些数据，以履行其在劳动法、社会保障和社会保护方面的义务：雇员报告的处理就是这种情况；
- 为对雇员工作能力的（健康）进行评估，并用于医疗诊断等目的，而需要卫生专业人员处理此数据。

由于这些原因，想要采取可能措施以确保其雇员的健康状况的雇主，必须依靠专业健康的服务。他们自己不能建立与员工体温或某些病理有关的文件，这些文件可能在 COVID-19 疫情感染中对疾病的传播造成加重影响。

本着这种精神，理事会于 2020 年 4 月 1 日下达了“适应职业卫生服务机构履行卫生紧急情况任务的条件，并修改了事先要求部分活动授权的制度”的命令，该命令根据 2020 年 3 月 23 日发布的紧急情况法律的第 11 条来处理 Covid-19 的疫情，该法律在 2020 年 4 月 2 日公布在官方公报上。

CNIL 还重申了有关数据处理的法规仅适用于自动化处理（特别是 IT）或非自动化处理。因此，在现场入口处只通过手动温度计（例如无接触的红外线）对温度进行唯一检测，而不会保留任何痕迹，也不会进行任何其他操作（例如这些温度的读数、信息反馈等），不会受

到数据保护法规的约束。

If it is up to everyone to implement measures appropriate to the situation such as limiting travel and meetings or respecting hygiene measures and “barrier gestures”, employers cannot take measures likely to disproportionately violate the privacy of data subjects, in particular by collecting health data that goes beyond the management of suspected exposure to the virus in order to protect employees and the public. This principle is also recalled by article L. 1121-1 of the Labor Code which provides that “no one may impose restrictions on the rights of individuals and on individual and collective freedoms which would not be justified by the nature of the task at hand.”

Because of the sensitive nature that they assume, data relating to a person's state of health is in fact subject to very specific legal protection: they are in principle prohibited from processing. To be able to be processed, their use must necessarily fall under one of the exceptions provided for by the GDPR, thus guaranteeing a balance between the desire to ensure the security of people, and respect for their fundamental rights and freedoms. In addition, their sensitivity justifies that they are treated under very strong conditions of security and confidentiality and only by those who are authorized to do so.

The exceptions that can be mobilized in the context of work are limited and can generally be either:

- the need for the employer to process this data to meet its obligations in terms of labor law, social security and social protection: this is the case with the processing of reports by employees;
- the need for a healthcare professional to process this data for the purposes of preventive medicine or occupational medicine, (health) assessment of the worker's work capacity, medical diagnoses, etc.

For these reasons, employers who would like to initiate possible procedures aimed at ensuring the health of their employees must rely on occupational health services. They cannot themselves set up files relating to the body temperature of their employees or certain pathologies (“co-morbidities”) likely to constitute aggravating disorders in the event of infection with COVID-19.

It is in this spirit that an order “adapting the conditions for the exercise of the missions of occupational health services to the health emergency and modifying the system of prior requests for authorization of partial activity”, was taken in Council of Ministers on April 1, 2020 in application of article 11 of the emergency law of March 23, 2020 to deal with the COVID-19 epidemic, and published in the Official Journal on April 2, 2020.

The CNIL also recalls that the regulations on data processing only apply to automated processing (in particular IT) or to non-automated processing which allows files to be created. Thus, the only verification of the temperature by means of a manual thermometer (such as for example of infrared type without contact) at the entry of a site, without no trace being preserved, nor that any other operation is carried out (such as readings of these temperatures, information feedback, etc.), does not fall under data protection regulations.

10.瑞士

10.Switzerland



Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

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File name: Legal data protection framework for coronavirus containment

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Link: [link](#)

https://www.edoeb.admin.ch/edoeb/en/home/latest-news/aktuell_news.html

1. 医疗机构的数据处理

1. Data processing by health care institutions

在根据联邦委员会的《流行病法》（EpidA）第 6 条宣布特殊情况之后，联邦、州和社区当局将继续与公共卫生机构合作，共同应对当前的新型冠状病毒大流行。

联邦公共卫生局（FOPH），各州主管当局以及受 EpidA 委托执行任务的公共和私人机构，应根据 EpidA 第 2 节的规定处理个人健康数据，以查明哪些人患病、疑似患病、被感染或疑似被感染，以期采取措施保护公众健康。同时，他们还应遵守联邦和州数据保护法规的一般原则。医院和其他公共或私人卫生保健机构，以及实验室和医务人员，也应遵守 EpidA 的特别报告义务。

Following the declaration of the special situation in accordance with Art. 6 of the Epidemics Act (EpidA) by the Federal Council, the federal, cantonal and communal authorities are continuing to work in conjunction with public health institutions to combat the current coronavirus pandemic.

The Federal Office of Public Health (FOPH), the competent cantonal authorities and the public and private institutions entrusted with tasks in accordance with the EpidA process personal health data in accordance with Section 2 of the EpidA, insofar as this is necessary to identify persons who are ill, suspected of being ill, infected or suspected of being infected, with a view to measures to protect public health. In doing so, they shall also observe the general principles of federal and cantonal data protection legislation. Hospitals and other public or private health care institutions, as well as laboratories and medical personnel, are also subject to special reporting obligations under the EpidA.

