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# **COVID-19**

## Data Privacy & Security Survey

3 APRIL 2020



# COVID-19 Data Privacy & Security Survey

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As COVID-19 quickly spreads across the globe and has now been officially declared a pandemic, many companies are facing difficult business and legal challenges and are required to make some urgent decisions in order to keep their workforce safe and ensure business continuity. Data plays a crucial role in containing the spread of the virus but not every data processing can be justified on that basis. A balance must be found between protecting public health and personal privacy.

The Baker McKenzie network of data privacy and security experts is pleased to provide you with this guide designed to assist employers assess whether or not certain data processing they may consider in light of COVID-19 is compliant with data privacy regulation.

In this guide Baker McKenzie lawyers from 39 jurisdictions are sharing their high-level views on five common questions many companies are facing:

- Can an employer lawfully conduct temperature checks of employees and visitors in its premises?
- Can an employer require employees to inform HR / their line manager if their temperature rises above the normal threshold?
- Can an employer require employees (and visitors to its premises) to complete travel declaration forms?
- Have data privacy regulators issued any guidance either permitting or restricting the collection of personal data for purposes of identifying COVID-19 cases?
- Is an employer permitted to disclose the identity of any worker who is confirmed to have COVID-19 to other co-workers?

We hope this short guide assists companies in making some of these difficult decisions. There are generally no clear-cut answers to these questions and it is imperative to carefully assess options against factual circumstances and their impact on data subjects' right to privacy. The content of this guide is current as of 1 April 2020 and does not constitute legal advice. The Coronavirus outbreak is an escalating situation, authorities are issuing advice on a daily basis and it is crucial to assess the effectiveness, proportionality and reasonableness of any proposed measures carefully on a case-by-case basis and in light of most recent information and developments on COVID-19.

You may also want to access **Baker McKenzie's Quick guide for employers**, dealing with 10 of the most pressing issues employers are currently facing in light of the Coronavirus outbreak. And we invite you to visit the **Baker McKenzie Coronavirus Resource page** to access a wealth of reference materials around this topic.

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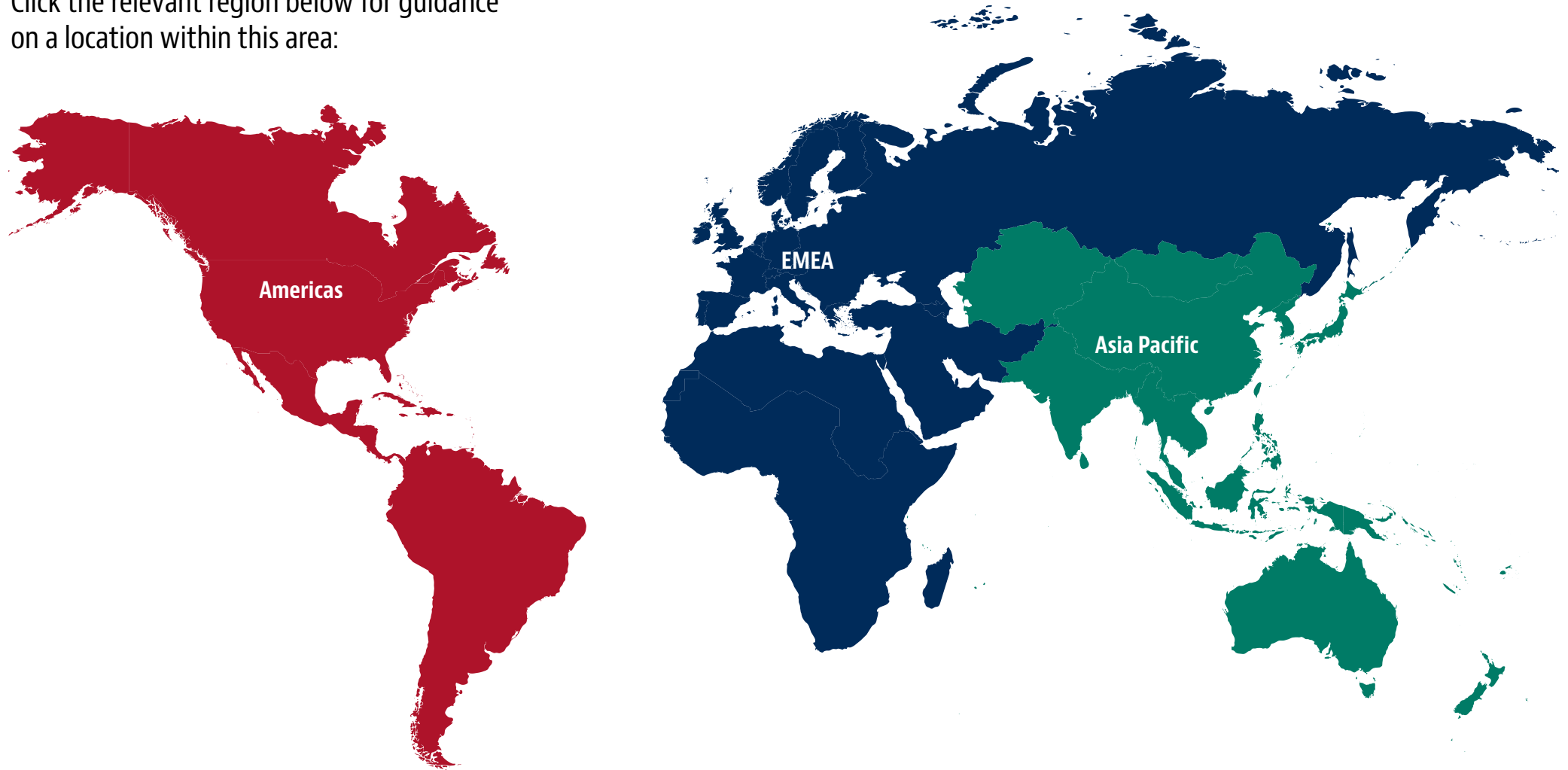


# COVID-19 Data Privacy & Security Survey

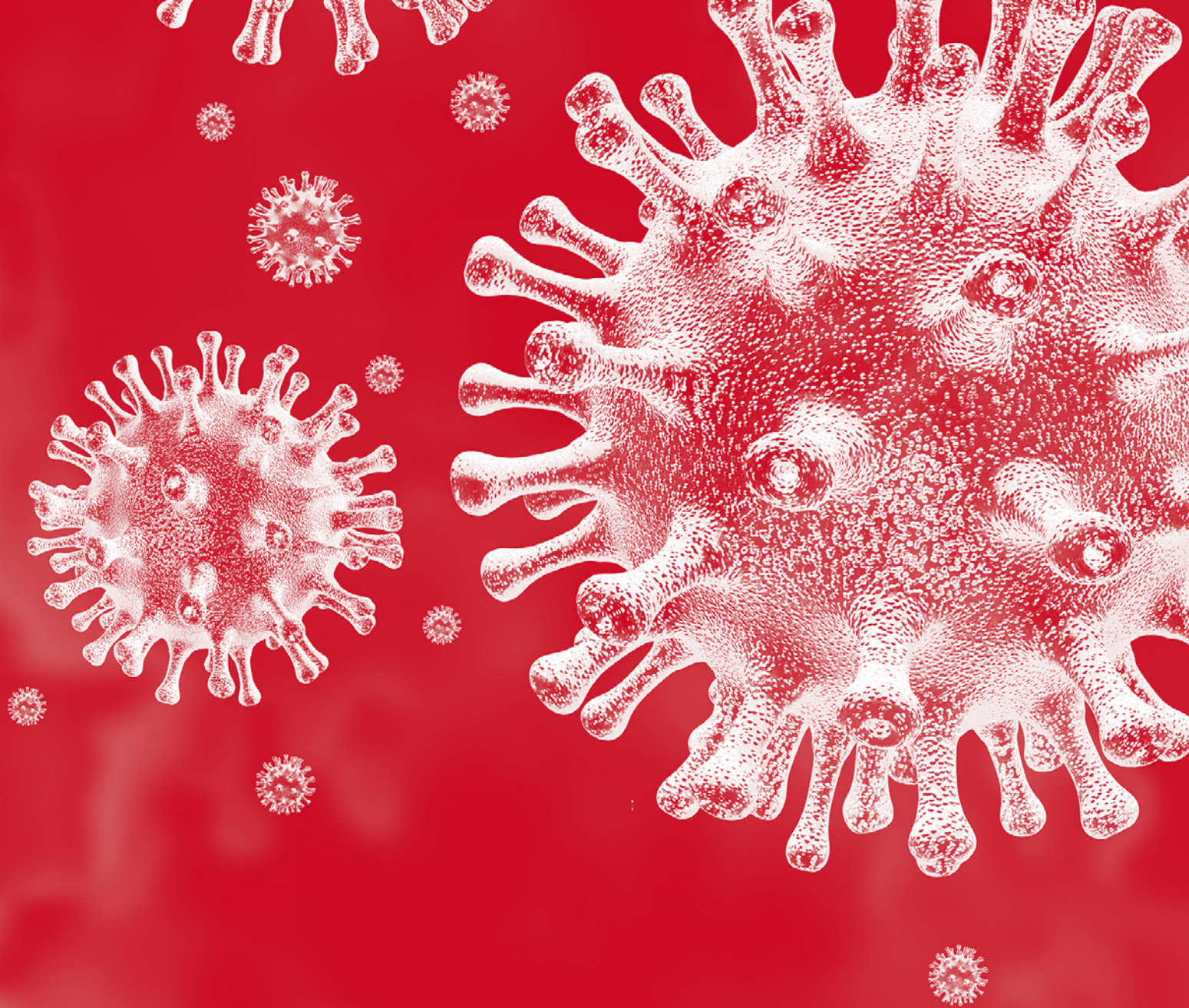
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<b>1 Can an employer lawfully conduct temperature checks of employees and visitors in its premises?</b>	<p>Yes.</p> <ul style="list-style-type: none"><li>▪ Although the temperature data is sensitive data (which generally may not be collected or processed), due to the current circumstances (potential risk for third parties -e.g. other employees) and the existence of a contractual/employment relationship with employees, the temperature check would be based on the need to fulfil the contract and comply with applicable obligations (this is an exception to the referred general prohibition).</li><li>▪ As regards visitors, since temperature checks cannot be made compulsory, the manner to approach it is as a condition precedent to grant access to the premises: Visitors could be asked to consent to the temperature check, and access to the premises could be refused if consent is not granted. The objective is to protect the health of others considering the extraordinary current health scenario.</li><li>▪ The employer should treat the information collected in accordance with the principles/obligations arising from Personal Data Protection Law No. 25,326 and its related regulations ("Law"), and recently issued health related regulations.</li></ul>
<b>2 Can an employer require employees to inform HR / their line manager if their temperature rises above the normal threshold?</b>	<p>Yes.</p> <ul style="list-style-type: none"><li>▪ Requiring employees to do this is less intrusive than forcing all employees to conduct temperature checks.</li></ul>
<b>3 Can an employer require employees (and visitors to its premises) to complete a declaration / self-assessment as to whether they have or have plans to travel to any of the high risk areas as designated by the WHO/ local government, or whether they have been in close contact with someone who has been positively tested for COVID-19?</b>	<p>Yes. In fact, employees who have been in close contact with individuals who have tested positive for COVID-19 are legally required to report such circumstance to both the health authorities and their employers to ensure the individuals self-isolate. In turn, employers are also required to report this to the authorities.</p> <ul style="list-style-type: none"><li>▪ Employers shall comply with the general personal data protection principles set forth by the Law. Also, the information collected shall be strictly related to COVID-19 and not be excessive for the purposes for which it was obtained.</li><li>▪ In addition, on 12 March 2020, the Executive Branch issued an Emergency Executive Order which declares a national health emergency for one year due to the COVID-19 outbreak and the WHO's declaration of the disease as a pandemic. Among other things, the Executive Order sets forth that those who are returning from a critical areas must self-isolate for 14 days following their arrival.</li></ul>



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**Have data privacy regulators issued any guidance either permitting or restricting the collection of personal data for purposes of identifying COVID-19 cases?**

No.

On 11 March 2020, the Argentinian DPA issued a statement reiterating the general principles of the Law that must be considered when processing health related data (such as information about COVID-19). The statement is available **here**:

The statement is high-level and, briefly states the following:

- Health data is sensitive data.
- Disclosure of the name of a patient suffering COVID-19 requires consent.
- Using patient information for purposes other than medical treatment requires free and informed consent.
- Healthcare establishments and professionals can process and transfer patient data to each other, provided they comply with professional secrecy.
- Professional secrecy will persist even after the end of the relationship with the patient.
- The National Health Ministry and the provincial ministries are empowered to request, collect, transfer among themselves or process in any manner health data without the consent of the patients, in accordance with the explicit and implicit powers conferred on them by law.

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**Is an employer permitted to disclose the identity of any worker who is confirmed to have COVID-19, to other co-workers?**

No.

- Disclosure of the identity of any worker who is confirmed to have COVID-19 to other co-workers requires consent. However, employers must require workers who were in close contact with a person who has COVID-19 to isolate and must report the COVID-19 case and the close contacts to the authorities.



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## Can an employer lawfully conduct temperature checks of employees and visitors in its premises?

Depends.

- Under Brazilian labor law, any employer is required to maintain a safe and healthy workplace environment for its employees. Given the COVID-19 pandemic, and considering that the virus spreads quickly and could endanger the health of employees and put at risk the life of individuals, especially those in risk groups, employers are required to take reasonable precautions in the workplace.
- Furthermore, Law No. 13,979/20 defines measures to face the “public health emergency” caused by COVID-19, and establishes that every person (and in Brazil this includes both individuals and legal entities) must cooperate with sanitary authorities by immediately reporting cases of possible contact with “coronavirus infectious agents” and circulation in areas considered risk areas for disseminating coronavirus.
- In such circumstances, conducting temperature checks could be justified by the employer’s obligations to keep the work environment healthy for all employees and to communicate any risks to authorities.
- However, employees’ or others’ temperatures would constitute sensitive personal data, according to the Brazilian Data Protection Law – processing of sensitive data is subject to stricter requirements than the processing of other types of personal data. In this context, relevant legal bases to process sensitive personal data are consent, compliance with a legal or regulatory obligation, and to protect the life and physical integrity of the data subject and third parties. Notwithstanding, the processing of sensitive data must be proportionate and account for the individual rights and freedoms of data subject.
- Given the range of health information that consistently tracking employees’ temperatures could reveal, we believe that mandatory temperature checks of employees would most likely be considered disproportionate and, therefore, a breach of Brazilian Data Protection Law.
- On the other hand, the new Brazilian Data Protection Law has not entered into force yet – it will be effective as of August 2020, when (hopefully) the risk scenario will be different. In any event, in light of the increasing awareness of the Data Protection Law by individuals and, especially, authorities, we recommend that companies adopt an approach that is consistent with the new Data Protection Law.
- One alternative for employers would be to obtain employee consent. For data protection purposes, consent must be free, informed and unequivocal. In most instances, in an employment relationship the consent is usually deemed invalid. However, we believe that employers could seek a valid consent of employees given the circumstances provided certain precautions are carefully put in place.
- For that purpose, the employer must provide employees with complete information about the use of the data, the purpose of processing and the possibility that employee can withhold consent, and revoke consent any time. It is also important to inform the employee of the consequences of withholding consent. To improve the chances that the consent will be valid in this case, the employee must be clearly informed that there will be no retaliation if she/he does not wish to undergo temperature checks, nor any adverse consequences to the person’s career. However, given the employer’s obligation to maintain a safe workplace, from a privacy perspective the employer could establish that the consequence of the employee withholding consent to the temperature check would be that employer may require the employee to work remotely or put the employee on a paid leave until the employee presents a statement from a healthcare professional that the current health status of employee does not present risk of COVID-19 dissemination in the workplace or until the COVID-19 outbreak is more contained. Employers willing to adopt such measure should also have such approach reviewed from a Brazilian labor law perspective.

