

**CORONAVIRUS
ALERT****24/7**

Business support 24/7 during coronavirus pandemic

Personal data protection

Data protection aspects seem to be coming to the fore in the fight against the SARS-CoV-2 pandemic (COVID-19 or coronavirus).

However, no legal regulations have revoked/suspended the application of the GDPR and the Personal Data Protection Act.

There are many challenges in the area of data protection, e.g. procedures, questionnaires and "what is allowed and what must be asked about" forms.

Successive supervisory authorities from individual European states (and not only) are issuing guidelines on the processing of personal data. The main issue in these guidelines is measuring the body temperature of staff. Authorities such as the British and Spanish allow employers to have this right. However, Italian and Belgian authorities are opposed to it. There is no uniform approach in this respect.

In Poland, the President of the Personal Data Protection Office published a statement on 12 March 2020 (<https://uodo.gov.pl/pl/138/1456>) according to which: "Personal data protection regulations cannot be used as an obstacle to measures being taken in the fight against coronavirus". It should be noted that some controllers have, in line with the GDPR, started to cite recital 46 of the GDPR, which is, however, inappropriate, as this recital does not concern health data (only "ordinary" personal data).

On 16 March 2020, the European Data Protection Board published a statement (https://edpb.europa.eu/news/news/2020/statement-edpb-chair-processing-personal-data-context-covid-19-outbreak_en), the key part of which reads:

Indeed, the GDPR provides for the legal grounds to enable the employers and the competent public health authorities to process personal data in the context of epidemics, without the need to obtain the consent of the data subject. This applies for instance when the processing of personal data is necessary for the employers for reasons of public interest in the area of public health or to protect vital interests (Art. 6 and 9 of the GDPR) or to comply with another legal obligation.

At the same time, a law is being passed which is to remove all doubts and directly enable employers to have their employees checked before they are allowed to work, particularly by measuring body temperature.

Even assuming that this law comes into force, the issue of checking other people, especially associates, business partners and guests, is still unresolved. At this point in time, it seems that solutions based on thermal imaging cameras or temperature measurement without a result being assigned to a particular person would be permitted (though this approach could still be questioned). However, any activity that can be qualified as the processing of a specific category of personal data (health data) must have its basis in Article 9 of the GDPR.

We cannot lose sight of the fact that the sector's businesses could have their own detailed solutions, e.g. the provisions of the Act on Food Safety and Nutrition, specifically Article 59 of this Act read with Article 9(2)(g) of the GDPR, which may constitute the legal basis for collecting statements or measuring body temperature.

We are at your disposal



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