2. 私营机构数据处理

2. Data processing by private parties

就私营机构（尤其是雇主）处理个人数据以应对新型冠状病毒流行而言，必须按照《联邦数据保护法》第4条规定的原则进行处理：

- 健康数据特别值得保护，原则上，私营机构不能违背有关人员的意愿获得健康数据。
- 此外，私营机构对健康数据的处理必须与目的相关且相称。这意味着它们必须是必要的并且适合于防止进一步的感染，并且不得超出实现该目标所必需的范围。
- 只要有可能，应收集有关流感症状（如发烧）的适当数据，并由受影响的人自行传递。
- 必须向数据主体公开私营第三方对健康数据的收集和进一步处理，以使数据主体了解处理的目的是范围和其内容和时间范围。

Insofar as private parties, in particular employers, process personal data to combat the pandemic, the processing must be carried out in compliance with the principles set out in Article 4 of the Federal Data Protection Act:

- Health data are particularly worthy of protection and, as a matter of principle, may not be obtained by private parties against the will of the persons concerned.
- Moreover, processing of health data by private parties must be purpose-related and proportionate. This means that they must be necessary and suitable with a view to preventing further infections and must not go beyond what is necessary to achieve this goal.
- Wherever possible, appropriate data on flu symptoms such as fever should be collected and passed on by those affected themselves.
- The collection and further processing of health data by private third parties must be disclosed to the data subjects so that the latter understand the purpose and scope of the processing as well as its content and time frame.

3. 体温与追踪

3. Body temperature and tracking

就私营机构而言，为了防止感染，在进入建筑物或工作场所之前收集诸如体温之类的医学数据的情况，就其内容和时间而言，对数据的处理应限于达到该目的所需的最低限度。收集数据时必须尊重有关人员的信息和自决权。在这种情况下，向非医务人员回答有关健康状况的广泛问题被证明是不适当和不相称的。

这同样适用于私营机构为防止感染而在运营和组织措施方面处理的个人数据。最晚在新型冠状病毒流行威胁停止存在时，必须整体删除这些数据。

如果考虑使用数字方法来收集和分析移动和位置数据，则必须证明它们与预防感染的目的相称。只有在流行病学上有正当理由并能证明对受感染者的人身权利进行干预以便在当前阶段遏制新型冠状病毒流行时，它们才是正确的。

Insofar as private individuals collect medical data such as body temperature before entering buildings or workplaces for the purpose of preventing infection, the processing of this data is to be limited to the minimum necessary to achieve the purpose in terms of its content and time. The information and self-determination of the persons concerned must be respected when collecting data. In this context, answering extensive questions about the state of health to non-medical persons proves to be inappropriate and disproportionate.

The same applies to personal data processed by private individuals in connection with operational and organizational measures to prevent infection. At the latest when the pandemic threat has ceased to exist, these data must be deleted as a whole.

If the use of digital methods for the collection and analysis of mobility and proximity data is considered, they must prove to be proportionate to the purpose of preventing infection. They are only so if they are epidemiologically justified and suitable to have an effect justifying the intervention in the personal rights of the persons affected in order to contain the pandemic in the its current stage.

11.新西兰

11.New Zealand



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Link: link

<https://www.privacy.org.nz/further-resources/privacy-and-covid-19/covid-19-information-for-employers-and-employees/>

1. 如果一名员工从海外返回并自我隔离，出现疑似新型冠状病毒肺炎症状，我可以告诉我的其他员工吗？

1. If an employee returns from overseas and self-isolates themselves with possible Covid-19 symptoms, can I tell my other employees?

在这种情况下，员工已经自我隔离，雇主并不确定员工是否患有新型冠状病毒。根据原则 8 的规定，机构在使用个人信息之前，应检查个人信息的准确性和完整性。在这种情况下，员工不确定自己是否感染了病毒，但正在采取预防措施。他们已经选择了隔离，因此他们没有潜在的机会向同事暴露自己。雇主没有必要在健康和安全方面向其他工作人员披露此信息。

In this case, the employee has already self-isolated, and the employer does not definitely know if the staff member has the Covid-19 virus. Principle 8 says an agency should check that personal information is accurate and complete before they use it. In this scenario, the employee is unsure if they have the virus but is taking a precautionary step. They have chosen to go into isolation, so they do not potentially expose their colleagues. There is no health and safety imperative for the employer to disclose this information to other staff members.

2. 一名员工上班表现出疑似新型冠状病毒肺炎症状并被送回家。可以告知其他员工该员工

可能感染了病毒吗？

2. An employee comes to work displaying possible Covid-19 symptoms and is sent home. Can staff be told the employee might have the virus?

如果您担心传染给其他员工，可以告诉他们可能的风险。这样，他们就可以采取措施保护自己并注意症状。但这并不一定意味着应该将有问题的员工身份进行告知。理想情况下，最好不要对可能是传染源的个人的身份进行识别。但是有时候在某些情况下这是不可避免的，例如在一个只有一个人请病假的小型组织或办公室中。

隐私法中允许使用或披露个人信息的例外之一是您认为必须使用或披露个人信息以防止或减少严重威胁他人安全、福祉或健康的风险。

If you are concerned about a risk of transmission to other employees, you could tell them about the possible exposure. This is so they can take steps to protect themselves and watch for symptoms. But this doesn't necessarily mean you should identify the employee in question. Ideally, it would be preferable not to identify the individual who may be the source of the exposure. But there will be times when that will be unavoidable in the context, such as in a small organization or office where only one person is absent on sick leave.

One of the exceptions in the Privacy Act which permits the use or disclosure of personal information is where you believe that the use or disclosure is necessary in order to prevent or lessen the risk of a serious threat to someone's safety, well-being or health.

3. 在新型冠状病毒肺炎封锁期间，我是否需要雇员的许可才能向社会发展部（MSD）披露其工资信息？

3. Do I need an employee's permission to disclose their wage information to the Ministry of Social Development during the Covid-19 lockdown?

如果您正在为企业申请政府的新型冠状病毒肺炎工资补贴，则可以向 MSD 披露获得该补贴所需的有关员工的个人信息（例如姓名，出生日期和 IRD 编号）。您可以执行此操作而无需获得员工的事先授权或许可。

但是，在无需个人授权时，隐私委员会鼓励企业在合理可行的情况下跟员工同步，以通知他们有关其信息的使用。

重要的是要注意，仅允许企业根据《2013 年民防国家突发事件（信息共享）法规》进行个人信息的披露，以便 MSD 管理或响应新型冠状病毒肺炎紧急情况（例如通过向受影响的个人提供财务援助）。《隐私权法》中有规定限制将个人信息用于任何其他目的。

本规范适用于宣布的紧急状态以及紧急状态期满后的 20 个工作日。

If you are applying for the Government's Covid-19 wage subsidy for your business, you can disclose personal information about your employees to the Ministry of Social Development (MSD) that is necessary to access this subsidy (e.g. name, date of birth and IRD number). You can do this without getting the employee's prior authorization or permission.