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- In any event, employers would still need to conduct temperature checks in a compliant and sensitive way, avoiding embarrassment for those who are identified as having higher temperatures, providing a privacy notice to explain what will happen with the temperature data, having a clear retention policy with a short retention period (a retention period of longer than 30 days would seem disproportionate), limiting those who have access to temperature check information, and handling it safely and securely. Also, any temperature check should be conducted only by a healthcare professional and, to mitigate exposure, such healthcare professional should not disclose temperatures per se, but only notify the employer if there is a concern with a particular employee/visitor and prohibit such employee/visitor from entering the workplace environment.

**2 Can an employer require employees to inform HR / their line manager if their temperature rises above the normal threshold?**

Yes.

- Requiring employees to do this is less intrusive than forcing all employees to conduct temperature checks, and is not dissimilar to employees self-certifying to their line manager that they are unwell.
- In the context of a major outbreak of COVID-19 this is more likely to be considered proportionate in the circumstances, especially considering the employer's legal obligations to maintain a safe workplace for all employees and to report cases of possible contact with "coronavirus infectious agents" and circulation in areas considered risk areas for disseminating coronavirus.

**3 Can an employer require employees (and visitors to its premises) to complete a declaration / self-assessment as to whether they have or have plans to travel to any of the high risk areas as designated by the WHO/ local government, or whether they have been in close contact with someone who has been positively tested for COVID-19?**

Yes, assuming information is limited to actual recent / planned travel, and actual cases of COVID-19. Our view is that this could reasonably be deemed to be proportionate and justified on the basis of: (i) the employer's balanced legitimate interests to ensure health and safety at work in the context of a major COVID-19 outbreak in Brazil, (2) and in light of the obligation to report cases of possible contact with "coronavirus infectious agents" and circulation in areas considered risk areas for disseminating coronavirus.

**4 Have data privacy regulators issued any guidance either permitting or restricting the collection of personal data for purposes of identifying COVID-19 cases?**

No. As mentioned above, Brazilian Data Protection Law has not entered into force yet (effective as of August 2020). The Brazilian Data Protection Authority is not operational yet and it, or any other authority, has not issued any regulation or guidance to date.



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**Is an employer permitted to disclose the identity of any worker who is confirmed to have COVID-19, to other co-workers?**

No, generally speaking.

- Informing employees or others about the identity of any specific employee who is confirmed to have COVID-19 would involve disclosing special category personal data, and so has the potential to be unlawful both from a data privacy perspective and employment law perspective (since it may carry a certain stigma, cause embarrassment etc.).
- It will generally not be necessary to disclose an individual's identity, even where implementing appropriate precautions. If you have assessed that a certain group of people are at high-risk of infection and should self-isolate, you can do this without disclosing the particular employee's identity.

This involves a balancing act, and where an infected employee's identity can be kept anonymous, that is preferable.



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| <b>1</b> | <b>Can an employer lawfully conduct temperature checks of employees and visitors in its premises?</b>  | <p>Generally speaking, it is not permissible for an employer to require employees to undergo health related tests, which include temperature checks.</p> <p>With respect to visitors, absent a directive from Canadian health agencies or the applicable privacy regulator, it is unlikely that temperature checks and collection of this type of health data are permissible for private sector organizations, as there may be other, less intrusive methods of collecting information for the purpose of limiting the spread of COVID-19.</p> |
| <hr/>    |  |   |
| <b>2</b> | <b>Can an employer require employees to inform HR / their line manager if their temperature rises above the normal threshold?</b>  | <p>Unlikely - it may be less intrusive to ask employees to report whether they experience "flu like" symptoms generally, rather than requiring that employees disclose the exact symptoms that they are experiencing. This is in line with the principle of limiting collection of personal information to that which is necessary for the purposes identified.</p>   |
| <hr/>    |  |   |
| <b>3</b> | <b>Can an employer require employees (and visitors to its premises) to complete a declaration / self-assessment as to whether they have or have plans to travel to any of the high risk areas as designated by the WHO/ local government, or whether they have been in close contact with someone who has been positively tested for COVID-19?</b> | <p>Yes, provided that in doing so, employers comply with applicable privacy laws, which include, but are not limited to, the requirement to obtain adequate consent, limit collection to that which is needed for the purposes identified by the employer, and limiting use, disclosure, and retention of personal information.</p>   |
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#### **4 Have data privacy regulators issued any guidance either permitting or restricting the collection of personal data for purposes of identifying COVID-19 cases?**

On 20 March 2020, the Office of the Privacy Commissioner of Canada ("OPC") released *Privacy and the Covid-19 Outbreak* (the "Guidance") to provide organizations subject to federal privacy laws with insight into appropriate information sharing during a pandemic.

The Guidance offers private sector organizations whose collection, use and disclosure of personal information are governed by the Personal Information Protection and Electronic Documents Act ("PIPEDA") clarification on when PIPEDA's general requirement to obtain the knowledge and meaningful consent of individuals before collecting, using, and disclosing their personal information does not apply. Seeking an individual's consent may not be necessary or appropriate if the organization:

- cannot obtain such consent in a timely way, and the collection is clearly in the interests of the individual;
- is collecting and using the information to make a lawfully required disclosure;
- receives a request for the disclosure from a government institution, acting under its lawful authority, to enforce or administer the laws of Canada or a province;
- believes, on reasonable grounds, that the information relates to a contravention of the laws of Canada, a province, or a foreign jurisdiction; or
- is acting in respect to an emergency that threatens the life, health, or security of an individual.

The Guidance also gives the following practical examples applicable to the current situation:

- The individual is critically ill or in a particularly dangerous situation, and needs help.
- A public health authority requires the disclosure.
- The organization has reasonable grounds to believe that an individual is in contravention of a quarantine order.
- An individual requires urgent medical attention and is unable to communicate directly with medical professionals.

As this pandemic progresses, we expect that formal declarations of a public emergency under federal and provincial laws may further extend government institutions' broad powers to collect, use, and disclose personal information, including their powers to require disclosures from private sector organizations. We will provide updates as new information becomes available.

#### **5 Is an employer permitted to disclose the identity of any worker who is confirmed to have COVID-19, to other co-workers?**

Generally, no.

- In keeping employees informed of possible COVID-19 transmission risk, employers should make a reasonable effort not to disclose information that alone, or in conjunction with other information, may identify an individual as having a confirmed case of COVID-19.
- While employers should avoid disclosing identifying information, they may provide information pertaining to the date of an individual's potential exposure and the nature of the potential exposure.
- In certain instances, Canadian privacy laws allow for disclosure of personal information without the consent, including instances where the disclosure of information is necessary to respond to an emergency that threatens the life, health or security of an individual of the public.



<p><b>1 Can an employer lawfully conduct temperature checks of employees and visitors in its premises?</b></p>	<p>Yes. As long as it is done in a non-discriminatory way (e.g., to all employees in a certain group, to all visitors, etc.) and with respect to the dignity of the persons.</p> <p>From a privacy perspective, it is generally accepted that employers takes measures which may affect employees' right to privacy for the sake of safety of other employees and the company in general.</p> <p>However, such measures need to be (i) proportional to the objectives that are pursued, (ii) non-discriminatory in their application, and (iii) respectful of the employees' right to privacy, dignity, etc. The first requirement implies a minimum intervention principle, while the last requirement means that the company needs to adopt pro-active measures to avoid affecting employees' rights. Examples in relation to the latter principle include that sensitive information must be shared only on a need-to-know basis and that an employee's identity must only be disclosed if strictly necessary.</p> <p>A balance must be found with reference to the circumstances of each case.</p>
<p><b>2 Can an employer require employees to inform HR / their line manager if their temperature rises above the normal threshold?</b></p>	<p>Yes.</p> <p>Requiring employees to do this seems to be justifiable in order to safeguard the company's personnel and does not seem unduly intrusive.</p>
<p><b>3 Can an employer require employees (and visitors to its premises) to complete a declaration / self-assessment as to whether they have or have plans to travel to any of the high risk areas as designated by the WHO/ local government, or whether they have been in close contact with someone who has been positively tested for COVID-19?</b></p>	<p>Yes, complying with the aforementioned requirements. Our view is that this could reasonably be deemed proportionate and low risk in the context of a major COVID-19 outbreak in Chile.</p>
<p><b>4 Have data privacy regulators issued any guidance either permitting or restricting the collection of personal data for purposes of identifying COVID-19 cases?</b></p>	<p>No.</p>



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**5** **Is an employer permitted to disclose the identity of any worker who is confirmed to have COVID-19, to other co-workers?**

No, generally speaking.

Informing employees or others about the identity of any specific employee who is confirmed to have COVID-19 would involve disclosing sensitive personal data, and so has the potential to both be unlawful from a data privacy perspective and employment law perspective (since it may carry a certain stigma, cause embarrassment etc.).

It will generally not be necessary to disclose an individual's identity, even where implementing appropriate precautions. If you have assessed that a certain group of people are at high-risk of infection and should self-isolate, you can do this without disclosing the particular employee's identity.

This involves a balancing act, and where an infected employee's identity can be kept anonymous, that is preferable.

There may be very limited circumstances where, based on the nature of the job, or an inability by the employer to assess whether a high risk of infection exists, confirming the identity of an infected person could be justified because of the high risk of onward infection (on the basis of substantial public interest, or vital interests).

Organisations should prepare an impact assessment which records how they will approach the issue of identifying infected persons.

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<b>1 Can an employer lawfully conduct temperature checks of employees and visitors in its premises?</b>	<p>Yes.</p> <p>Under normal circumstances, an employer must obtain the prior, express and informed consent of the data subject (employee or visitor) to collect and process their data.</p> <p>However, given the current situation of health emergency due to COVID-19, in which obtaining consent is problematic, the employer may process the data without consent in order to contain the risk and safeguard fundamental rights (like the right of life and health) of the data subject and third parties.</p> <p>Nevertheless, this exception does not exempt the employer from processing said data in accordance with the applicable principles set forth in the law. These principles require, among other obligations, proportionality between the processing of the data and the purpose sought. The processing of the data must be aimed at detection, prevention or control of COVID-19.</p>
<b>2 Can an employer require employees to inform HR / their line manager if their temperature rises above the normal threshold?</b>	<p>Yes.</p> <p>According to the circular No. 0018 of 2020 of the Ministry of Health and Social Protection (available <a href="#">here</a>), it is mandatory for employers to take action regarding any suspicious case of COVID-19 among its employees. Likewise, employees must report if they have symptoms of respiratory infection, including fever, cough or shortness of breath. Therefore, employers can and must require employees to inform HR / their line manager if their temperature rises above the normal threshold.</p>
<b>3 Can an employer require employees (and visitors to its premises) to complete a declaration / self-assessment as to whether they have or have plans to travel to any of the high risk areas as designated by the WHO/ local government, or whether they have been in close contact with someone who has been positively tested for COVID-19?</b>	<p>Yes.</p> <p>However, the information required must be proportional to the purpose sought and it would be prudent to obtain the prior, express and informed consent.</p> <p>For instance, an employer could ask data subjects (employees or visitors) whether they have returned from overseas in the past 14 days or have been in close contact with a confirmed COVID-19 case. But it would not be proportional to ask for the name of the infected person with whom the employee/ visitor has been in contact.</p> <p>As another example, an employer should not ask visitors to reveal future plans to travel to any of the high-risk areas as designated by the WHO or the Colombian Government, as this information is not relevant for the prevention purpose.</p>



## 4 Have data privacy regulators issued any guidance either permitting or restricting the collection of personal data for purposes of identifying COVID-19 cases?

Yes.

The Colombian DPA published an e-banner on the matter. However, the information included is limited to the availability of the exemption in the law for a medical or sanitary emergency.

According to the Law 1581 of 2012, in order to process personal data, it is mandatory to obtain the prior, express and informed consent of data subjects, unless an exception applies. Sanitary emergency is one of the exceptions that the Law foresees.

In light of the recent declaration of emergency in Colombia aimed at addressing the spread of COVID-19 in the country, the Data Protection Authority (i.e., the Superintendence of Industry and Commerce) has issued a letter clarifying that the collection of personal data that government entities make during the emergency (which for now is scheduled until April 13) does not require prior and express consent from data subjects, to the extent this information is required to overcome or manage the sanitary emergency.

Consequently, it is not necessary to obtain the consent of data subjects for administrative and/or government entities collecting personal data within the context of measures related to COVID-19.

Nonetheless, administrative and/or government entities must process such personal data exclusively for “adopting or implementing necessary measures to prevent, treat or control the spread of COVID-19 and mitigate its effects”. In the statement, the Superintendence of Industry and Commerce highlighted that this exception also applies to mobile phone operators and private entities when providing information to the National Planning Department (DNP) and to other administrative and/or government entities collecting personal data.

## 5 Is an employer permitted to disclose the identity of any worker who is confirmed to have COVID-19, to other co-workers?

No.

Informing employees or others about the identity of any specific employee who is confirmed to have COVID-19 has the potential to be unlawful from a data privacy perspective and discriminatory from a constitutional and employment perspective. Additionally, it is unlikely that disclosing an individual's entity is necessary in order to adopt preventative or containing measures.

In the case that an employer finds out that an employee has tested positive for COVID-19, we would recommend to: (i) instruct the infected employee to stay home for at least 14 days and encourage them to self-quarantine during that time, and (ii) ask the infected employee on what date they tested positive. The latter is for purposes of identifying where the infected employee worked during relevant dates, as well as those individuals the infected employee came into contact with.



1	<b>Can an employer lawfully conduct temperature checks of employees and visitors in its premises?</b>	<p>Yes.</p> <p>From a privacy standpoint, no consent from employees or visitors would be required for the employer to: (1) conduct temperature checks of employees and visitors in its premises; and/or (2) notify the health regulators (if necessary). This conclusion is based on our interpretation of existing privacy, labour and health regulations</p>
2	<b>Can an employer require employees to inform HR / their line manager if their temperature rises above the normal threshold?</b>	<p>Yes.</p> <p>Considering the existence of the duty to notify the authorities of possible infections, as well as the obligation for all organizations to conduct medical examinations to guarantee a healthy workplace and prevent contagious diseases, the employer may require employees to inform HR / their line manager if their temperature rises above the normal threshold.</p> <p>Nonetheless, in order to comply with the information requirement set forth by FLPPDPI, the employer must provide a privacy notice or make sure that the personal data to be collected is covered by the privacy notice that might have already been delivered to the employee.</p>
3	<b>Can an employer require employees (and visitors to its premises) to complete a declaration / self-assessment as to whether they have or have plans to travel to any of the high risk areas as designated by the WHO/ local government, or whether they have been in close contact with someone who has been positively tested for COVID-19?</b>	<p>Yes.</p> <p>Considering the existence of the duty to notify the authorities of possible infections, as well as the obligation for all organizations to conduct medical examinations to guarantee a healthy workplace and prevent contagious diseases, the employer may require employees to complete such a declaration / self-assessment d.</p> <p>Nonetheless, in order to comply with the information requirement set forth by FLPPDPI, the employer must provide a privacy notice.</p>
4	<b>Have data privacy regulators issued any guidance either permitting or restricting the collection of personal data for purposes of identifying COVID-19 cases?</b>	<p>No.</p>
5	<b>Is an employer permitted to disclose the identity of any worker who is confirmed to have COVID-19, to other co-workers?</b>	<p>Yes.</p> <p>Considering the existence of the duty to notify the authorities of possible infections, as well as the obligation for all organizations to conduct medical examinations to guarantee a healthy workplace and prevent contagious diseases, the employer may require employees to complete such a declaration / self-assessment d.</p> <p>Nonetheless, in order to comply with the information requirement set forth by FLPPDPI, the employer must provide a privacy notice.</p>





<p><b>1</b> Can an employer lawfully conduct temperature checks of employees and visitors in its premises?</p>	<p>Yes, generally.</p> <p>Although, as a general rule, the processing of personal data –which would include temperature checks- is subject to the data subject's consent, there are exceptional cases in which the consent is not required, which include processing of:</p> <ul style="list-style-type: none"> <li>(i) "personal data related to health (...) when there are reasons of public interest declared by law, or for public health reasons, both of them declared as such by the Ministry of Health"; and</li> <li>(ii) "personal data necessary for the preparation and execution of a contractual relationship to which the data subject is a party".</li> </ul> <p>With regard to (i) above, due to the outbreak of COVID-19 in Peru, on 11 March 2020 the Ministry of Health declared a Sanitary Emergency, while on 15 March 2020, the Peruvian Government declared State of Emergency. Therefore, the exception provided in (i) should be sufficient to justify companies carrying out temperature checks.</p> <p>Regarding (ii), considering that employers are obliged to guarantee the health and safety of their employees, and that the temperature checks are conducted to prevent the spread of COVID-19 in the workplace, temperature checks could also be considered to fall within this exception, since they would serve the employer to execute the contractual relationship it has with the employees.</p> <p>Even though this measure may seem intrusive, we consider it is proportionate given the circumstances.</p>
<p><b>2</b> Can an employer require employees to inform HR / their line manager if their temperature rises above the normal threshold?</p>	<p>Yes.</p> <p>As provided above, employers are obliged to guarantee the health and safety of their employees. In the context of COVID-19, reporting this information (as well as the development of any other symptoms) becomes necessary for the employer to comply with such obligation.</p>
<p><b>3</b> Can an employer require employees (and visitors to its premises) to complete a declaration / self-assessment as to whether they have or have plans to travel to any of the high risk areas as designated by the WHO/ local government, or whether they have been in close contact with someone who has been positively tested for COVID-19?</p>	<p>Yes.</p> <p>Considering the outbreak of COVID-19 in Peru, and for the reasons described above (which entitle employers to process personal data without consent), employers would be entitled to ask employees and visitors to their premises to declare if they have been in high risk areas and/or have been in contact with people that tested positive for COVID-19.</p> <p>With regard to travel plans, employers would also be entitled to ask for such information; however, considering that the declaration of State of Emergency implies closing borders (by know, until March 30), such a declaration may not be useful moving forward.</p>

**4**

**Have data privacy regulators issued any guidance either permitting or restricting the collection of personal data for purposes of identifying COVID-19 cases?**

No.

