

How to take measures against the spreading of COVID-19 and not to violate GDPR

The adoption of various measures for prevention of the COVID-19 spreading also raises many practical issues in the area of personal data protection. Nowadays, employers already know that the issue of personal data protection needs to be treated sensitively. Personal data relating to health is considered to be a specific category of personal data that is subject to a higher level of protection. So how to deal with the new situation when, on the one hand, the employer is expected to take all necessary measures to protect the health of his employees, and on the other hand, the General Data Protection Regulation (GDPR) remains valid, according to which the employer shall not process personal health data without any particular reason?

Please find below our recommendations on how to proceed properly and avoid GDPR violations in the most common COVID-19 situations. Although the article was written in the context of the legislation of the Slovak Republic, it can be appropriately applied to the situation in the Czech Republic, because as in the Slovak Republic, in the Czech Republic the employer is as well responsible for safety and health at work, etc. In the context of taking measures against the spreading of COVID-19, the new Slovak government has already announced that it is also preparing some changes in the area of personal data protection.

1. Can the employer request information from the employee whether he has recently been abroad and even in which country?

Yes, he can. Given that the employer is obliged to take all measures to protect the health of his employees, including the adoption of measures necessary to prevent transmissible diseases, according to Art. 52 para. 1 a) of the Act no. 355/2007 Coll. on the Protection, Promotion and Development of the Public Health and on amendments to certain acts (hereinafter the “**Health Protection Act**”), has the right to ascertain information from employees and even suppliers or clients in order to fulfill his legal obligation under the Health Protection Act.

2. Can the employer request information from the employee that he is in a quarantine?

Yes, he can, if so, the employer is entitled to request information from the employee about the beginning and end of the quarantine in the term of employer's responsibility by taking the necessary measures to prevent transmissible diseases under the Health Protection Act.

3. Can the employer ask the employee if he has common symptoms of COVID-19 (e.g. respiratory problems, fever)?

Yes, the employer may request this information from employees or third parties in order to ensure occupational safety and health (e.g. by completing a questionnaire, etc.) or under the responsibility of the employer in taking the necessary measures to prevent transmissible

diseases under the Health Protection Act. The employer is responsible for the safety and health protection of his employees at work pursuant to Act no. 124/2006 Coll. on Health and Safety at work and on amendments to certain acts (hereinafter the “**Occupational Safety and Health Act**”).

4. Can the employer oblige the employee to undergo a health examination?

Yes, he can, but to a limited extent. The employer is obliged to protect the employee from being infected by another employee, as he is responsible for the safety and health of his employees at work according to the Occupational Safety and Health Act. In view of the above stated, the employer may introduce less invasive measures, such as temperature measurement.

5. Can the employer require from the incapable employee to confirm he has or does not have COVID-19?

The employer may ask the employee for such information, but the employee is not obliged to share this information with the employer. However, the examining physician will inform the state authorities of this fact, who in turn will also probably inform the employer (if there is a risk that other employees might be infected).

6. Can the employer request information from the employee whether he has been in contact with a person infected with COVID-19?

Yes, he can, but to a limited extent. Again, due to the reason that the employer is responsible for the occupational health and safety, he can strictly request such data from employees to the minimum necessary extent.

7. Is the employer entitled to inform other employees that presence of COVID-19 has been confirmed by the particular employee?

Yes, if necessary. The employer is obliged to inform those employees who came into contact with the employee who was infected by COVID-19. If other employees have not been in contact with the infected employee, the employer will not inform them or depending on the circumstances of the case, the employer should consider whether it is sufficient to inform employees only about the occurrence of COVID-19 at the workplace without mentioning specific person. Informing other employees should therefore be carefully considered, i. e. it should not be done in form of publishing a list of people infected with COVID-19 on the employer's intranet, etc.

8. If the employee can work from home, so called home office, is the employer obliged to provide the necessary equipment to work from home?

Yes, the employer is obliged to provide the employee with the equipment necessary for working from home (e.g. laptop, mobile phone, etc.), if work from home is agreed in the employment agreement. If work from home is not agreed in the employment agreement, the employer cannot order it. Even while working from home, the employer is responsible for the security of personal data and therefore, he is obliged to take the necessary measures to prevent unauthorized leakage of personal data.

If you have any questions, please do not hesitate to contact us.