But when dispensing with individual authorization, the Privacy Commissioner encourages businesses to follow up with individual employees to notify them about the use of their information once this is reasonably practicable.

It is important to note that businesses are only permitted to make this disclosure under the Civil Defence National Emergencies (Information Sharing) Code 2013 in order for MSD to manage or respond to Covid-19 (for example by providing financial assistance to affected individuals). There are limits in the Privacy Act on using this personal information for any other purpose.

This Code applies during the declared state of emergency and for the following 20 working days following expiry of the state of emergency.

4. 在新型冠状病毒肺炎封锁期间在家里办公时，我的雇主可以要求我保持笔记本电脑摄像头开机吗？

4. While I'm working at home during the Covid-19 lockdown, can my employer require me to keep my laptop camera on?

根据劳动法，雇员有义务遵守任何合理的指示。要求员工在家里始终打开摄像头会引起相当大的隐私问题，并且不太可能被认为是合理的，因为这会使员工受到持续监视。

为了安全的目的而在工作场所中安装摄像头，和坚持要在员工家里安装摄像头是完全不同的事情。员工对家中的隐私保密性期待很高。

《隐私法》第4条原则规定，信息收集手段不应不公平或不合理地侵犯个人。要求在家办公的员工保持笔记本电脑摄像头的开启很可能违反了这一原则。雇主只能在出于合法目的而需要收集个人信息的情况下（请参阅原则1）收集个人信息。雇主不应仅仅因为其能够收集信息就任意收集。相反，他们可以考虑其他方式与远程工作的员工保持联系并评估工作进度。

另请阅读以下相关 AskUs 文章：

[我的雇主在工作时有权收集哪些信息？](#)

[我可以记录我的员工吗？](#)

[雇主可以在出租车，公共汽车和卡车上安装摄像头吗？](#)

Under employment law, an employee is obliged to comply with any reasonable instruction. Asking an employee to have a camera in their home at all times raises considerable privacy concerns and is unlikely to be considered reasonable as it places the employee under constant surveillance.

Having a camera in a workplace for security and monitoring purposes and insisting on having one on in an employee's home are very different things. The employee would quite rightly have a heightened expectation of privacy in their home.

Principle 4 of the Privacy Act says the means of collection should not be unfair or unreasonably intrusive. Insisting that an employee who is working from home keep their laptop camera on is likely to be a breach of this principle. An employer can only collect personal information when doing so is necessary for a lawful purpose (see principle 1). An employer should not collect information just because they can. Instead they could look at other ways keeping in touch with employees working remotely and gauging their work progress.

Read also these related AskUs article:

[What information is my employer entitled to collect while I'm working?](#)

[Can I record my employees?](#)

[Can an employer install cameras in its taxis, buses and trucks?](#)

5. 雇主可以要求雇员或承包商提供多少接触人跟踪信息？

5. How much contact tracing information can an employer ask for from an employee or contractor?

雇主需要追踪员工在工作场所的密切接触者。雇主还可以要求雇员在工作时间以外保持密切联系，并可以给雇员一张表格，以更新其在家中的最新状态。但是雇主没有必要收集这些信息。收集员工密切接触者意味着，如果员工与确诊或疑似的新型冠状病毒肺炎人员密切

接触，则可以提供有用的信息。在此之前，雇主无需追踪员工在工作场所以外的所有接触人。

Employers need to keep track of an employee's close contacts in the workplace. An employer can also ask an employee to keep track of their close contacts out of work hours and can give an employee a form to keep up to date in their homes. But it is unnecessary for the employer to collect this information. Having an employee keep track of the contacts means the employee can provide useful information in the event they have had close contact with a confirmed or suspected case of Covid-19. Until then, an employer does not need to keep track of all an employee's contacts outside the workplace.

6. 对于需要到客户住处支持的人员能否向其雇主询问客户的健康信息？

6. Can a home visit support worker ask their employer for a client's health information?

支持人员在拜访客户时需要感到安全。根据《2015 年健康与安全法》，雇主还有义务保护员工免受工作场所健康和安全风险的影响。

客户的健康信息受《1994 年健康信息隐私法》的保护。通常，任何人的健康信息的披露均应获得其授权，除非为进行家庭访问而披露该信息是收集信息的目的之一。

否则，除非有必要防止严重威胁员工的健康和安全的风险，否则雇主不得泄露有关客户健康的信息。如果有机会这样做，则应首先获得客户的授权（或其代表的授权）。

如果员工认为他们需要有关客户的某些信息才能安全地工作，则应与雇主进行讨论。

关于新型冠状病毒肺炎 ge 风险，支持人员的雇主需要制定适当的安全计划和程序。

Home visit support workers need to feel safe when visiting their clients. Employers also have obligations under the [Health and Safety at Work Act 2015](#) to protect employees from workplace health and safety risks. You can find [Worksafe's information for workers here](#).

Clients' health information is protected under the [Health Information Privacy Code 1994](#). Generally, any disclosure of a person's health information should be with their authorisation, unless disclosing it for home visits is one of the purposes for which it was collected.

Otherwise the employer should not disclose information about a client's health - unless it is necessary to prevent a serious threat to the health and safety of the employee. If there is an opportunity to do so, the client's authorisation (or their representative's authorisation) should be obtained first.

If an employee thinks they need certain information about clients in order to work safely, they should discuss this with their employer.