The Peruvian Data Protection Authority has only provided recommendations regarding how health establishments and health professionals must process personal data of patients with COVID-19 (press notice available [here](#)). No guidelines have been approved regarding how employers can process personal data of their employees in the context of COVID-19.

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**Is an employer permitted to disclose the identity of any worker who is confirmed to have COVID-19, to other co-workers?**

Yes, but only to those co-workers that need to access to such information for health reasons.

Indeed, all data processing must be conducted in compliance with the principle of proportionality, according to which any processing of personal data must be adequate, relevant and not excessive to the purpose for which the personal data was collected. Considering that personal data is collected for guaranteeing the health and safety of the employees, it should only be disclosed to those co-workers that have been in contact with the employee with COVID-19 and are at risk of having been infected.

If it is not possible to identify which employees were in contact with the employees with COVID-19, the employer must adopt preventive measures with regard to all of its employees. In this scenario, there would be no need to disclose the identity of the employee with COVID-19.



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| <b>1</b> | <b>Can an employer lawfully conduct temperature checks of employees and visitors in its premises?</b>  | <p>Yes.</p> <p>However, in all cases, temperature checks must be as non-invasive as reasonably possible, including by using temporal scanners or other thermometers that do not require employees make physical contact with the thermometer. Employers may also choose to recommend that employees check their own temperature before coming to work or once arriving at work, as part of an effort to prevent illness transmission in the workplace. These ADA statutory restrictions do not extend to visitors or other non-employees.</p>  |
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| <b>2</b> | <b>Can an employer require employees to inform HR / their line manager if their temperature rises above the normal threshold?</b>  | <p>Yes.</p> <p>However, employers should notify employees that they do not have to reveal information about underlying disabilities. Employers are generally free to ask employees if they are experiencing flu-like symptoms. Employers may also require employees to self-report those symptoms in connection with work (i.e., in advance of scheduled work shifts). Visitors or non-employees can be required to disclose if they recently have had a fever before being granted access to a facility.</p>  |
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| <b>3</b> | <b>Can an employer require employees (and visitors to its premises) to complete a declaration / self-assessment as to whether they have or have plans to travel to any of the high risk areas as designated by the WHO/ local government, or whether they have been in close contact with someone who has been positively tested for COVID-19?</b> | <p>Yes, generally speaking.</p> <p>However, employers must be mindful of the fact that Title VII and state law prohibit discrimination based on race, color, national origin, and other protected classifications. In fact, the Interim Guidance for Businesses and Employers released by the CDC (referenced below), specifically states that "to prevent stigma and discrimination in the workplace, use only the guidance [provided by the CDC] to determine risk of COVID-19. Do not make determinations of risk based on race or country of origin, and be sure to maintain confidentiality of people with confirmed COVID-19." As such, although employers may ask employees to complete such declarations, they must be mindful to administer them on a consistent basis and to avoid discriminatory use of the results. For example, it is not permissible to exclude employees from work activities simply because of their race or national origin and without evidence that they are ill or have recently travelled to a high risk area. Policies regarding future travel should similarly be neutral with respect to anti-discrimination laws. In addition, with the designation of COVID-19 as a pandemic, employers can now require employees to self-disclose a diagnosis of the virus (keeping in mind that ADA rules on confidentiality should always be observed).</p> |
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**4** Have data privacy regulators issued any guidance either permitting or restricting the collection of personal data for purposes of identifying COVID-19 cases?

No.

As of the time of writing, US authorities have not released guidance specific to the collection of personal data for purposes of identifying COVID-19 cases. The Office of Civil Rights, Health & Human Services, issued guidance stating that federal health privacy law authorizes employers to request protected health information from health care providers without employees' consent, if necessary to "prevent a serious and imminent threat." The guidance makes clear, however, that health care providers are not required to provide the information, and should use their own professional judgment in deciding whether to do so. See [www.hhs.gov](https://www.hhs.gov).

The CDC has released Interim Guidance for Businesses and Employers, available at: [www.cdc.gov](https://www.cdc.gov). In addition, as noted above, the Equal Employment Opportunity Commission ("EEOC") has previously issued guidance in 2009 for employers in the context of pandemics under the ADA, available at [www.eeoc.gov](https://www.eeoc.gov).

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**5** Is an employer permitted to disclose the identity of any worker who is confirmed to have COVID-19, to other co-workers?

No.

The ADA establishes the basic rule that, with limited exceptions, employers must keep confidential any medical information they learn about an applicant or employee (42 USC § 12112(d)(3)(B)). The CDC's Interim Guidance for Businesses and Employers also cautions employers on this topic and reminds them of their confidentiality obligations. Under this Guidance, however, employers can inform other employees that they may have been exposed to the virus so long as they maintain confidential the impacted employee's identity.

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The background of the slide features a detailed illustration of COVID-19 virus particles. A large, highly magnified virus particle is positioned on the right side, showing its characteristic spherical shape and a dense covering of red, spike-like proteins (glycoproteins). Several smaller, similar virus particles are scattered across the light blue background, which is decorated with faint, stylized white floral or leaf patterns. The overall aesthetic is clean and professional, typical of a public health or medical presentation.

# Asia Pacific Region

# Asia Pacific contacts & locations



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Click the relevant flag below for guidance on each location:



Australia



China



Hong Kong



Indonesia



Japan



Malaysia



Philippines



Singapore



Taiwan



Thailand



Vietnam



## 1 Can an employer lawfully conduct temperature checks of employees and visitors in its premises?

Depends.

- The employer will need to work through the legal basis allowing it to do the temperature check. This might change given the COVID-19 rapidly evolving situation and vary depending on the employee / visitor context.
- Generally speaking, all collection of personal information is subject to a test of being reasonably necessary for the entity's functions or activities. Additionally, collection of health information like a person's temperature is sensitive information. Unless an exception applies, under the Privacy Act 1988 (and other similar privacy laws), consent is needed to collect, use or disclose sensitive information. A relevant exception could be collection of sensitive information authorised or required by law. An issue is whether temperature checking of employees and visitors might be needed to comply with obligations under work health and safety (WHS) laws (e.g., as a safety measure). This may vary depending on the workplace and the specific measures an employer may have to put in place to eliminate or reduce a COVID-19 related risk. For example, it is likely that employers will need to adopt more stringent measures to comply with their WHS obligations where employees are working with more vulnerable people (e.g. aged care, healthcare and detention / security services).
- In Australia, employees and visitors might need to be considered differently. Activities by an employer with an employee record directly related to the employment relationship are exempt from the Privacy Act. Accordingly, it may be relevant to consider whether the temperature check would form part of an employee record used by the employer.

## 2 Can an employer require employees to inform HR / their line manager if their temperature rises above the normal threshold?

Yes.

- Employers have an obligation to take all reasonably practicable steps to protect the health and safety of anyone working in or visiting the workplace. As part of meeting their WHS legal obligations to provide a safe workplace, employers who form a reasonable view that they need to collect this information from employees could likely justify the collection by HR as an activity authorised by law. Given one of the principal symptoms of COVID-19 is fever, it is likely that requiring employees to provide such information will be a "reasonably practicable step" to protect the health and safety of workplace occupants.
- HR including the data as part of an employee's employment record could also mean that the Privacy Act does not apply to that employment record. However, the employer really needs to consider how they will use the collected information. For example, if the employer intends to disclose the information to a related entity or third party, the employee record exception would no longer apply.





<b>3</b> Can an employer require employees (and visitors to its premises) to complete a declaration / self-assessment as to whether they have or have plans to travel to any of the high risk areas as designated by the WHO/ local government, or whether they have been in close contact with someone who has been positively tested for COVID-19?	<p>Depends. Different considerations apply to past and future activities.</p> <ul style="list-style-type: none"><li>▪ Collection of information about past (or planned future) travel will be personal information. For visitors asked to advise past travel, the employer will need to comply with the Privacy Act requirements such as giving a collection notice containing the required content. For employees, it may be that the collected information forms part of an employee record (see above comments). From a work, health and safety perspective, it is likely that screening employees and visitors to the workplace in this manner may be a reasonable measure that employers must implement to comply with their WHS obligations (e.g. across healthcare, aged care etc).</li><li>▪ It is likely to be justifiable as part of meeting WHS legal obligations to provide a safe workplace, for an employer to request that their employees provide details on future travel plans. For example, so that the employer can form a view on instructing the employee to work from home for a period on return. The employee record exception in the Privacy Act might also assist the employer, but care needs to be taken when an employer is relying on it and future disclosure to other parties is not subject to the employee record exception.</li><li>▪ Collection of future travel plans from a visitor to the office may be harder to justify, particularly if the visitor is unlikely to return to the office in the near future.</li></ul>
<b>4</b> Have data privacy regulators issued any guidance either permitting or restricting the collection of personal data for purposes of identifying COVID-19 cases?	<p>Yes. The Office of the Australian Information Commissioner on 18 March 2020 issued guidance for government agencies and private sector employers to help keep workplaces safe and handle personal information appropriately as part of the COVID-19 response. Please see <a href="http://www.oaic.gov.au">www.oaic.gov.au</a>.</p>
<b>5</b> Is an employer permitted to disclose the identity of any worker who is confirmed to have COVID-19, to other co-workers?	<p>Depends.</p> <ul style="list-style-type: none"><li>▪ Absent consent from the worker with COVID-19, the employer would not have a legal basis for making the disclosure of what would be sensitive information to co-workers unless authorised or required by law.</li><li>▪ The employer should consider whether its obligations under WHS laws require it to make a disclosure to other co-workers as part of checking if they have been in contact with the worker with COVID-19. For example, disclosure to co-workers in the same location who are at risk could be justified. In contrast, disclosure to workers in other locations who have had no recent contact with the worker with COVID-19 is probably not justifiable.</li><li>▪ Employers should exercise extreme caution prior to disclosing the identity of an employee with COVID-19 to minimise the risk of victimisation and discrimination and consider whether the disclosure is necessary to comply with WHS obligations.</li></ul>



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| <b>1</b> | <b>Can an employer lawfully conduct temperature checks of employees and visitors in its premises?</b>  | <p>Yes.</p> <ul style="list-style-type: none"><li>▪ The vast majority of cities in Mainland China mandatorily require employers to implement temperature checks on employees and visitors in the employer's premises.</li><li>▪ In late February 2020, the State Council issued a notice requiring that an employee's temperature be checked every time the employee enters the company's premises. The notice requires the same for visitors.</li><li>▪ In some cities, an employer's commitment to take this measure is made a precondition for the local government's approval or the company's resumption of business.</li><li>▪ From a strict compliance point of view, we recommended employers obtain their employees' express consent to collect, process, use and transfer their body temperature information, and abide by the general principles of data protection.</li></ul> |
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| <b>2</b> | <b>Can an employer require employees to inform HR / their line manager if their temperature rises above the normal threshold?</b>  | <p>Yes.</p> <ul style="list-style-type: none"><li>▪ The vast majority of cities in Mainland China mandatorily require employees to do this, as employees are under a general obligation to contain COVID-19.</li><li>▪ As temperature checks are mandatorily required each time the employee enters the company's premises, if any employee's temperature rises above the normal threshold, the employer will immediately know and would be required to take actions as per local government rules.</li></ul>   |
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| <b>3</b> | <b>Can an employer require employees (and visitors to its premises) to complete a declaration / self-assessment as to whether they have or have plans to travel to any of the high risk areas as designated by the WHO/ local government, or whether they have been in close contact with someone who has been positively tested for COVID-19?</b> | <p>Yes.</p> <ul style="list-style-type: none"><li>▪ Under the national and local rules issued to contain COVID-19 in Mainland China, employers are required to collect employees' and visitors' health and travel information and employees and visitors have an obligation to provide such information.</li><li>▪ In many cities, employers can only re-open their offices after they submit employees' relevant health and travel information to the local authorities (and the required level of detail varies by city).</li></ul>   |
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**4** Have data privacy regulators issued any guidance either permitting or restricting the collection of personal data for purposes of identifying COVID-19 cases?

Yes.

In February 2020, the Office of Central Cyberspace Affairs Commission issued a notice emphasizing several general principles for protection of individuals' personal data in the situation of COVID-19. The principles the notice emphasizes include:

- no one can collect an individual's personal data without the individual's consent (except for those institutions / personnel authorized by the national health authority); note that employers are authorized and required by the government to collect employees' data related to containing COVID-19
- only information necessary for containing COVID-19 should be collected
- personal data should not be publicized without the data subject's consent (unless this is necessary for containing COVID-19 and the data is desensitized)
- personal data should be safeguarded

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**5** Is an employer permitted to disclose the identity of any worker who is confirmed to have COVID-19, to other co-workers?

Depends.

- From a data privacy perspective, it is preferable to keep an infected employee's identity anonymous, if there is no legitimate reason to disclose the infected employee's identity to other employees. For example, if an employee is confirmed to have COVID-19 but since then has not returned to the premises of the employer, the employer probably should not disclose the individual's identity to other co-workers.
  - However, if an employee is confirmed to have COVID-19 on the employer's premises, or returns to the premises thereafter, the employer likely needs to disclose the employee's identity to other co-workers, as the employer is obligated to cooperate with local health authorities to track any co-workers who have been in close contact with the employee.
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1	<b>Can an employer lawfully conduct temperature checks of employees and visitors in its premises?</b>	Yes. The Centre for Health Protection has issued a <b>Guidance Note on Monitoring Body Temperature</b> which says that offices have the discretion to initiate temperature checks as a measure to prevent the spread of infectious diseases.
2	<b>Can an employer require employees to inform HR / their line manager if their temperature rises above the normal threshold?</b>	Yes. Requiring employees to do this is less intrusive than forcing all employees to undergo temperature checks.
3	<b>Can an employer require employees (and visitors to its premises) to complete a declaration / self-assessment as to whether they have or have plans to travel to any of the high risk areas as designated by the WHO/ local government, or whether they have been in close contact with someone who has been positively tested for COVID-19?</b>	Yes, as long as employers comply with the usual notification requirements under the Personal Data (Privacy) Ordinance (PDPO), and only collect personal data which is necessary but not excessive for the purpose of use.
4	<b>Have data privacy regulators issued any guidance either permitting or restricting the collection of personal data for purposes of identifying COVID-19 cases?</b>	No, in relation to collection of personal data by employers.  However, the Privacy Commissioner has issued a <b>media statement on “The Use of Information on Social Media for Tracking Potential Carriers of COVID-19”</b> , which states that “there are <u>sufficient legal and justifiable bases</u> , whether under international law or local health-specific and personal data privacy legislation, on which the government may collect and use information obtainable offline or online with the aid of devices, applications, software or supercomputers with a view to tracking potential COVID-19 carriers or patients in the interests of both the individuals concerned and the public, not to mention the fact that the same approach has been adopted in many other jurisdictions”.
5	<b>Is an employer permitted to disclose the identity of any worker who is confirmed to have COVID-19, to other co-workers?</b>	Depends. <ul style="list-style-type: none"><li>▪ From a data privacy perspective, it is preferable to keep an infected employee’s identity anonymous.</li><li>▪ Under Data Protection Principle (DPP) 3 of the PDPO, consent is required in order to use personal data for a “new purpose” that was not notified to the data subject on or before initial collection of their personal data.</li><li>▪ However, section 59 of the PDPO contains a “health exemption”. In particular, personal data relating to the identity or location of a data subject is exempt if the application of the DPP3 consent requirement would be likely to cause serious harm to the physical or mental health of the data subject; or any other individual.</li></ul>



<b>1 Can an employer lawfully conduct temperature checks of employees and visitors in its premises?</b>	<p>Yes (subject to conditions)</p> <ul style="list-style-type: none"><li>▪ Indonesian data privacy laws have a very general and broad definition of personal data, therefore temperature information may be considered as personal data. Accordingly, any processing activity of temperature information of employees and visitors must be done in compliance with Indonesian regulations on personal data protection.</li><li>▪ In order to lawfully process the temperature information of employees and visitors, the employer must obtain valid consent from them and fulfil one of the legal bases requirements under Indonesian data privacy laws (e.g., valid interests of the employer).</li><li>▪ In relation to COVID 19, several governmental bodies have issued circular letters to require their employees and visitors to conduct temperature checks before entering their office premises. A similar approach is commonly taken nowadays by Indonesian companies/ building owners due to the circumstances. In the current circumstances, it is likely that a valid interest exists in conducting temperature checks of employees and visitors.</li></ul>
<b>2 Can an employer require employees to inform HR / their line manager if their temperature rises above the normal threshold?</b>	<p>Yes</p> <p>Requiring employees to do this is less intrusive than forcing all employees to undergo temperature checks.</p>
<b>3 Can an employer require employees (and visitors to its premises) to complete a declaration / self-assessment as to whether they have or have plans to travel to any of the high risk areas as designated by the WHO/ local government, or whether they have been in close contact with someone who has been positively tested for COVID-19?</b>	<p>Yes (subject to conditions)</p> <ul style="list-style-type: none"><li>▪ Given the broad definition of personal data under the Indonesian data privacy laws, the declaration/self-assessment form would be considered as collection of personal data. So, a valid consent and legal basis requirement would also be required.</li><li>▪ The declaration/self-assessment form should contain consent from the employees and visitors, which must clearly describe the purposes of collecting the information (i.e., preventing further spreading of COVID-19) and cater for the possibility of further processing.</li></ul>



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**Have data privacy regulators issued any guidance either permitting or restricting the collection of personal data for purposes of identifying COVID-19 cases?**

Yes (but limited to governmental bodies)

The Ministry of Communications and Informatics (MOCI), Indonesia's data privacy regulator, issued Decree No. 159 of 2020 concerning efforts to curb the spread of the Coronavirus (COVID-19) through the support of the Post and Information Sector (Decree 159). To date, the full text of Decree 159 has not yet been published.

From the press release in the MOCI website, the MOCI, together with the Ministry of Health, Ministry of State-owned Enterprises, National Disaster Recovery Body, and Indonesian telecommunication operators intend to coordinate surveillance efforts in an integrated manner in the form of tracing and tracking COVID-19 with the objective of enabling governmental bodies to conduct health surveillance. The surveillance is performed through a digital application called "PeduliLindungi" as developed by PT Telekomunikasi Indonesia, a state-owned telecommunication enterprise.

The application can trace movement of an infected person for the past 14 days. Based on the movement log, a notice would be blasted via SMS to people surrounding/in contact with the infected person. The notice would contain notification to follow the protocol for person under monitoring (orang dalam pengawasan/ODP). The application can also monitor mass gatherings, which will trigger a warning to dismiss via an SMS blast.

The application is still in beta version (early access). From the information provided in the application, personal information collected includes gadget identity and timestamp through MSISDN (i.e., cell phone numbers). While it is stated that geolocation data will not be collected, the MSISDN would be traced from data of the base transceiver station.

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**Is an employer permitted to disclose the identity of any worker who is confirmed to have COVID-19, to other co-workers?**

Unclear.

- It would be legally permitted if the declaration/self-assessment form provides the possibility of disseminating the information to other co-workers.
- Although the main two requirements are fulfilled, the key principles of data processing under Indonesian data privacy laws must also be considered. For instance, personal data must only be processed for the purposes for which it was collected. This means, employers may be asked to demonstrate that disclosing the identity of any worker who is confirmed to have COVID-19 is compatible with the purposes for which the data was collected and that individuals were informed accordingly.



<b>1</b> Can an employer lawfully conduct temperature checks of employees and visitors in its premises?	<p>No (unless consent is obtained).</p> <ul style="list-style-type: none"> <li>Employees' or others' temperatures without any additional information concerning doctor's assessment or consultation should not constitute sensitive personal data per se. However, considering that the practical sensitivity of the issue, it would be recommended to obtain the consent of the employee or visitor. Note that the consent is not required if there is a need to protect human health or lives or to enhance public hygiene, and when it is difficult to obtain a data subject's consent.</li> <li>In most cases, we would expect that a data subject will be able to provide their consent prior to the temperature check.</li> <li>A difficult situation may arise if an employee does not consent to the temperature check - what may the employer do in such a situation?</li> </ul>
<b>2</b> Can an employer require employees to inform HR / their line manager if their temperature rises above the normal threshold?	<p>Yes.</p> <p>From a data protection law perspective, there are no prohibitions on this approach.</p>
<b>3</b> Can an employer require employees (and visitors to its premises) to complete a declaration / self-assessment as to whether they have or have plans to travel to any of the high risk areas as designated by the WHO/ local government, or whether they have been in close contact with someone who has been positively tested for COVID-19?	<p>Yes.</p> <ul style="list-style-type: none"> <li>Employee travel data or data on whether an employee has been in close contact with someone who has been positively tested for COVID-19 would be non-sensitive data. Employers may collect such data by notifying the employees of how the data will be used. This can be done through updating privacy policies, or sending out emails or notifying employees on an individual basis.</li> </ul>
<b>4</b> Have data privacy regulators issued any guidance either permitting or restricting the collection of personal data for purposes of identifying COVID-19 cases?	<p>No.</p>
<b>5</b> Is an employer permitted to disclose the identity of any worker who is confirmed to have COVID-19, to other co-workers?	<p>It depends</p> <p>If the co-workers' health is at stake, and the data subject's consent is difficult to obtain, then disclosure should be permitted. The legal position would be uncertain though should the worker infected with COVID-19 refuse to provide consent.</p>





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| <b>1</b> Can an employer lawfully conduct temperature checks of employees and visitors in its premises?  | <p>Yes. There are no legal provisions prohibiting employers from conducting temperature checks on its employees and visitors.</p> <p>Separately, note that the Ministry of Human Resources has issued Management Guidelines for Workplaces which advise employers to encourage their employees to take their temperature regularly and monitor for respiratory symptoms.</p> <p>The Department of Occupational Safety and Health had also issued a press statement relating to directions made under the Occupational Safety and Health Act 1994 in respect of Preventive Measures for the Coronavirus Disease (COVID-19) epidemic at the workplace. The press statement advised employers to identify employees that have visited countries where the COVID-19 virus has spread by conducting a health assessment on the relevant employee, and if they have symptoms such as a fever, coughs, and breathing difficulties, to encourage them to seek treatment immediately.</p> |
| <b>2</b> Can an employer require employees to inform HR / their line manager if their temperature rises above the normal threshold?  | <p>Yes. There are no legal provisions prohibiting employers from enforcing this requirement.</p> <p>Please also refer to our response to 1 in respect of the Management Guidelines for Workplaces issued by the Ministry of Human Resources.</p>   |
| <b>3</b> Can an employer require employees (and visitors to its premises) to complete a declaration / self-assessment as to whether they have or have plans to travel to any of the high risk areas as designated by the WHO/ local government, or whether they have been in close contact with someone who has been positively tested for COVID-19? | <p>Yes, as long as employers comply with the seven principles under the Personal Data Protection Act 2010 ("PDPA") in processing such data.</p> <p>Note also that the Ministry of Human Resources has issued Management Guidelines for Workplaces which advise employers to consider obtaining travel declarations from employees on their travel history.</p>   |
| <b>4</b> Have data privacy regulators issued any guidance either permitting or restricting the collection of personal data for purposes of identifying COVID-19 cases?   | <p>No. As at the date of this survey, there is no published guidance from the Personal Data Protection Commissioner on data protection issues arising from COVID-19.</p>   |
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**Is an employer permitted to disclose the identity of any worker who is confirmed to have COVID-19, to other co-workers?**

Yes, where the employer obtains the explicit consent of the infected worker. To the extent that the infected worker's express consent cannot be obtained, an employer may be able to disclose the identity of such worker if the employer can justify the lack of express consent. Under the PDPA, such information can be disclosed in the absence of express consent, if the employer can justify the conveyance of this information is necessary in order to:

- (a) protect the vital interests of the data subject (i.e., the worker), or another person, in a case where the express consent either cannot be obtained or cannot be reasonably expected to be obtained from the worker. For example, where the employer cannot be reasonably expected to obtain express consent of the worker to the disclosure, the employer may promptly disclose this information where there is an urgent need to avoid further contamination of common areas of the work place (and therefore further infections) where the infected worker has been working.
- (b) protect the vital interests of another person, in a case where consent by or on behalf of the worker has been unreasonably withheld. For example, the employer may still disclose the information to the other co-workers of the worker to enable them to get tested or to require them to self-quarantine - even if the worker had refused to provide consent given that such relay of information is necessary to protect other workers from risk of infection or spreading such infection.

That said, it should be noted that such disclosure may raise issues from an employment law perspective given that it may amongst others, amount to a breach of mutual trust and confidence, entitling the worker to claim for constructive dismissal. As such, to the extent possible, given the risk of stigma associated with being infected, employers should not disclose the infected worker's identity. Where an employer has assessed that a certain group of people are at high-risk of infection and should self-isolate, the employer should take the relevant preventive measures without disclosing the particular worker's identity.



<b>1</b>	<b>Can an employer lawfully conduct temperature checks of employees and visitors in its premises?</b>	<p>Yes, provided that the temperature checks are general and anonymous, without identifying each individual subjected to the checks. This should not be deemed as personal data processing and is therefore outside of the coverage of the Data Privacy Act of 2012.</p> <p>However, if the temperature checks identify the individuals subjected to the checks, the results constitute sensitive personal information, which may not be processed without the express consent of the employees and visitors.</p>
<b>2</b>	<b>Can an employer require employees to inform HR / their line manager if their temperature rises above the normal threshold?</b>	<p>Yes, employers are required to protect the welfare of their employees.</p>
<b>3</b>	<b>Can an employer require employees (and visitors to its premises) to complete a declaration / self-assessment as to whether they have or have plans to travel to any of the high risk areas as designated by the WHO/ local government, or whether they have been in close contact with someone who has been positively tested for COVID-19?</b>	<p>Yes, travel declaration forms that do not require an individual's sensitive personal information (e.g., age, health condition) may be lawfully required in the exercise of the employer's legitimate interests or justified as necessary in order to respond to a national emergency or to comply with the requirements of public order and safety.</p>
<b>4</b>	<b>Have data privacy regulators issued any guidance either permitting or restricting the collection of personal data for purposes of identifying COVID-19 cases?</b>	<p>Yes, the National Privacy Commission issued its <b>official statement</b> on 10 March 2020 directing that only pertinent information necessary in facilitating contact tracing should be collected, such as but not limited to: travel history, and frequented locations. Likewise, only the information required to enable contact tracing is allowed to be disclosed to the public.</p>
<b>5</b>	<b>Is an employer permitted to disclose the identity of any worker who is confirmed to have COVID-19, to other co-workers?</b>	<p>No, a person's condition as a COVID-19 patient constitutes sensitive personal information, which may not be processed without the express consent of the employees and visitors.</p>



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| <b>1</b> Can an employer lawfully conduct temperature checks of employees and visitors in its premises?  | <p>Yes</p> <ul style="list-style-type: none"><li>▪ The Ministry of Manpower ("MOM") states that employers should encourage employees to take temperature regularly and monitor for respiratory symptoms.</li><li>▪ In relation to workplace measures in response to the Disease Outbreak Response System Condition (DORSCON) Orange situation, please see the general advisory at: <a href="http://www.mom.gov.sg">www.mom.gov.sg</a>. Amongst other things, the appropriate workplace measures include: temperature checks/screening, split team arrangements, work from home where possible, stepping up cleaning of work premises.</li><li>▪ The MOM general advisory states specifically in relation to temperature checks:<ul style="list-style-type: none"><li>- "Depending on the nature of business and environment, employers may consider measures in their BCPs to control and log access of visitors/customers to their workplaces, with temperature screening where necessary."</li><li>- "Employers are encouraged to remind their employees to take care of their own health. All employers should require their employees to take their temperature regularly (at least twice daily) and check for respiratory symptoms."</li></ul></li></ul> |
| <b>2</b> Can an employer require employees to inform HR / their line manager if their temperature rises above the normal threshold?  | <p>Yes</p> <ul style="list-style-type: none"><li>▪ That would help the employer maintain a safe working environment. Under the Singapore Workplace Safety and Health Act (SWSHA) and common law, employers have a duty to take reasonably practicable measures to ensure the safety and health of employees. This would likely justify temperature screening measures, as long as these measures are implemented in a reasonable manner.</li><li>▪ The Guide on Business Continuity Planning for COVID-19 prepared by Enterprise Singapore states that "Once an employee is identified to have fever (38°C and above), [the employer should] follow instructions in Annex 3B: Procedures upon Detection of Unwell Employee".</li></ul>  |
| <b>3</b> Can an employer require employees (and visitors to its premises) to complete a declaration / self-assessment as to whether they have or have plans to travel to any of the high risk areas as designated by the WHO/ local government, or whether they have been in close contact with someone who has been positively tested for COVID-19? | <p>Yes</p> <ul style="list-style-type: none"><li>▪ The MOM states that employers may obtain travel declaration from employees on travel history / upcoming plans to the affected regions.</li><li>▪ This will also allow employers to check for compliance with any Stay-Home Notices or the previous Leave of Absence (LOA) regime.</li><li>▪ From 20 Mar 2020 2359 hours, all travellers are required to comply with a Stay-Home Notice (SHN) upon arrival in Singapore. Under the SHN, the employee cannot leave his place of residence for a period of 14 days from the date of his/her arrival in Singapore.</li></ul>   |
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**Have data privacy regulators issued any guidance either permitting or restricting the collection of personal data for purposes of identifying COVID-19 cases?**

Yes

The Personal Data Protection Commission (PDPC) has issued an "Advisory on Collection of Personal Data for COVID-19 Contact Tracing" at [www.pdpc.gov.sg](http://www.pdpc.gov.sg).