In relation to Covid-19 risks, employers of home visit support workers need to have appropriate safety plans and procedures in place.

12.美国

12. U.S.A



U.S. Equal Employment Opportunity Commission

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Link: [link](#)

<https://www.eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act>

符合 ADA（Americans with Disabilities Act，美国残疾人法案）标准的防疫雇主实践 ADA-COMPLIANT EMPLOYER PRACTICES FOR PANDEMIC PREPAREDNESS

以下问题和答案旨在帮助雇主规划如何在流行病之前和期间以符合 ADA 的方式管理员工。
The following Questions and Answers are designed to help employers plan how to manage their workforce in an ADA-compliant manner before and during a pandemic.

A.在流行病爆发前

HHS（美国卫生与公共服务部）建议雇主通过确定“具有针对准备和响应计划的明确角色和职责的疫情协调员和/或团队”来启动防疫。该团队应包括法律上有平等就业机会的有专长的员工。计划讨论的人员中应包括残疾员工，并且该残疾员工应当可以就防疫有关问题与雇主进行沟通。

当雇主启动防疫计划时，与 ADA 有关的一个常见问题是，他们是否可以调查雇员以识别比大多数人更容易感染流行性流感并发症的雇员。

A. BEFORE A PANDEMIC

HHS advises employers to begin their pandemic planning by identifying a "pandemic coordinator and/or team with defined roles and responsibilities for preparedness and response planning." This team should include staff with expertise in all equal employment opportunity laws. Employees

with disabilities should be included in planning discussions, and employer communications concerning pandemic preparedness should be accessible to employees with disabilities.

When employers begin their pandemic planning, a common ADA-related question is whether they may survey the workforce to identify employees who may be more susceptible to complications from pandemic influenza than most people.

1.在流感大流行发生之前，受 ADA 管辖的雇主是否可以要求雇员披露其以下信息，即是否有疾病预防控制中心认为可能更容易感染流感并发症的受损的免疫系统或慢性健康状况？

1. Before an influenza pandemic occurs, may an ADA-covered employer ask an employee to disclose if he or she has a compromised immune system or chronic health condition that the CDC says could make him or her more susceptible to complications of influenza?

否。一项要求雇员披露免疫系统受损或慢性健康状况的询问与残疾相关，因为该回复很可能会透露残疾的存在。在缺乏客观证据表明流行性症状将引起直接威胁的情况下，ADA 规定不允许雇主进行此类询问。

No. An inquiry asking an employee to disclose a compromised immune system or a chronic health condition is disability-related because the response is likely to disclose the existence of a disability. The ADA does not permit such an inquiry in the absence of objective evidence that pandemic symptoms will cause a direct threat.

2.是否存在符合 ADA 的方法，供雇主确定在疫情下哪些员工很可能无法工作？

2. Are there ADA-compliant ways for employers to identify which employees are more likely to be unavailable for work in the event of a pandemic?

是。雇主可以进行与残疾无关的询问。如果调查旨在确定疫情期间缺席的潜在非医学原因（例如，减少公共交通）并且与医学原因（例如，会增加并发症风险的慢性疾病）保持步调一致，则该询问与残疾无关。询问的结构应使雇员对整个问题给出一个“是”或“否”的答案，而无需特别指明其本人的具体要素。答案不必匿名给出。

下面是一个示例的 ADA 兼容调查，可以提供给员工以预测缺席情况。

Yes. Employers may make inquiries that are not disability-related. An inquiry is not disability-related if it is designed to identify potential non-medical reasons for absence during a pandemic (e.g., curtailed public transportation) on an equal footing with medical reasons (e.g., chronic illnesses that increase the risk of complications). The inquiry should be structured so that the employee gives one answer of "yes" or "no" to the whole question without specifying the factor(s) that apply to him. The answer need not be given anonymously.

Below is a sample ADA-compliant survey that can be given to employees to anticipate absenteeism.

符合 ADA 的员工流行病调查

说明：对整个问题回答“是”，而无需特别指明其本人的具体要素。只需在页面底部选中“是”或“否”。

如果发生疫情，您是否会因为以下任一原因而无法上班：

- 如果学校或日托中心关闭，则您需要照看孩子。
- 如果没有其他服务，则需要照顾其他家属。
- 如果公共交通很少或不可用，您将无法上班；和/或；

- 如果您或您的家庭成员属于疾病预防控制中心认定的流行性流感病毒引起严重并发症的高风险类别之一，公共卫生当局会建议您不要上班（例如孕妇；由于癌症、HIV、器官移植史或其他医疗状况而导致免疫系统受损的人、年龄不足 65 岁且患有慢性病的人、或 65 岁以上的人）。

答案：是_____，否_____

ADA-COMPLIANT PRE-PANDEMIC EMPLOYEE SURVEY

Directions: Answer "yes" to the whole question without specifying the factor that applies to you. Simply check "yes" or "no" at the bottom of the page.

In the event of a pandemic, would you be unable to come to work because of any one of the following reasons:

- If schools or day-care centers were closed, you would need to care for a child;
- If other services were unavailable, you would need to care for other dependents;
- If public transport were sporadic or unavailable, you would be unable to travel to work; and/or;
- If you or a member of your household fall into one of the categories identified by the CDC as being at high risk for serious complications from the pandemic influenza virus, you would be advised by public health authorities not to come to work (e.g., pregnant women; persons with compromised immune systems due to cancer, HIV, history of organ transplant or other medical conditions; persons less than 65 years of age with underlying chronic conditions; or persons over 65).

Answer: YES _____, NO _____

3. 雇主可否要求新入职的雇员在接受 offer 后进行体检以确定其总体健康状况？

3. May an employer require new entering employees to have a post-offer medical examination to determine their general health status?