5

**Is an employer permitted to disclose the identity of any worker who is confirmed to have COVID-19, to other co-workers?**

Yes.

- This can be done for contact tracing purposes i.e. to check with the co-workers if they have been in contact with the worker who is confirmed to have COVID-19.

The PDPC Advisory clearly states: "In the event of a COVID-19 case, relevant personal data can be collected, used and disclosed without consent during this period to carry out contact tracing and other response measures, as this is necessary to respond to an emergency that threatens the life, health or safety of other individuals."





<b>1</b> Can an employer lawfully conduct temperature checks of employees and visitors in its premises?	<p>Yes.</p> <p>The Occupation Safety and Health Administration of Ministry of Labour issued a Sanitation Guideline for COVID-19 (Guideline), which requires employers to establish body temperature measurement and screening measures.</p>
<b>2</b> Can an employer require employees to inform HR / their line manager if their temperature rises above the normal threshold?	<p>Yes.</p> <p>Requiring employees to do this is less intrusive than forcing all employees to undergo temperature checks.</p>
<b>3</b> Can an employer require employees (and visitors to its premises) to complete a declaration / self-assessment as to whether they have or have plans to travel to any of the high risk areas as designated by the WHO/ local government, or whether they have been in close contact with someone who has been positively tested for COVID-19?	<p>Yes.</p> <p>The Guideline requires employers to closely monitor the health condition of employees who recently return from any of the high risk areas as designated by the World Health Organisation (WHO) / local government and take necessary monitoring actions and management.</p>
<b>4</b> Have data privacy regulators issued any guidance either permitting or restricting the collection of personal data for purposes of identifying COVID-19 cases?	<p>No</p>
<b>5</b> Is an employer permitted to disclose the identity of any worker who is confirmed to have COVID-19, to other co-workers?	<p>Depends.</p> <ul style="list-style-type: none"> <li>Under the Personal Data Protection Act, employers must not use employees' personal data beyond the original purpose of the employment agreement. Disclosure of the identity of any worker who is confirmed to have COVID-19 to other employees is likely to be considered beyond the original purpose of employment.</li> <li>That said, in certain exceptional cases, if the disclosure of the identity of the infected employees is necessary for furthering the public interest or to prevent material harm on others, under the same Act, such disclosure will be considered legal.</li> <li>It is strongly suggested to make sure that any disclosure is proportionate and not excessive.</li> </ul>



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| <b>1</b> Can an employer lawfully conduct temperature checks of employees and visitors in its premises?  | <p>Yes.</p> <p>COVID-19 has been recently categorized as a dangerous communicable disease under the Notification under Communicable Diseases Act. The employer, as owner or a person controlling a business operation area or any other place where the temperature check is conducted, shall notify the officer in the case where any person, who is suspected of being infected of COVID-19, is found in their area.</p> <p>Nevertheless, the Thai Personal Data Protection Act (PDPA) has finally been published in the Government Gazette last year and will be effective on 27 May 2020. Under the PDPA, employees' or visitor' temperatures will constitute sensitive data. The collection, use, and/or disclose of temperature check will require explicit consent. However, the Communicable Diseases Act will override the PDPA.</p> |
| <hr/>  |   |
| <b>2</b> Can an employer require employees to inform HR / their line manager if their temperature rises above the normal threshold?  | <p>Yes.</p> <p>Requiring employees to do this is less intrusive than forcing all employees to undergo temperature checks.</p>   |
| <hr/>  |   |
| <b>3</b> Can an employer require employees (and visitors to its premises) to complete a declaration / self-assessment as to whether they have or have plans to travel to any of the high risk areas as designated by the WHO/ local government, or whether they have been in close contact with someone who has been positively tested for COVID-19? | <p>Yes.</p> <p>Under the PDPA, the personal data shall be collected only to the extent necessary for the relevant lawful purpose, and shall be deleted or destroyed whenever it is irrelevant or no longer needed for the purpose necessary for which it has been collected.</p>  |
| <hr/>  |   |
| <b>4</b> Have data privacy regulators issued any guidance either permitting or restricting the collection of personal data for purposes of identifying COVID-19 cases?   | <p>No.</p>  |
| <hr/>  |   |
| <b>5</b> Is an employer permitted to disclose the identity of any worker who is confirmed to have COVID-19, to other co-workers?   | <p>No.</p> <p>From a data privacy perspective, it is preferable to keep an infected employee's identity anonymous.</p> <p>Under the PDPA, the explicit consent is required before the employer may disclose the identity of any worker who is confirmed to have COVID-19 (this is deemed as a health data, which falls under category of sensitive data), to other co-workers.</p>  |
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## 1 Can an employer lawfully conduct temperature checks of employees and visitors in its premises?

Yes.

- The Vietnamese government highly recommends temperature screening on premises' entrances.
- From a data privacy perspective, Vietnam's Law on Information Technology (IT Law) requires organizations and individuals that collect, process and use personal information of other people in the network environment to obtain the consent of those people unless otherwise provided by law. We note that Severe or Emerging Contagious Diseases fall within the definition of "Class A Infectious Diseases" under the Law on Prevention and Control of Infectious Diseases (LPCID) and individuals/ organizations in Vietnam are required to take sanitation, disinfection and sterilization measures according to instructions of competent health agencies. As such, employers will likely be authorized to conduct temperature checks of employees and visitors on their premises for purposes of sterilization and disinfection to comply with the LPCIP without the relevant infected users' consent.

## 2 Can an employer require employees to inform HR / their line manager if their temperature rises above the normal threshold?

Yes.

- An employer has the right to require employees to comply with their obligations in relation to labor safety and hygiene at the workplace which include an obligation on employees to report any "risks of dangerous and hazardous incidents" at the workplace.
- In addition, an employer has an obligation to assess and control dangerous and harmful factors at the workplace and fully provide employees with information on the same. Thus, an employer can legally require that employees disclose themselves as being a "risk-factor" at the workplace.

## 3 Can an employer require employees (and visitors to its premises) to complete a declaration / self-assessment as to whether they have or have plans to travel to any of the high risk areas as designated by the WHO/ local government, or whether they have been in close contact with someone who has been positively tested for COVID-19?

Generally, yes.

- Employers must be aware of this information to protect all employees at the workplace and to comply with their obligation of reporting to the authorities if deemed necessary.
- Employees and visitors who have recently visited countries recorded with a large number of Coronavirus cases (e.g., China, Korea, Japan, Iran and European countries) or who are suspected of suffering from COVID-19 are required by the government to undergo a mandatory 14-day quarantine. Individuals who have been in close contact with someone who has been positively tested for COVID-19 will also be subject to the mandatory quarantine requirement.
- Asking visitors about their travel history and plans is slightly more sensitive. However, considering the current situation in Vietnam, questions to visitors on travel history are likely acceptable although not that common.
- Vietnam currently does not have a unified legal framework for data protection and privacy. Rather references to data privacy and required levels of protection are scattered throughout different laws including, but not limited to, the Civil Code, Penal Code, Law on Cyber Information Security, Law on Information Technology, Law on Cybersecurity, and sector-specific laws ("Vietnamese Data Privacy Laws").



As a general principle, Vietnamese Data Privacy Laws protect information pertaining or belonging to individuals or (to a lesser degree, organizations) that can serve to personally identify individuals (i.e., personal data). While Vietnamese Data Privacy Laws do not consistently define what information constitutes personal data and the definition also varies between sectors, the laws are interpreted to protect, at a minimum, information that would enable the identification of an individual.

Specifically, the Law on Information Technology requires that the entity collecting personal data must provide data subjects with information about the form, scope, place, purpose of collecting, processing, and using personal data. Further, the collection, storage, use, and transfer of such data must have the consent of such person. If travel data may amount to information that would enable the identification of an individual it would be considered as personal data that warrants protection under Vietnamese Data Privacy Laws. As such, those being asked to make such declaration/self-assessment should be informed of the form, scope, place, purpose of collection, processing, and use of such data and their consent should be obtained accordingly.

## 4 Have data privacy regulators issued any guidance either permitting or restricting the collection of personal data for purposes of identifying COVID-19 cases?

No.

- There is no specific guidance or regulation regarding the collection of information by employers for purposes of identifying COVID-19 cases.
- With respect to tracking of personal information of the patients, under Circular 17/2019/TT-BYT, health agencies are allowed to track personal data such as name, job, DOB, address, phone number etc. of any suspected cases.

## 5 Is an employer permitted to disclose the identity of any worker who is confirmed to have COVID-19, to other co-workers?

Arguably no.

- This information is considered protected medical information of the employee, the employee's consent would be normally required. However, employers have obligations to ensure the labor safety at the workplace and to report to the authorities any affected and suspected COVID-19 cases. Thus, the employer should be permitted to notify other co-workers that there is a worker who is confirmed to have COVID-19, however, should not disclose the identity of the worker, unless there is a consent from such worker.
- As a matter of practice, since employers have an obligation to report to the authorities any cases of affected/suspected COVID-19, the authorities will come and identify who has been in contact with a suspected affected or affected employee, and inform other employees if necessary. Employers are required to follow local authorities' recommendations if an employee is affected by COVID-19.

























**EMA**  
Region



# EMEA contacts & locations



Please reach out to any of the below contacts or your usual Baker McKenzie contact for more information or assistance:

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Click the relevant flag below for guidance on each location:

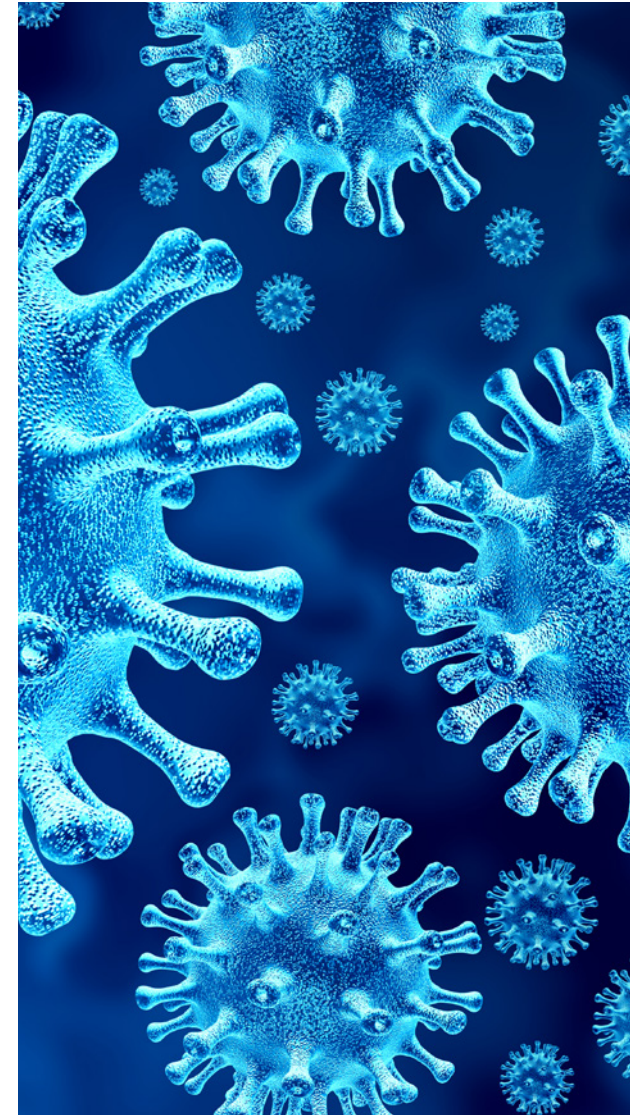
 Austria	 Belgium	 Czech Republic	 France	 Germany
 Hungary	 Italy	 Luxembourg	 Netherlands	 Poland
 Russia	 Saudi Arabia	 Slovak Republic	 South Africa	 Spain
 Sweden	 Switzerland	 Turkey	 UK	 United Arab Emirates, ADGM & DIFC



# European Data Protection Board (EDPB)

On 19 March 2020, the European Data Protection Board (“EDPB”) adopted a statement on the processing of personal data in the context of the COVID-19 outbreak.

- Data protection rules (such as the GDPR) do not hinder measures taken in the fight against the coronavirus pandemic. Still, data controller and processor must ensure the protection of the personal data of the data subjects. Emergency is a legal condition which may legitimize restrictions of freedoms provided these restrictions are proportionate and limited to the emergency period.
- Lawful Basis:
  - In the employment context, the processing of personal data may be necessary for compliance with a legal obligation to which the employer is subject such as obligations relating to health and safety at the workplace, or to the public interest, such as the control of diseases and other threats to health. Processing of health data is permitted where it is necessary for reasons of substantial public interest in the area of public health (Art. 9.2.i), on the basis of Union or national law, or where there is the need to protect the vital interests of the data subject (Art.9.2.c), as recital 46 explicitly refers to the control of an epidemic.
  - With respect to the processing of location data, national laws implementing the ePrivacy Directive must also be respected. In principle, location data can only be used by the telecommunication operator when made anonymous or with the consent of individuals. However, Art. 15 of the ePrivacy Directive enables Member States to introduce legislative measures to safeguard public security provided such measures are necessary, appropriate and proportionate.
- Core principles continue to apply, such as purpose limitation, transparency, appropriate retention principles, adequate security measures and documenting the decision-making process.
- Member State governments can use personal data related to individuals' mobile phones in their efforts to monitor, contain or mitigate the spread of COVID-19 only if it is not possible to achieve the purposes in an anonymous way (e.g. reports on the concentration of mobile devices at a certain location (“cartography”)) subject to legislative measures introduced by the Member States based on Art. 15 of the ePrivacy Directive (safeguarding public security).





<b>1</b>	<b>Can an employer lawfully conduct temperature checks of employees and visitors in its premises?</b>	<p>Generally, no. This would qualify as a collection of sensitive data for which there is no apparent legal basis under the GDPR.</p> <p>As an exception to the above, a legal basis does exist:</p> <ul style="list-style-type: none"><li>▪ to conduct temperature checks of employees if a works council agreement authorizes such checks (Art. 9(2)(b) GDPR)</li><li>▪ to conduct temperature checks of employees and/or visitors to protect public health (Art. 9(2)(i) GDPR) if the data subject (i) has been diagnosed with COVID-19 or (ii) is suspected of being infected as a result of contact with an infected person or as a result of his or her stay in a risk region.</li></ul>
<b>2</b>	<b>Can an employer require employees to inform HR / their line manager if their temperature rises above the normal threshold?</b>	<p>Yes. The collection of such data is possible on the basis that this is necessary to comply with duty-of-care obligations under the employment contracts (Art. 9(2)(b) GDPR).</p>
<b>3</b>	<b>Can an employer require employees (and visitors to its premises) to complete a declaration / self-assessment as to whether they have or have plans to travel to any of the high risk areas as designated by the WHO/ local government, or whether they have been in close contact with someone who has been positively tested for COVID-19?</b>	<p>Yes. The collection of such data is covered by a prevailing legitimate interest (Art. 6(1)(f) GDPR).</p>
<b>4</b>	<b>Have data privacy regulators issued any guidance either permitting or restricting the collection of personal data for purposes of identifying COVID-19 cases?</b>	<p>Yes. The Austrian Data Protection Authority has issued a public guideline stating that (see <a href="https://www.dsb.gv.at">www.dsb.gv.at</a>):</p> <ul style="list-style-type: none"><li>▪ sensitive data may be collected at least concerning persons who have been diagnosed or are suspected of being infected as a result of contact with an infected person or as a result of their stay in a risk region; for an employer, the legal basis is the necessity to comply with duty-of-care obligations under the employment contract (Art. 9(2)(b) GDPR)</li><li>▪ the transfer of sensitive data to health authorities is covered by a legal basis (Article 9(2)(i) GDPR)</li><li>▪ an employer may collect its employees' private contact details for emergency contact purposes but may not force the disclosure of such information</li></ul>



5

**Is an employer permitted to disclose the identity of any worker who is confirmed to have COVID-19, to other co-workers?**

No.