是的，但所有进入同一工作类别的雇员都必须接受体检，而且申请人的病情或病历资料分别收集和保存在单独的表格和医疗档案中，并作为机密病历处理。

Yes, if all entering employees in the same job category are required to undergo the medical examination and if the information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record.

范例 A：当世卫组织和疾病预防控制中心确认可能即将爆发疫情时，国际航运业的雇主实施了防疫计划，因为新的流感病毒正在感染多个地区的人，但尚未感染北美。雇主的国际业务大部分在受影响的地区。雇主应立即宣布，其将所有进入国际领港员和机组人员纳入范围，以便于疾病预防控制中心增加在收到 offer 后的医疗检查程序，用于识别与患流感并发症相关的风险的医疗状况。因为雇主将这些医学检查提供给所有职位类别相同的在职员工，所以这些检查符合 ADA 的规定。

Example A: An employer in the international shipping industry implements its pandemic plan when the WHO and the CDC confirm that a pandemic may be imminent because a new influenza virus is infecting people in multiple regions, but not yet in North America. Much of the employer's international business is in the affected regions. The employer announces that, effective immediately, its post-offer medical examinations for all entering international pilots and flight crew will include procedures to identify medical conditions that the CDC associates with an

increased risk of complications from influenza. Because the employer gives these medical examinations post-offer to all entering employees in the same job categories, the examinations are ADA-compliant.

4.如果雇主发现申请人的医疗状况使其患流感并发症的风险增加，是否可以根据发送 offer 后的体检结果撤销申请人的工作机会？

4. May an employer rescind a job offer made to an applicant based on the results of a post-offer medical examination if it reveals that the applicant has a medical condition that puts her at increased risk of complications from influenza?

不可以，除非申请人会构成 ADA 意义上的直接威胁。发现“直接威胁”必须基于合理的医学判断，该判断依赖于最新的医学知识和/或最佳的可用证据，例如疾病预防控制中心或州或地方卫生当局的客观信息。该发现必须基于对个人当前安全地完成工作的基本功能的能力的个性化评估，其中包括考虑了风险的迫切性、危害的严重性并提供合理的设施以降低风险。在断定个人构成直接威胁之前，雇主必须确定合理的调解是否可以将风险降低到直接威胁水平以下。

No, unless the applicant would pose a direct threat within the meaning of the ADA. A finding of "direct threat" must be based on reasonable medical judgment that relies on the most current medical knowledge and/or the best available evidence such as objective information from the CDC or state or local health authorities. The finding must be based on an individualized assessment of the individual's present ability to safely perform the essential functions of the job, after considering, among other things, the imminence of the risk; the severity of the harm; and the availability of reasonable accommodations to reduce the risk. Before concluding that an individual poses a direct threat, the employer must determine whether a reasonable accommodation could reduce the risk below the direct threat level.

例子 B：国际航运雇主提供给史蒂夫一个在其美国总部的财务职位。该职位不涉及与机组人员的定期联系或前往受影响的世卫组织区域的旅行。史蒂夫的接到 offer 后的医疗检查（与美国总部所有员工的检查相同）显示，史蒂夫由于最近的癌症治疗而导致其免疫系统受损。鉴于该职位不涉及旅行或与机组人员的定期接触，并且流感病毒尚未传播到北美，因此史蒂夫在工作中不会面临感染该病毒的重大风险，因此对自己或处于这个位置的其他人不会构成“直接威胁”。在 ADA 下，根据流感流行的可能性，撤销史蒂夫的工作机会是歧视性的。

Example B: The same international shipping employer offers a financial position at its U.S. headquarters to Steve. This position does not involve regular contact with flight crew or travel to the affected WHO region. Steve's post-offer medical examination (which is the same examination given to all U.S. headquarters employees) reveals that Steve has a compromised immune system due to recent cancer treatments. Given the fact that the position does not involve regular contact with flight crew or travel, and that the influenza virus has not spread to North America, Steve would not face a significant risk of contracting the virus at work and does not pose a "direct threat" to himself or others in this position. Under the ADA, it would be discriminatory to rescind Steve's job offer based on the possibility of an influenza pandemic.

B.在流感流行期间

以下问题和答案讨论了世卫组织和疾病预防控制中心报告流感流行时雇主的行动。

B. DURING AN INFLUENZA PANDEMIC

The following questions and answers discuss employer actions when the WHO and the CDC report an influenza pandemic.

5.如果流感流行期间雇员出现类似流感的症状，受 ADA 管辖的雇主可以将其送回家吗？

5. May an ADA-covered employer send employees home if they display influenza-like symptoms during a pandemic?

是。疾病预防控制中心指出，在流感流行期间上班时患有流感样疾病症状的员工应离开工作场所。如果疾病类似于季节性流感或 2009 年春夏 H1N1 病毒，建议这些工人回家不是与残疾相关的行动。此外，如果疾病严重到足以构成直接威胁，则根据 ADA 可以采取行动。将这一原则应用于当前疾病预防控制中心关于 COVID-19 的指南，这意味着雇主可以将患有 COVID-19 或与之相关的症状的雇员送回家。

Yes. The CDC states that employees who become ill with symptoms of influenza-like illness at work during a pandemic should leave the workplace. Advising such workers to go home is not a disability-related action if the illness is akin to seasonal influenza or the 2009 spring/summer H1N1 virus. Additionally, the action would be permitted under the ADA if the illness were serious enough to pose a direct threat. **Applying this principle to current CDC guidance on COVID-19, this means an employer can send home an employee with COVID-19 or symptoms associated with it.**

6.在流感流行期间，受 ADA 管辖的雇主可以从在工作中报告感到不适或生病的雇员那里获得多少信息？

6. During a pandemic, how much information may an ADA-covered employer request from employees who report feeling ill at work or who call in sick?