If done electronically, this would qualify as a processing of sensitive data for which there is no apparent legal basis under the GDPR. However, to the extent that such disclosure is performed orally in a face-to-face meeting, an argument can be made that the GDPR does not apply (cf. Art. 2(1) GDPR).

According to the Austrian Data Protection Authority, disclosing the identity of such worker to health authorities is covered by a necessity to protect public health (Article 9(2)(i) GDPR).



## 1

### **Can an employer lawfully conduct temperature checks of employees and visitors in its premises?**

Yes, but only if no personal data is processed. If personal data is processed, the answer is no.

- In its guidelines updated on 20 March 2020, the Belgian Data Protection Authority (BDPA) does not consider a mere temperature check as a processing of personal data, provided that no data is recorded or otherwise processed. In such a case, the GDPR will not apply. However, a general and systemic screening of body temperature will still be considered disproportionate in case personal data is recorded or processed.
- In Belgium, health checks in general and temperature checks in particular, may be performed only in specific circumstances, and in any case through the occupational physician. According to the BDPA, it is the role and purview of the occupational physician to follow and screen those employees of which the employer has the suspicion that they were exposed to and/or show symptoms of COVID-19.
- Employees' temperatures would constitute a special category of personal data (health-related data) that can only be collected and processed under specific circumstances. Assuming explicit consent will not work in the employment context, the only available legal bases seem to be if these checks would be necessary (i) for the employer to comply with its specific rights and obligations under employment law (Art. 9.2.(b) GDPR), or (ii) for reasons of substantial public interest or for reasons of public interest on the area of public health, on the basis of Union or Member State law, providing for suitable and specific measures to safeguard the rights and freedom of data subjects (Article 9.2 (g) and (i) GDPR).
- For the time being, no specific Belgian law seems to apply in relation to COVID-19. Although the general obligation of Belgian employers to provide a safe work place (see the Law of 3 July 1978) and to ensure well-being and safety at work (see the Law of 4 August 1996 on the wellbeing at work) could be invoked, the BDPA seems to consider that these are not sufficiently specific to justify the processing of health-related data on the basis of Art. 9. 2 (b), (g) or (i) GDPR.
- The data minimization principle should also be followed in all instances, and, in light of the recent guidance of the BDPA, there is a clear risk that a blanket measure to check employees' temperatures would be considered disproportionate.
- In practice, however, employers may still have to collect and process certain personal data in order to comply with their general obligations of safety and well-being in the workplace. In such case, the necessity and proportionality of the measures should be assessed in light of all elements and circumstances of the particular case. While it seems clear that general and systemic screening/checks will be deemed disproportionate, the risk could be mitigated by implementing safeguards to limit the generality of the measure and the intrusion into employees' privacy, always ensuring compliance with general principles such as data minimization and transparency (which means that a specific data protection information notice needs to be provided), accountability (documenting compliance with the above-mentioned principles) and data security.

**2**

**Can an employer require employees to inform HR / their line manager if their temperature rises above the normal threshold?**

No.

- Although this appears less intrusive, the same conditions as outlined under 1 would apply.
- In case an employee demonstrates flu symptoms, the employer could, however, ask the occupational physician to examine the employee in accordance with labor law requirements.
- In its guidelines issued on 13 March and updated on 20 March, the BDPA recommends that employees be encouraged to spontaneously report symptoms (which would, in our view, also likely result in the processing of health-related data).

**3**

**Can an employer require employees (and visitors to its premises) to complete a declaration / self-assessment as to whether they have or have plans to travel to any of the high risk areas as designated by the WHO/ local government, or whether they have been in close contact with someone who has been positively tested for COVID-19?**

Yes, assuming information is strictly limited to actual recent travel in high risk areas, and actual cases of COVID-19, it being noted that, in its guidelines issued on 13 March, as updated on 20 March, the BDPA considers that employees cannot be obliged to complete medical or travel questionnaires, but can be encouraged to do so.

- Our view is that this processing could reasonably be deemed proportionate and justified on the basis of the employer's balanced legitimate interests to ensure health and safety at work in the context of a major COVID-19 outbreak in Belgium.
- In such context, the employer's interests do not appear to be overridden by the employee's or visitor's own legitimate interests or fundamental rights and freedoms, provided that the data collection is strictly limited to:
  - whether the employee/visitor has recently visited any of those areas designated as highest risk
  - whether the employee/visitor (is aware that he/she) has been in close contact (according to official guidance) with anyone confirmed with COVID-19
  - if yes, whether they have been tested for COVID-19 and what the results are

However, it has to be noted that in its guidelines dated 13 March, the BDPA considers that an employer cannot oblige employees to complete questionnaires related to recent travels, but encouraging employees to report trips to high risk zones spontaneously would be permissible. The BDPA underlines again the role of the occupational physician in that respect.

**4**

**Have data privacy regulators issued any guidance either permitting or restricting the collection of personal data for purposes of identifying COVID-19 cases?**

Yes, see [www.autoriteprotectiondonnees.be](https://www.autoriteprotectiondonnees.be) (French) and [www.gegevensbeschermingsautoriteit.be](https://www.gegevensbeschermingsautoriteit.be) (Dutch)

On 13 March 2020, then updated on 20 March, the BDPA issued the following **general guidance regarding the processing of personal data in the context of preventive measures adopted by employers to protect their employees' health and safety in the context of COVID-19** (it being noted that this guidance is not legally binding and is subject to further developments) which may be summarized as follows:

- The general principle is that any processing of personal data must comply with Art. 6.1 GDPR and must rely on one of the legal basis listed under that article.



- At this point in time, according to the Belgian Data Protection Authority on the basis of the latest information published by the Ministry of Public Health concerning COVID-19, there is no justification for a more extensive or systematic application of the legal basis set out in Article 6.1 (d) GDPR in the context of preventive measures taken by employers.
- For the processing of health-related data, employers may invoke Article 9.2 (i) GDPR only if they act in accordance with explicit instructions imposed by the authorities (at this point of time, no such explicit instructions exist).
- The evaluation of the risks for health and safety is the competence of the occupational physician (not the employer), who is competent to detect infections and to inform the employer and persons who have been in contact with an infected person on the basis of Articles 6.1 (c) and 9.2 (b) GDPR (processing for the purpose of fulfilling an obligation under employment law).
- When adopting preventive measures involving the processing of personal data, the employer must take into account, in addition to the lawfulness of the processing, the principles of proportionality and data minimization: only the minimum data necessary to achieve the intended purpose may be processed.
- Employers must be transparent about the measures taken and adequately inform their employees and visitors about the processing purposes and the retention period of the personal data collected in this context (Article 5.1 (a) GDPR).
- The necessary security measures must also be taken to protect the personal data to be processed (Article 32 GDPR).
- The BDPA also answers specific questions that are outlined in this Q&As.

## 5 Is an employer permitted to disclose the identity of any worker who is confirmed to have COVID-19, to other co-workers?

In principle, no.

- Disclosing the identity of any person who is confirmed to have COVID-19 would amount to processing of special categories of personal data (health-related data) and could not be performed without a valid legal basis.
- Assuming consent is unlikely to be a valid basis in this context, the only possible legal bases are the necessity of the disclosure (i) for substantial public interest or for public interests in the area of public health, on the basis of a law (not in place regarding COVID-19 yet), or (ii) for the vital interests of the data subject or another person (where the data subject is physically or legally incapable of giving consent). As explained above, the BDPA is of the view that these legal bases do not apply in the current situation.
- In its guidelines, the BDPA stated that, as per the principles of confidentiality (Article 5.1(f) GDPR) and of data minimization (Article 5.1(c) GDPR), an employer cannot reveal the identity of an affected person, but can only inform other employees of the situation without mentioning the identity of the affected person.
- Again, in practice, we are of the view that this must be assessed on a case-by-case basis as there may be cases where disclosure (or at least indirect disclosure in case where the affected person could be indirectly identifiable) may appear as a necessary measure in order to protect the vital interests of other persons.
- This would in any case require the carrying out of a data protection impact assessment and the balancing of interests and fundamental rights and freedoms of the different individuals, and the documentation that the vital interests of a person are at stake while the data subject is physically or legally incapable of giving consent.
- The fact that the data subject would make this information manifestly public could, in our view, also be a possible basis.



1

**Can an employer lawfully conduct temperature checks of employees and visitors in its premises?**

Depends.

- When the checks are being performed on employees, generally yes, provided that contactless thermometers are used and the checks are performed on a non-discriminatory basis by health care professionals or other employees (or third party personnel) who have first-aid training.
- In relation to visitors, temperature checks may be considered disproportionate. It will depend on the specific situation (e.g. the time spent by the visitor at the workplace, the regularity of visits, the type of activity performed by the visitor). We think that conducting temperature checks on, for example, delivery people or messengers who are only dropping off goods or correspondence would be considered disproportionate. On the other hand, temperature checks might be allowed if they are being conducted for staff from a cleaning agency.
- When conducting temperature checks with an electronic thermometer it is also necessary to adhere to GDPR requirements for personal data processing, which means having a legal basis for the processing and ensuring the processing is transparent (individuals must be clearly informed about the data processing activities).
- When processing data relating to individuals' temperatures, an employer would most likely need to argue that the measure is necessary in the context of substantial public interest, based on the need to protect individuals' health and safety at the workplace, or on the basis of freely given consent. Whether checking individuals' temperatures will be lawful or not will always depend on the individual circumstances, in particular on how necessary the measures are and whether they will be deemed proportionate.
- In any event, the results of the temperature checks should not be recorded or shared with anyone outside the local entity.

2

**Can an employer require employees to inform HR / their line manager if their temperature rises above the normal threshold?**

Yes.

- Employers can ask employees to disclose themselves as being a "risk-factor".
- Requiring employees to report this is less intrusive than forcing all employees to conduct temperature checks, and is not dissimilar to employees self-certifying to their line manager that they are unwell.
- In any event, this information should not be recorded or shared with anyone outside the local entity.





3

**Can an employer require employees (and visitors to its premises) to complete a declaration / self-assessment as to whether they have or have plans to travel to any of the high risk areas as designated by the WHO/ local government, or whether they have been in close contact with someone who has been positively tested for COVID-19?**

Generally yes.

- Provided that information is limited to actual recent / planned travel, and actual cases of COVID-19. Our view is that this could reasonably be deemed to be proportionate (with the exception of future travel plans of mere visitors).
- Employees / visitors can also be asked other questions in order to determine whether that person is a "risk-factor", for example whether they have an individual who is confirmed to have COVID-19 living in their household or recently visited an event, which later became known to be a venue from which the COVID-19 disease spread.
- We would recommend only asking these questions verbally and not recording the received information. If the information is recorded (e.g. by signing a written declaration), it is necessary to adhere to GDPR requirements for personal data processing, including having a legal basis for the processing and ensuring the processing is transparent. Generally, we are of the opinion that if the questions are limited to the above, this could be justified based on the protection of vital interests of natural persons.
- Please note that Czech borders are closed as of 16 March 2020 subject to some minor exceptions, and therefore asking about planned travels might become irrelevant.

4

**Have data privacy regulators issued any guidance either permitting or restricting the collection of personal data for purposes of identifying COVID-19 cases?**

Yes.

- The Czech supervisory authority has issued a statement, which is available **here**.
- The Czech supervisory authority stated that public or private entities are required to follow the COVID-19 measures within the guidelines and recommendations of the competent authorities. For data controllers, whether in the private or public sector, this means complying with applicable regulations, including current emergency measures of the Government of the Czech Republic and other central authorities, and to process personal data (health data) only in these cases.

5

**Is an employer permitted to disclose the identity of any worker who is confirmed to have COVID-19, to other co-workers?**

No.



- 1 Can an employer lawfully conduct temperature checks of employees and visitors in its premises?**

No.  
The French DPA (CNIL) has specifically stated in its online guidance on COVID-19 that mandatory body temperature checks for employees/agents/visitor are not permitted.
- 2 Can an employer require employees to inform HR / their line manager if their temperature rises above the normal threshold?**

No.  
The French government had initially indicated that it was only “recommended” for employees to inform their employer if they have flu symptoms or if they visited the crisis area within the past 14 days.

The authorities have now recently emphasized the fact that employees must inform their employer of any situation that could present a risk for other employees’ health. However, a rise in temperature alone would not need to be reported if this does not seem to be related to COVID-19.

Employers should be aware of employees’ right of privacy and only request strictly necessary information. It is recommended to ask employees to voluntarily disclose relevant information whilst insisting on the reasons for the request for such information (to protect the workforce). Indeed, since employees have an obligation to protect other employees’ health, employees should be kindly asked to disclose any relevant information.
- 3 Can an employer require employees (and visitors to its premises) to complete a declaration / self-assessment as to whether they have or have plans to travel to any of the high risk areas as designated by the WHO/ local government, or whether they have been in close contact with someone who has been positively tested for COVID-19?**

Yes, assuming information is limited to actual recent / planned travel, and actual cases of COVID-19.

Our view is that this could reasonably be deemed to be proportionate and low risk given the current major COVID-19 outbreak in France.



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**4 Have data privacy regulators issued any guidance either permitting or restricting the collection of personal data for purposes of identifying COVID-19 cases?**

Yes.

The CNIL has published online guidance on COVID-19. It states notably that it is permitted for employers to collect and register: date, identity of the person suspected of having been exposed to the virus and organizational measures taken as a result (confinement, distance working, orientation and contact with occupational doctor etc.).

On the contrary, employers must refrain from systematically and generally collecting information relating to possible symptoms presented by an employee/agent and his/her relatives. The CNIL states it is not permitted to carry out body temperature checks for each employee/agent/visitor nor is it permitted to collect personal data via medical questionnaires from all employees/ agents.

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**5 Is an employer permitted to disclose the identity of any worker who is confirmed to have COVID-19, to other co-workers?**

No, generally speaking.

- Informing employees or others about the identity of any specific employee who is confirmed to have COVID-19 would involve disclosing special category personal data, and so has the potential to both be unlawful from a data privacy perspective and employment law perspective (since it may carry a certain stigma, cause embarrassment etc).
  - It will generally not be necessary to disclose an individual's identity, even where implementing appropriate precautions. If individuals appear to be at high-risk of infection and should self-isolate, this can be achieved without disclosing the particular employee's identity.
  - That said, there may be very limited circumstances where, based on the nature of the job, or an inability by the employer to assess whether a high risk of infection exists, confirming the identity of an infected person could be justified because of the high risk of onward infection (on the basis of substantial public interest, or vital interests).
  - Overall, this requires a balancing act, and where an infected employee's identity can be kept anonymous, that is preferable.
  - Organisations should prepare an impact assessment which records how they will approach the issue of identifying infected persons.
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- 
- 1 Can an employer lawfully conduct temperature checks of employees and visitors in its premises?**
- Depends.
- Conducting temperature checks qualifies as a processing of personal data if the checks are carried out with an electronic thermometer irrespective of whether the result is recorded or not. For employees, even non-automated processing by analogue thermometers will qualify as processing of employee data under German data protection law. Employees' or others' temperatures would constitute special category personal data.
  - In order to have a legal basis for collecting employees' temperatures (sensitive data), an employer would most likely need to rely on the argument that the measure is necessary in the context of substantial public interest, for reasons of public interest in the area of public health (such as in order to protect against serious cross-border threats to health), for compliance with the Occupational and Health Act in the work environment or consent. Whether or not checking employees' temperatures will be justified will depend entirely on the individual circumstances, in particular on whether they are necessary and proportionate.
  - The **Data Protection Authority of Rhineland-Palatinate** published a statement that it does not deem such temperature checks necessary because elevated temperature does not automatically mean the individual has been infected, neither does normal temperature mean that the individual is not infected. Other measures to protect health and safety are considered more appropriate by the Data Protection Authority of Rhineland-Palatinate, such as home office and instructing the employees to go see an HCP if they have flu-like symptoms.
  - In any event, the results of the temperature checks should not be recorded or shared with anyone outside the local entity and the individuals must be clearly informed about the data processing activities.
- 
- 2 Can an employer require employees to inform HR / their line manager if their temperature rises above the normal threshold?**
- Yes, in order to enable the employer to take precautionary measures to protect the other co-workers:
- Employees with a confirmed infection need to disclose this to their contractual employer.
  - Employees with flu symptoms, such as fever, who (i) visited or (ii) had contact with individuals from regions classified as COVID-19 **risk areas by the German Robert-Koch-Institute** within the past 3 weeks are required to inform their employer.
  - Employees must be informed pursuant to GDPR about any such processing activities.
- 
- 3 Can an employer require employees (and visitors to its premises) to complete a declaration / self-assessment as to whether they have or have plans to travel to any of the high risk areas as designated by the WHO/ local government, or whether they have been in close contact with someone who has been positively tested for COVID-19?**
- Yes, assuming information is limited to travel within the last 3 weeks.
- Questions should be limited to past travel to regions classified as COVID-19 **risk areas by the German Robert-Koch-Institute** within the past 3 weeks.
  - Employees / visitors can also be asked if they: (i) have an individual who is confirmed to have COVID-19 living in their household; or (ii) visited an event, which later became known to be a venue from which the COVID-19 disease spread, or (iii) otherwise had contact with an individual who is confirmed to have a COVID-19 infection.
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## 4

### Have data privacy regulators issued any guidance either permitting or restricting the collection of personal data for purposes of identifying COVID-19 cases?