受 ADA 管辖的雇主可以询问这些雇员是否出现类似流感的症状，例如发烧或发冷，咳嗽或喉咙痛。雇主必须按照 ADA 的要求将所有有关员工疾病的信息作为机密医疗记录进行维护。

如果流行性流感类似于季节性流感或 2009 年春夏的 H1N1，则这些询问与残疾无关。如果流行性流感变得严重，即使是与残疾相关的询问，也可以基于表明流行性流感的严重形式构成了直接威胁的客观证据证明其合理性。

将这一原则应用于当前疾病预防控制中心关于 COVID-19 的指南中，雇主可以询问工作中感觉不适或生病的雇员有关其症状的问题，以确定他们是否患有 COVID-19。当前，这些症状包括例如发烧，发冷，咳嗽，呼吸急促或喉咙痛。

ADA-covered employers may ask such employees if they are experiencing influenza-like symptoms, such as fever or chills and a cough or sore throat. Employers must maintain all information about employee illness as a confidential medical record in compliance with the ADA.

If pandemic influenza is like seasonal influenza or spring/summer 2009 H1N1, these inquiries are not disability-related. If pandemic influenza becomes severe, the inquiries, even if disability-related, are justified by a reasonable belief based on objective evidence that the severe form of pandemic influenza poses a direct threat.

Applying this principle to current CDC guidance on COVID-19, employers may ask employees who report feeling ill at work, or who call in sick, questions about their symptoms to determine if they have or may have COVID-19. Currently these symptoms include, for example, fever, chills, cough, shortness of breath, or sore throat.

7.在流感流行期间，受 ADA 管辖的雇主可否根据员工的体温来确定他们是否发烧？

7. During a pandemic, may an ADA-covered employer take its employees' temperatures to determine whether they have a fever?

通常，测量员工的体温是一项医学检查。如果流行性流感的症状变得比季节性流感或 2009 年春季/夏季的 H1N1 病毒更为严重，或者根据州或地方卫生当局或疾病预防控制中心的评估，流行性流感在社区中广泛传播，则雇主可以衡量员工的体温。

但是，雇主应注意，包括 2009 H1N1 病毒或 COVID-19 在内的某些流感患者不会发烧。

由于疾病预防控制中心和州/地方卫生当局已认可 COVID-19 在社区的传播并于 2020 年 3 月发布了相应的预防措施，因此雇主可以测量员工的体温。与所有医疗信息一样，员工发烧或其他症状的事实也要遵守 ADA 的保密要求。

Generally, measuring an employee's body temperature is a medical examination. If pandemic influenza symptoms become more severe than the seasonal flu or the H1N1 virus in the spring/summer of 2009, or if pandemic influenza becomes widespread in the community as assessed by state or local health authorities or the CDC, then employers may measure employees' body temperature.

However, employers should be aware that some people with influenza, including the 2009 H1N1 virus or COVID-19, do not have a fever.

Because the CDC and state/local health authorities have acknowledged community spread of COVID-19 and issued attendant precautions as of March 2020, employers may measure employees' body temperature. As with all medical information, the fact that an employee had a fever or other symptoms would be subject to ADA confidentiality requirements.

8. 当雇员在流感流行期间从旅行中返回，雇主是否必须等到雇员出现流感症状时，才能提出有关在旅行中接触大流行性流感的问题？

8. When an employee returns from travel during a pandemic, must an employer wait until the employee develops influenza symptoms to ask questions about exposure to pandemic influenza during the trip?

不是。这些不是与残疾相关的问询。如果疾病预防控制中心或州或地方公共卫生官员建议到指定地点访问的人在家里呆几天直到明显没有大流行性流感症状，雇主可能会询问员工是否从这些地点返回，即使旅行是因私的。

同样，对于当前的 COVID-19 流行，雇主可以遵循疾病预防控制中心和州/地方公共卫生当局的建议，在允许访问了指定地点后的雇员返回工作场所之前询问所需的信息，不论这种访问是因公还是因私。

No. These would not be disability-related inquiries. If the CDC or state or local public health officials recommend that people who visit specified locations remain at home for several days until it is clear they do not have pandemic influenza symptoms, an employer may ask whether employees are returning from these locations, even if the travel was personal.

Similarly, with respect to the current COVID-19 pandemic, employers may follow the advice of the CDC and state/local public health authorities regarding information needed to permit an employee's return to the workplace after visiting a specified location, whether for business or personal reasons.

9. 在流感流行期间，受 ADA 管辖的雇主是否可以要求没有流感症状的雇员披露疾病预防控制中心表示可能使其特别容易感染流感并发症的疾病状况？

9. During a pandemic, may an ADA-covered employer ask employees who do not have influenza symptoms to disclose whether they have a medical condition that the CDC says could make them especially vulnerable to influenza complications?

不能。如果流行性流感像季节性流感或 2009 年春季/夏季的 H1N1 病毒一样，则 ADA 禁止进行与残疾相关的询问或要求无症状的雇员进行体检。但是，在这种情况下，雇主应允许出现流感症状的雇员待在家里，这将使所有雇员受益，包括可能出现并发症风险增加的雇员。

如果员工自愿（没有与残疾相关的询问）披露自己患有某种特定的医疗疾病或残疾，从而使他（她）患流感并发症的风险增加，则雇主必须对该信息保密。雇主可以要求该雇员描述其认为需要的协助类型（例如远程办公或请假去看医生）。雇主不应以为所有残疾都会增加患流感并发症的风险。许多残疾并不会增加这种风险（例如视力或行动障碍）。

如果根据当地州或联邦公共卫生官员的评估，流感流行变得更加严重，受 ADA 管辖的雇主可能会从公共卫生顾问那里获得足够的客观信息，以合理地得出如果员工感染流行性流感将面临直接威胁的结论。仅在这种情况下，受 ADA 管辖的雇主才可以进行与残疾相关的询问或要求对无症状雇员进行医学检查，以识别出患流感并发症风险更高的人。

No. If pandemic influenza is like seasonal influenza or the H1N1 virus in the spring/summer of 2009, making disability-related inquiries or requiring medical examinations of employees without symptoms is prohibited by the ADA. However, under these conditions, employers should allow employees who experience flu-like symptoms to stay at home, which will benefit all employees including those who may be at increased risk of developing complications.