Yes. On March 13, the German data protection authorities (**Datenschutzkonferenz - DSK**) published a statement regarding processing of data relating to COVID-19 by employers.

- Data collected in the context of the COVID-19 pandemic will typically qualify as health data protected by Art. 9 GDPR.
- Such data can in principle be collected and processed lawfully for purposes of containing the Corona pandemic or for protecting the employees. The principle of proportionality and lawfulness / legal basis must be taken into consideration.
- The following measures are in principle permitted:
  - Collecting and processing of employee data (including health data) by the employer to prevent the further spread of the virus among the employees, for example:
    - if the employee has been tested positive for COVID-19 or if the employee was in contact with a confirmed infected individual; and/or
    - if an employee has been in a high risk area as identified by the **German Robert-Koch-Institute** during the relevant time period.
  - Collecting and processing of personal data (including health data) of visitors in order to determine whether:
    - they are infected or have been in contact with a confirmed infected individual
    - they have been in a high risk area as identified by the German Robert-Koch-Institute during the relevant time period
  - The identity of an individual who has been tested positive for the Coronavirus or who is suspected of having been infected may only, and on an exceptional basis, be disclosed to contact persons of this individual if the disclosure of the identity is necessary for preventative measures.
- The legal bases for such measures may vary but in principle the following legal bases will be available for non-public bodies: For non-sensitive personal data - Sec. 26 (1) German Federal Data Protection Act (FDPA) and Art. 6 (1) (f) GDPR. For health data - Sec. 26 (3) FDPA and Art. 9 (2) (b) GDPR; Art. 9 (2) (i) GDPR with Sec. 22 (1) Nr. 1 (c) FDPA.
- Data must be kept confidential and can only be used for the above described limited purposes. Data must be deleted as soon as possible, at the latest at the end of the pandemic.
- Consent should only be obtained if the data subject is fully informed and can give the consent freely and voluntarily.

The data protection authority in Baden-Württemberg has also released FAQs on March 13:

- Employers can collect private contact details of employees in order to be in a position to inform them about shut downs or instructions for home office, but only on a voluntary basis. There is no legal obligation for employees to disclose their private contact details. Any such private contact details must be deleted once the crisis is over and can only be used for the specified purposes.
- Employers can ask employees returning from vacation whether the employee was in a risk area as determined by the Robert-Koch-Institute.
- Employers can collect and process data about any contact person of an infected employee in order to inform those contact person about a potential infection of the employee.
- Employers may inform the public health authorities about the identity of employees who are confirmed infected, who have been in a risk area or who have been in contact with a confirmed infected individual subject to an order by the public health authority.
- The public health authorities can issue orders requiring the collection, retention and disclosure of personal data about visitors / attendees to an event in case those visitors / attendees must be informed about a COVID-19 case.



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The **Data Protection Authority of Rhineland-Palatinate** has issued a statement around March 17:

- The DPA considers temperature checks as unnecessary (see above).
- Questionnaires to employees and visitors need to be proportionate.
- In case an employee has been infected, it needs to be determined in a privacy-friendly manner which coworkers need to be informed about the identity of the infected employee. Ideally, the infected employee creates a list of all coworkers with whom he/she was in contact so that those coworkers can be informed on an individual basis. A company-wide disclosure of the infected employee's name is generally not necessary.
- As a rule of thumb, personal data relating to COVID-19 infections could be deleted at the end of the quarantine.

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**5 Is an employer permitted to disclose the identity of any worker who is confirmed to have COVID-19, to other co-workers?**

Yes, in exceptional circumstances:

- The identity of an individual who has been tested positive for COVID-19 or who is suspected of having been infected may only, and on an exceptional basis, be disclosed to contact persons of this individual if the disclosure of the identity is necessary for preventative measures.
  - Taking the principle of proportionality into account, companies should try to protect the co-workers (and any other individuals) without disclosing the identity of the infected employee.
-





## 1 Can an employer lawfully conduct temperature checks of employees and visitors in its premises?

With respect to employees generally no, in case of visitors no.

- The applicable rules are covered by (i) the government decree of the Hungarian government issued as part of the legislation of the state of emergency (the Government Decree), and (ii) the Hungarian data protection authority's (NAIH) COVID-19 Guidance (the Guidance) issued prior to the declaration of the state of emergency by the Hungarian government.
- Bearing in mind the situation in Hungary at that time NAIH in its Guidance deemed such measures – irrespective of the type of device (e.g., a thermometer) being used – disproportionate, when is imposed as a blanket measure on all employees. In addition, according to the Guidance medical checks should only be conducted or supervised by health care professionals.
- Health checks may be however permissible, if:
  - i. the employer concludes in its risk assessment that these measures are necessary for certain jobs which are particularly affected by exposure to the virus, and are also proportionate and necessary (e.g., for safety and health protection purposes at the workplace)
  - ii. the health checks are conducted or supervised by health care professionals, and
  - iii. the employer only processes information relating to the result of the health checks and not the health check data itself
- In all cases employers must carry out a prior risk assessment (as well as a data protection impact assessment), in which the necessity, proportionality and suitability of the data processing with respect to its purpose must be described in detail.
- The prohibition to carry out health checks by the employers may vis-à-vis apply to visitors, as NAIH provides that the same legal bases may be applied in this case, thus only health care professionals (or persons supervised by them) might conduct such checks.
- The Government Decree however:
  - provides that the employer may deviate unilaterally – in a specific scope – from the rules of the Hungarian Labor Code during the term of the state of emergency and for thirty days thereafter, and in this respect
  - grants the employer the permission to take the necessary and justified measures regarding checking the employee's state of health. The Government Decree, however, does not specify the term "necessary and justified measures"; therefore, in our view the employers should, before introducing such measures establish if the measure is necessary and justified on a case by case basis. The specific rules with respect to this matter might be specified in further legislation, in which the government could set those rules that are necessary in order to comply with Article 9 (2) g) or i) or other applicable provisions of the GDPR and in line with the conclusions of the Guidance. We note that so far NAIH is silent regarding the applicability of other legal bases with regard to the declaration of the state of emergency and the emerging relevant new laws, and has not updated its Guidance yet.
  - The Government Decree does not set out specific rules applicable for visitors, thus it may be assumed that the conclusions of the Guidance in this respect remains in force, thus health checks may be conducted or supervised only by health care professionals.



2

**Can an employer require employees to inform HR / their line manager if their temperature rises above the normal threshold?**

Generally no.

- The Guidance provides that the collection and evaluation of information related to the symptoms of COVID-19, and also drawing conclusions from such information, should be reserved for health care professionals and authorities.
- As regards the provisions of the Government Decree on the measures regarding the checking of the employee's state of health see our answers to Q1.
- However, based on the general conduct requirements which apply within an employment relationship (in particular, the obligation to cooperate and the principles of bona fide action and fairness) employees must inform the employer of any health- or safety-related risk which might adversely affect the workplace, other employees or third parties, including the risk of themselves being potentially infected, and also the possibility of any suspected contact with an infected person.

3

**Can an employer require employees (and visitors to its premises) to complete a declaration / self-assessment as to whether they have or have plans to travel to any of the high risk areas as designated by the WHO/ local government, or whether they have been in close contact with someone who has been positively tested for COVID-19?**

Yes, the Guidance specifically states that such questionnaires are permissible provided that:

- A preliminary risk assessment deems this method necessary and proportionate when balanced against the impact on the employees' right to privacy;
- The employer provided detailed information to its employees / visitors in advance concerning the most important things to know about COVID-19 (e.g., the source of the infection, its spread, incubation period, countries/territories indicated as high risk territories, symptoms, prevention);
- The range of personal data collected is limited to the following information:
  - the date of the report and the employee's identification data
  - whether the employee visited (including for private purposes) a specific country in a specific time period (in accordance with the prior information provided to employees)
  - data about the employee having contact with a person arriving from the territories indicated in the employer's prior information
  - the measures taken by the employer (e.g., ensuring the possibility of visiting the company doctor, permission for voluntary quarantine at home)
- The questionnaire should not request any information about the employee's medical history and health documentation.
- As a general point, in the context of the general conduct requirements which apply within an employment relationship, employees are obliged to cooperate with their employer (See our answers to Q2).



## 4 Have data privacy regulators issued any guidance either permitting or restricting the collection of personal data for purposes of identifying COVID-19 cases?

Yes, but it was issued before the state of emergency was proclaimed.

You can find the guidance in English [here](#) and in Hungarian [here](#). It is worth noting that the Guidance was issued prior to the declaration of the state of emergency by the Hungarian government, and therefore only considers the situation in Hungary at that time. The Guidance is high level and reflects on the COVID-19 epidemic on the basis of general rules applicable to all forms of data processing, and then focuses on specific frequent cases. The findings may be summarized as follows:

- The Guidance extends to organizations both in the public and the private sector.
- The data controller – that is, the employer controlling the processing and the physician providing health care – is primarily responsible for processing data in a compliant way.
- The Guidance covers the applicable rules for data processing relating to (i) employment and other forms of working relationship; (ii) health care providers as well as company doctors; (iii) the processing of data related to third parties (e.g. clients and visitors).
- The Guidance addresses measures expected from the employer including:
  - the preparation of a pandemic/business continuity action plan
  - providing the employees/visitors with detailed information about the most important things to know about COVID-19
  - the reorganization of business conduct, if necessary
  - a procedure should be in place so that employees are obliged to immediately notify the designated person and/or turn to a doctor if the conditions set out in the relevant notice are met
- The Guidance sets out the conditions under which health checks may be permissible. As regards the provisions of the Government Decree on the measures regarding the checking of the employee's state of health see our answers to Q1.
- The Guidance also covers the possible criminal liability which can arise in the event of non-cooperation or willful behaviour, in the context of COVID-19 obligations.

## 5 Is an employer permitted to disclose the identity of any worker who is confirmed to have COVID-19, to other co-workers?

No, generally speaking.

- As a general rule, the name of an affected employee should not be communicated. The Guidance does not specify when a disclosure will be permissible, but taking into account the principles of data minimization and purpose limitation, such processing generally does not seem to be necessary nor proportionate in our view. The measure might be unlawful not only from data privacy perspective, but also in the context of employment law and an individual's right to privacy.
- However, there might be certain cases in which disclosure is inevitable, for example to co-workers who have had personal contact with the worker who was confirmed to have COVID-19. In any case, it is possible that this measure might be justifiable if a positive result of a risk assessment carried out by the employer is reached, provided that the applicable rules of data protection are applied.



<b>1</b> Can an employer lawfully conduct temperature checks of employees and visitors in its premises?	<p>Yes.</p> <p>On March 14 2020, a protocol (the "Protocol") has been issued as agreed between the Italian Government, employers' and the Workers Unions organizations, in order to address the escalating sanitary emergency.</p> <p>The Protocol allows employers to collect in real time employees' and visitors' temperature before entering their premises, preventing access to those whose temperature is higher than 37.5 degrees Celsius.</p> <p>As the temperature checks qualify as data processing, specific measures have to be undertaken. For example, the dignity and privacy of employees/visitors should always be respected, proper information should be provided and identification is permitted only for the purpose of documenting the reason for banning an individual from accessing the premises.</p>
<b>2</b> Can an employer require employees to inform HR / their line manager if their temperature rises above the normal threshold?	<p>Yes</p> <p>The Protocol states that if an employee has temperature and breathing infection symptoms (such as a cough), the employee should immediately inform HR, so that competent health authorities may be warned.</p> <p>The Garante with its Guidance (see below) is on the same page: it stresses that the employee has a duty to notify the employer of any circumstance that may represent a risk for the health and safety at the workplace; the employer may facilitate this communication by setting up a dedicated communication channel.</p>
<b>3</b> Can an employer require employees (and visitors to its premises) to complete a declaration / self-assessment as to whether they have or have plans to travel to any of the high risk areas as designated by the WHO/ local government, or whether they have been in close contact with someone who has been positively tested for COVID-19?	<p>Yes</p> <p>The Protocol states that if an employee has temperature and breathing infection symptoms (such as a cough), the employee should immediately inform HR, so that competent health authorities may be warned.</p> <p>The Garante with its Guidance (see below) is on the same page: it stresses that the employee has a duty to notify the employer of any circumstance that may represent a risk for the health and safety at the workplace; the employer may facilitate this communication by setting up a dedicated communication channel.</p>



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## 4 Have data privacy regulators issued any guidance either permitting or restricting the collection of personal data for purposes of identifying COVID-19 cases?

Yes.

The Italian DPA has issued specific guidance available [here](#).

The overall message and rationale behind this guidance is to avoid companies introducing new measures on their own initiative, and instead to leave the handling of the crisis to the competent government and health authorities. Of course, in some specific high risk cases, the employer may be permitted to act on its own initiative, but when capturing health data, any initiative should be driven through the company doctor.

The above-mentioned Protocol has been issued later than the guidance of the Garante and permits employers to take certain measures which the Garante had previously reserved for competent authorities. This is not a contradiction, since these measures are not independent initiatives of some employers, but have been decided by the Government in light of the increasing seriousness of the Covid-19 spread.

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## 5 Is an employer permitted to disclose the identity of any worker who is confirmed to have COVID-19, to other co-workers?

No, generally speaking.