If an employee voluntarily discloses (without a disability-related inquiry) that he has a specific medical condition or disability that puts him or her at increased risk of influenza complications, the employer must keep this information confidential. The employer may ask him to describe the type of assistance he thinks will be needed (e.g. telework or leave for a medical appointment). Employers should not assume that all disabilities increase the risk of influenza complications. Many disabilities do not increase this risk (e.g. vision or mobility disabilities).

If an influenza pandemic becomes more severe or serious according to the assessment of local, state or federal public health officials, ADA-covered employers may have sufficient objective information from public health advisories to reasonably conclude that employees will face a direct threat if they contract pandemic influenza. Only in this circumstance may ADA-covered employers make disability-related inquiries or require medical examinations of asymptomatic employees to identify those at higher risk of influenza complications.

10. 雇主是否可以鼓励员工在流感流行期间采取远程工作（即在其他位置，如家中工作）作为防控策略？

10. May an employer encourage employees to telework (i.e., work from an alternative location such as home) as an infection-control strategy during a pandemic?

是。远程办公是一种有效的防控策略，受 ADA 管辖的雇主也很熟悉远程办公作为一种合理的方式。

此外，残疾雇员如面临流行性流感并发症的高风险，可要求进行远程办公，这作为一种合理的方式可减少他们在疫情期间的感染机会。

Yes. Telework is an effective infection-control strategy that is also familiar to ADA-covered employers as a reasonable accommodation.

In addition, employees with disabilities that put them at high risk for complications of

pandemic influenza may request telework as a reasonable accommodation to reduce their chances of infection during a pandemic.

11.在流感流行期间，雇主可否要求其雇员在工作场所采取防控措施，例如定期洗手？

11. During a pandemic, may an employer require its employees to adopt infection-control practices, such as regular hand washing, at the workplace?

是。要求进行防控措施，例如定期洗手，咳嗽和打喷嚏的礼节以及正确使用和处置纸巾，并不意味着违反 ADA 的规定。

Yes. Requiring infection control practices, such as regular hand washing, coughing and sneezing etiquette, and proper tissue usage and disposal, does not implicate the ADA.

12.在流感流行期间，雇主可否要求其雇员穿戴旨在减少流行性传染病传播的个人防护设备（例如口罩，手套或工作服）？

12. During a pandemic, may an employer require its employees to wear personal protective equipment (e.g., face masks, gloves, or gowns) designed to reduce the transmission of pandemic infection?

是。雇主可能要求员工在流感流行期间穿戴个人防护设备。但是，如果残障雇员需要根据 ADA 进行合理的安排（例如，使用非乳胶手套或为使用轮椅的人设计的罩衫），则雇主应提供这些，且应避免不必要的困难。

Yes. An employer may require employees to wear personal protective equipment during a pandemic. However, where an employee with a disability needs a related reasonable accommodation under the ADA (e.g., non-latex gloves, or gowns designed for individuals who use wheelchairs), the employer should provide these, absent undue hardship.

13.受 ADA 和 1964 年《民法》第 VII 篇管辖的雇主是否可以强迫所有雇员在流感流行期间使用流感疫苗，而不论他们的医疗状况或宗教信仰如何？

13. May an employer covered by the ADA and Title VII of the Civil Rights Act of 1964 compel all of its employees to take the influenza vaccine regardless of their medical conditions or their religious beliefs during a pandemic?

不能。基于 ADA 的规定，残疾而导致其无法接种流感疫苗的雇员，可能有权获得强制性疫苗接种要求的豁免。这将是一个合理的通融，但须不能造成过度的困难（重大困难或费用）。同样，根据 1964 年《民法》第 VII 篇，一旦雇主收到雇员表示其真诚的宗教信仰、习俗或行为阻止其接种流感疫苗的通知，则雇主必须提供合理的通融，除非会造成第七章所定义的不适当的困难（对雇主业务的运营“超出最低成本”，这比《美国残疾人法》规定的标准低）。

通常，受 ADA 管辖的雇主应该只是考虑鼓励员工接种流感疫苗，而不是要求他们接种。截至本文档发布之日，尚无可用于 COVID-19 的疫苗。

No. An employee may be entitled to an exemption from a mandatory vaccination requirement based on an ADA disability that prevents him from taking the influenza vaccine. This would be a reasonable accommodation barring undue hardship (significant difficulty or expense). Similarly, under Title VII of the Civil Rights Act of 1964, once an employer receives notice that an employee's sincerely held religious belief, practice, or observance prevents him from taking the influenza vaccine, the employer must provide a reasonable accommodation unless it would pose an undue hardship as defined by Title VII ("more than de minimis cost" to the operation of the employer's

business, which is a lower standard than under the ADA).(36)

Generally, ADA-covered employers should consider simply encouraging employees to get the influenza vaccine rather than requiring them to take it. As of the date this document is being issued, there is no vaccine available for COVID-19.

14.在流感流行期间，雇主是否必须继续为已知残疾的雇员提供与流行病无关的合理便利，以避免不必要的困难？

14. During a pandemic, must an employer continue to provide reasonable accommodations for employees with known disabilities that are unrelated to the pandemic, barring undue hardship?

是。在流感流行期间，雇主对残疾人的 ADA 责任继续存在。只有当雇主能够证明即使经过合理的通融，残疾人仍构成直接威胁时，雇主才能够合法地将其排除在就业或与就业有关的活动之外。

如果残疾员工需要在远程办公场所获得与工作场所相同的合理场所条件，则雇主应提供该场所，并且应避免不必要的困难。如果遇到不适当的困难，用人单位和雇员应合作寻找替代的合理安排。

Yes. An employer's ADA responsibilities to individuals with disabilities continue during an influenza pandemic. Only when an employer can demonstrate that a person with a disability poses a direct threat, even after reasonable accommodation, can it lawfully exclude him from employment or employment-related activities.

If an employee with a disability needs the same reasonable accommodation at a telework site that he had at the workplace, the employer should provide that accommodation, absent undue hardship. In the event of undue hardship, the employer and employee should cooperate to identify an alternative reasonable accommodation.

15.在流感流行期间，如果员工缺勤且雇主怀疑是出于医疗原因，是否可以询问雇员缺勤的原因？

15. During a pandemic, may an employer ask an employee why he or she has been absent from work if the employer suspects it is for a medical reason?

是。问一个人为什么缺勤并不是与残疾有关的询问。雇主总是有权知道为什么雇员缺勤。

Yes. Asking why an individual did not report to work is not a disability-related inquiry. An employer is always entitled to know why an employee has not reported for work.

例 E：在流感流行期间，雇主指示主管与未报告缺勤五个工作日的雇员联系，而无需解释。主管问这个雇员为什么缺勤，什么时候回去工作。根据 ADA，主管的询问不是与残障相关的询问。

Example E: During an influenza pandemic, an employer directs a supervisor to contact an employee who has not reported to work for five business days without explanation. The supervisor asks this employee why he is absent and when he will return to work. The supervisor's inquiry is not a disability-related inquiry under the ADA.

新冠疫情期间的招聘

HIRING DURING THE COVID-19 PANDEMIC

16. 如果雇主正在招聘，是否可以对申请人进行 COVID-19 症状筛查？

16. If an employer is hiring, may it screen applicants for symptoms of COVID-19?

是。雇主可以在提供有条件的工作机会之后筛查求职者是否出现 COVID-19 症状，只要对所有从事同一类型工作的雇员都进行筛查。ADA 允许雇主在发放 offer 后（不是提供 offer 前）进行适用于所有申请人的医疗询问和检查，无论申请人是否有残障。

Yes. An employer may screen job applicants for symptoms of COVID-19 after making a conditional job offer, as long as it does so for all entering employees in the same type of job. This ADA rule allowing post-offer (but not pre-offer) medical inquiries and exams applies to all applicants, whether or not the applicant has a disability.

17. 雇主可以在发送 offer 后、入职前将申请人的体温检测纳入到入职体检中吗？

17. May an employer take an applicant's temperature as part of a post-offer, pre-employment medical exam?

是。雇主提出有条件的聘用后，任何体检都被允许。但是，雇主应注意某些携带 COVID-19 的人不会发烧。

Yes. Any medical exams are permitted after an employer has made a conditional offer of employment. However, employers should be aware that some people with COVID-19 do not have a fever.

18. 雇主可否推迟感染 COVID-19 或有相关症状的申请人开始工作的日期？

18. May an employer delay the start date of an applicant who has COVID-19 or symptoms associated with it?

是。根据疾病预防控制中心当前的指导，感染 COVID-19 或与之相关的症状的人不应该出现在工作场所。

疾病预防控制中心已经发布了适用于所有工作场所的指南，但也发布了针对特定类型工作场所（例如，医护人员）的更具体的指南。随着 COVID-19 的流行，来自公共卫生当局的指导可能会改变。因此，雇主应继续遵循有关维护工作场所安全的最新信息。需要重申的是：雇主应根据疾病防治中心或公共卫生当局的建议，自由决定，ADA 不干预雇主。

Yes. According to current CDC guidance, an individual who has COVID-19 or symptoms associated with it should not be in the workplace.

CDC has issued guidance applicable to all workplaces generally, but also has issued more specific guidance for particular types of workplaces (e.g. health care employees). Guidance from public health authorities is likely to change as the COVID-19 pandemic evolves. Therefore, employers should continue to follow the most current information on maintaining workplace safety. To repeat: the ADA does not interfere with employers following recommendations of the CDC or public health authorities, and employers should feel free to do so.

19. 如果雇主需要申请人立即开始工作，但该人感染 COVID-19 或有症状，可否撤回工作机会？

19. May an employer withdraw a job offer when it needs the applicant to start immediately but the individual has COVID-19 or symptoms of it?

根据疾病预防控制中心当前的指导，此人不能安全地进入工作场所，因此雇主可以撤回工作机会。

Based on current CDC guidance, this individual cannot safely enter the workplace, and therefore the employer may withdraw the job offer.

C. 流感后

C. AFTER A PANDEMIC

20. 受 ADA 管辖的雇主是否可以要求在流感流行期间离开工作场所的员工提供医生证明，证明其适合重返工作岗位？

20. May an ADA-covered employer require employees who have been away from the workplace during a pandemic to provide a doctor's note certifying fitness to return to work?

是。ADA 允许此类问询，因为它们与残障无关，或者，如果流行性流感确实是严重的，则根据 ADA 的规定对雇员进行残障相关问询是合理的。

但是，实际上，流感爆发期间和之后，医生和其他医疗保健专业人员可能太忙而无法提供其适合工作的证明文件。因此，可能需要新的方法，例如依靠当地诊所提供表格，盖章或通过电子邮件以证明个人没有流行性病毒。

Yes. Such inquiries are permitted under the ADA either because they would not be disability-related or, if the pandemic influenza were truly severe, they would be justified under the ADA standards for disability-related inquiries of employees.

As a practical matter, however, doctors and other health care professionals may be too busy during and immediately after a pandemic outbreak to provide fitness-for-duty documentation. Therefore, new approaches may be necessary, such as reliance on local clinics to provide a form, a stamp, or an e-mail to certify that an individual does not have the pandemic virus.

Global Privacy Compliance Policy Guide on Epidemic Prevention

Enterprise Employee Data Processing

全球疫情防控隐私合规政策指南

企业雇员数据处理

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