- Informing employees or others about the identity of any specific employee who is confirmed to have COVID-19 would involve disclosing special category personal data, and so has the potential to both be unlawful from a data privacy perspective and employment law perspective (since it may carry a certain stigma, cause embarrassment etc.).
  - It will generally not be necessary to disclose an individual's identity, even where implementing appropriate precautions. If you have assessed that a certain group of people are at high-risk of infection and should self-isolate, you can do this without disclosing the particular employee's identity.
  - This requires a balancing act, and as a general principle, an infected employee's identity should be kept anonymous.
  - There may be some very limited circumstances where, based on the nature of the job, or an inability by the employer to assess whether a high risk of infection exists, confirming the identity of an infected person could be justified because of the high risk of onward infection (on the basis of substantial public interest, or vital interests).
  - Organisations should prepare an impact assessment which records how they will approach the issue of identifying infected persons.
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| <b>1</b> | <b>Can an employer lawfully conduct temperature checks of employees and visitors in its premises?</b> | <p>No.</p> <ul style="list-style-type: none"><li>▪ Employees' or other persons' temperatures would constitute special category personal data - these could only be collected in this way if there is a substantial public interest, or a public interest in the area of public health, in doing so. (We assume that consent doesn't work in this context).</li><li>▪ This measure is considered disproportionate by the data protection regulator in the Luxembourg (the CNPD), especially if it is enforced on all employees or visitors as a blanket measure.</li></ul> |
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| <b>2</b> | <b>Can an employer require employees to inform HR / their line manager if their temperature rises above the normal threshold?</b> | <p>No.</p> <p>This, too, would qualify as a collection of sensitive data for which there is no apparent legal basis under the GDPR.</p> |
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| <b>3</b> | <b>Can an employer require employees (and visitors to its premises) to complete a declaration / self-assessment as to whether they have or have plans to travel to any of the high risk areas as designated by the WHO/ local government, or whether they have been in close contact with someone who has been positively tested for COVID-19?</b> | <p>Yes, assuming information is limited to actual recent / planned travel, and actual cases of COVID-19.</p> <ul style="list-style-type: none"><li>▪ Our view is that this could reasonably be deemed to be proportionate and, on balance, justified on the basis of the employer's legitimate interests to ensure health and safety at work in the context of a major COVID-19 outbreak in Luxembourg.</li><li>▪ In this context, the employer's interests do not appear to be overridden by the employee's or visitor's own legitimate interests or fundamental rights and freedoms, provided that the data collection is limited to:<ul style="list-style-type: none"><li>- whether the employee / visitor has recently visited any of those areas designated as highest risk;</li><li>- whether the employee/ visitor (is aware that he/she) has been in close contact (according to official guidance) with anyone confirmed with COVID-19; and</li><li>- if yes, whether they have been tested for COVID-19 and the test results.</li></ul></li></ul> |
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| <b>4</b> | <b>Have data privacy regulators issued any guidance either permitting or restricting the collection of personal data for purposes of identifying COVID-19 cases?</b> | <p>Yes.</p> <ul style="list-style-type: none"><li>▪ You can find the guidance here. The CNPD (the relevant authority in Luxembourg) issued a statement on COVID-19 in which it indicates that if an employee reports being tested positive for COVID-19, companies may, as part of their safety and health obligations, record:<ul style="list-style-type: none"><li>▪ the date and identity of the employee suspected of having been exposed;</li><li>▪ the organizational measures taken (containment measures, teleworking, contacting the occupational medicine service, etc.).</li></ul></li><li>▪ Employers must therefore refrain from collecting personal data in a systematic and generalized manner, or through individual inquiries and requests. This would apply to the collection of information as part of a search for possible symptoms displayed by an employee / external person as well as their relatives.</li></ul> |
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**Is an employer permitted to disclose the identity of any worker who is confirmed to have COVID-19, to other co-workers?**

No, generally speaking.

- Informing employees or others about the identity of any specific employee who is confirmed to have COVID-19 would involve disclosing special category personal data, and so has the potential to both be unlawful from a data privacy perspective and employment law perspective (since it may carry a certain stigma, cause embarrassment etc.).
- It will generally not be necessary to disclose an individual's identity, even where implementing appropriate precautions. If you have assessed that a certain group of people are at high-risk of infection and should self-isolate, you can do this without disclosing the particular employee's identity. This involves a balancing act, and where an infected employee's identity can be kept anonymous, that is preferable.
- There may be very limited circumstances where, based on the nature of the job, or an inability by the employer to assess whether a high risk of infection exists, confirming the identity of an infected person could be justified because of the high risk of onward infection (on the basis of substantial public interest, or vital interests).
- Organisations should prepare an impact assessment which records how they will approach the issue of identifying infected persons.



<b>1 Can an employer lawfully conduct temperature checks of employees and visitors in its premises?</b>	<p>No.</p> <ul style="list-style-type: none"><li>▪ Employees' or others' temperatures would constitute special category personal data - these could only be collected in this way if there is a substantial public interest, or a public interest in the area of public health, in doing so. (We assume that consent doesn't work in this context).</li><li>▪ There is a significant risk that this measure would be considered disproportionate by the data protection regulator in the Netherlands, especially if it is enforced on all employees or visitors as a blanket measure.</li><li>▪ If there was a significant COVID-19 outbreak in a specific location (e.g., Amsterdam), and the National Health Institute would issue recommendations, this could change the picture. We do not consider this a likely scenario, especially as there is already press coverage on infected individuals having suppressed their fever by taking paracetamol. More generally an organization would need to be able to demonstrate effectivity of the measure and temperature as a single data point does not seem to be a reliable proxy for COVID-19 infections. In combination with whereabouts and any respiratory symptoms, it is, we understand.</li></ul>
<b>2 Can an employer require employees to inform HR / their line manager if their temperature rises above the normal threshold?</b>	<p>Yes.</p> <ul style="list-style-type: none"><li>▪ Requiring employees to do this is less intrusive than forcing all employees to conduct temperature checks, and is not dissimilar to employees self-certifying to their line manager that they are unwell.</li><li>▪ In the context of a major outbreak of COVID-19 this is more likely to be considered proportionate in the circumstances, and in any event employees are under an express and implied duty to their employer to disclose themselves as a "risk-factor" to their employer if they have been in contact with a confirmed case of COVID-19, or because they have visited a high-risk area.</li></ul>
<b>3 Can an employer require employees (and visitors to its premises) to complete a declaration / self-assessment as to whether they have or have plans to travel to any of the high risk areas as designated by the WHO/ local government, or whether they have been in close contact with someone who has been positively tested for COVID-19?</b>	<p>Yes, assuming information is limited to actual recent / planned travel, and actual cases of COVID-19. Our view is that this could reasonably be deemed to be proportionate and low risk in the context of a major COVID-19 outbreak in the Netherlands.</p> <p>In fact it is already standard practice to take precautionary measures to avoid contact with people who live or have recently been in any risk-area, including the southern part of the Netherlands.</p> <p>We recommend that such a declaration form focuses only on those areas of risk and limits personal data processing.</p>



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**4 Have data privacy regulators issued any guidance either permitting or restricting the collection of personal data for purposes of identifying COVID-19 cases?**

Yes.

The Dutch DPA has updated the FAQ pages on its website and added a special item which confirms that an employer is not allowed to collect and register medical data of its employees, but can do this only via the company doctor's service. See the FAQ item (in Dutch) [here](#).

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**5 Is an employer permitted to disclose the identity of any worker who is confirmed to have COVID-19, to other co-workers?**

No, generally speaking.

- Informing employees or others about the identity of any specific employee who is confirmed to have COVID-19 would involve disclosing special category personal data, and so has the potential to both be unlawful from a data privacy perspective and employment law perspective (since it may carry a certain stigma, cause embarrassment etc).
  - It will generally not be necessary to disclose an individual's identity, even where implementing appropriate precautions. If you have assessed that a certain group of people are at high-risk of infection and should self-isolate, you can do this without disclosing the particular employee's identity.
  - This requires a balancing act, and where an infected employee's identity can be kept anonymous, that is preferable.
  - That said, if it is impossible to prevent that the data point of someone being infected can be related to an identified individual - e.g., because only a limited number of people is working in the organization and hence it is easy to figure out who the infected person was - this does not impede the employer from telling the other workers that there has been an infection, as in such cases the balancing test will often show that the health interests of the exposed colleagues override the interests of the sick employee.
  - Organisations should prepare an impact assessment which records how they will approach the issue of identifying infected persons.
-



- 1 Can an employer lawfully conduct temperature checks of employees and visitors in its premises?**

Unclear.

  - Employees' or others' temperatures would constitute special category personal data - these could only be collected in this way in exceptional circumstances e.g., if there is a substantial public interest, or a public interest in the area of public health, in doing so, or if necessary for the purposes of carrying out the obligations of the controller or of the data subject in the field of employment, in so far as it is authorised by the law.
  - Under the labour laws, the employers are responsible for the state of health and safety at the workplace. It may be argued that under the current circumstances this labour law provision could be interpreted as a legal basis for conducting temperature checks of employees or visitors at the company as an exceptional measure to ensure a safe work environment for other employees during the outbreak. The test results should not be recorded or stored in electronic or paper form.
  - However, such potential interpretation has not been explicitly confirmed or denied by the Polish data protection authorities.
- 2 Can an employer require employees to inform HR / their line manager if their temperature rises above the normal threshold?**

Unclear.

  - Requiring the employees to do this is less intrusive than mandatory temperature checks for the employees. It is not dissimilar to employees self-certifying to their line manager that they are unwell. Thus, in the context of the current situation relating to outbreak of COVID-19, it is more likely to be considered as a proportionate measure. However, the position of the Polish data protection authority is still unknown.
  - From the employment law perspective, it is recommended to gather such data in a form of declaration of the employee (not enforced by the employer).
  - In any event employees are under an express and implied duty to their employer to disclose themselves as a "risk-factor" to their employer if they have been in contact with a confirmed case of COVID-19, or because they have visited a high-risk area.
- 3 Can an employer require employees (and visitors to its premises) to complete a declaration / self-assessment as to whether they have or have plans to travel to any of the high risk areas as designated by the WHO/ local government, or whether they have been in close contact with someone who has been positively tested for COVID-19?**

Yes, our view is that this could reasonably be deemed to be proportionate and low risk in the context of the current situation in Poland.

We recommend that such a declaration form focuses only on those areas of risk and limits personal data processing by asking:

  - whether the employee/ visitor has recently visited any of those areas designated as highest risk
  - whether the employee/ visitor has been in close contact (within 2 meters for 2 minutes or more) with anyone confirmed with COVID-19

Gathering the above information may be justified as a measure to ensure health and safety at the workplace.

However, the employer should not require employees to disclose any future travel plans, i.e. whether they plan to visit areas designated as high risk.



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**4 Have data privacy regulators issued any guidance either permitting or restricting the collection of personal data for purposes of identifying COVID-19 cases?**

Yes.

- On 12 March, the Polish DPA issued a high-level statement in relation to the COVID-19 outbreak.
- The Polish DPA discusses the recent “anti-virus” statute and states that “the provisions on personal data protection must not be viewed as an obstacle to the implementation of actions in connection with the fight against the coronavirus”
- The DPA does not directly indicate what actions the employers may take on their own initiative. However, the DPA states that in accordance with recital 46 of the GDPR, processing of personal data should be considered lawful also where it is necessary for the protection of an interest which is essential for the life of the data subject, e.g., where processing is necessary for humanitarian purposes, including monitoring of epidemics and their spread.

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**5 Is an employer permitted to disclose the identity of any worker who is confirmed to have COVID-19, to other co-workers?**

No, generally speaking.

- Informing employees or others about the identity of any specific employee who is confirmed to have COVID-19 would involve disclosing special category personal data, and so has the potential to both be unlawful from a data privacy perspective and employment law perspective (since it may carry a certain stigma, cause embarrassment etc).
  - It will generally not be necessary to disclose an individual’s identity, even where implementing appropriate precautions. If you have assessed that a certain group of people are at high-risk of infection and should self-isolate, you can do this without disclosing the particular employee’s identity.
  - This requires a balancing act, and where an infected employee’s identity can be kept anonymous, that is preferable.
  - There may be very limited circumstances where, based on the nature of the job, or an inability by the employer to assess whether a high risk of infection exists, confirming the identity of an infected person could be justified because of the high risk of onward infection (on the basis of substantial public interest, or vital interests).
  - Organisations should prepare an impact assessment which records how they will approach the issue of identifying infected persons.
-



<b>1</b>	<b>Can an employer lawfully conduct temperature checks of employees and visitors in its premises?</b>	<p>Yes.</p> <ul style="list-style-type: none"><li>▪ The Federal Service for Supervision of Communications, Information Technology, and Mass Media (Roscomnadzor) has issued special Guidelines regarding the lawfulness of performing temperature checks on employees. Such data is considered special category personal data.</li><li>▪ The employer has a right to request information regarding its employees' health where this is related to the employee's ability to fulfill their duties (art. 88 of the Labor Code of Russia, art. 10(2.3) of the Federal Law on Personal Data).</li><li>▪ Therefore, obtaining employees' consent to conduct temperature checks is not necessary.</li><li>▪ Employers also have an obligation under some regional acts to perform temperature checks and suspend employees from work places in the case of high body temperature (for example, para. 4.1 of the Decree of the Moscow Mayor dated 05.03.2020 No. 12-U "On Introduction of a High Alert Regime"; para. 8.3 of the Decree of the Moscow Mayor dated 29.03.2020 No. 34-U "On amendments to the Decree of the Moscow Mayor dated 05.03.2020 No. 12-U").</li><li>▪ The Guidelines state that all visitors implicitly give consent to their temperature being checked (and thereby their data being processed in this way) by entering the office building.</li><li>▪ Nevertheless, it is necessary to notify employees about the fact that the temperature checks are being performed and that personal data is being collected (for instance, a notice near the entrance to the office). The Guidelines suggest that any information about employees' temperatures should be destroyed one day after it has been collected.</li></ul>
<b>2</b>	<b>Can an employer require employees to inform HR / their line manager if their temperature rises above the normal threshold?</b>	<p>Yes.</p> <ul style="list-style-type: none"><li>▪ An employee is obliged to inform his/her employer or his/her direct supervisor without delay about any situation which emerges which might present a hazard to other persons' life and general health (art. 21 of the Labor Code of Russia).</li></ul>
<b>3</b>	<b>Can an employer require employees (and visitors to its premises) to complete a declaration / self-assessment as to whether they have or have plans to travel to any of the high risk areas as designated by the WHO/ local government, or whether they have been in close contact with someone who has been positively tested for COVID-19?</b>	<p>Yes.</p> <ul style="list-style-type: none"><li>▪ See our advice in relation to Q2. In our view, information relating to recent / planned travel could indicate a risk to other persons' life and/or general health, and so the employer would have a legitimate basis for collecting such information.</li><li>▪ Besides, in some regions of Russia additional measures have been introduced which allow employers to request this kind of information from employees (for example, para. 4.3 of the Decree of the Moscow Mayor dated 05.03.2020 No. 12-U "On Introduction of High Alert Regime"; para. 8.4 of the Decree of the Moscow Mayor dated 29.03.2020 No. 34-U "On amendments to the Decree of the Moscow Mayor dated 05.03.2020 No. 12-U").</li></ul>
<b>4</b>	<b>Have data privacy regulators issued any guidance either permitting or restricting the collection of personal data for purposes of identifying COVID-19 cases?</b>	<p>Yes.</p> <ul style="list-style-type: none"><li>▪ See our advice in relation to Q1. Roscomnadzor's Guidelines regarding the lawfulness of performing temperature checks on employees also specify that visitors implicitly consent to temperature checks by entering an office building.</li></ul>





## 5 Is an employer permitted to disclose the identity of any worker who is confirmed to have COVID-19, to other co-workers?

Presumably, yes

- Information about the fact that a citizen has received medical care, or information about the actual state of his/her health, is deemed a "medical secret" under Russian law (art. 13(1) of the Federal Law on the Fundamentals of Citizens' Health Protection in the Russian Federation). As a general rule, disclosing information about a deemed "medical secret" is prohibited. In addition, an employer has an obligation to refrain from disclosing personal data to third parties without the individual's consent, except as otherwise provided by federal laws (art. 7 of the Federal Law on Personal Data).
- Where an employer has the employee's prior written consent, it can disclose such information.
- However, Russian law provides for a number of situations in which it is possible to disclose medical secrets without the individual's consent. For instance, this is the case if there is a risk of the spread of infectious diseases (Art. 13(4)(2) of the Federal Law on the Fundamentals of Citizens' Health Protection in the Russian Federation). COVID-19 is specifically included in the List of Dangerous Contagious Diseases (Resolution of the Government of the Russian Federation dated 01.12.2004 (amended 31.01.2020) No. 715). Furthermore, some regions of Russia oblige employees to inform authorities on contacts of sick person under their request (for example, para. 8.3 of the Decree of the Moscow Mayor dated 29.03.2020 No. 34-U "On amendments to the Decree of the Moscow Mayor dated 05.03.2020 No. 12-U").
- Therefore, we believe that if the disclosure is needed for the purposes of preventing spreading COVID-19, it is possible. However, there is no precedent for this at the moment.



- 
- 1 Can an employer lawfully conduct temperature checks of employees and visitors in its premises?**
- Yes.
- Yes, the Ministry of Human Resources and Social Development ("MHRSD") announced on Wednesday, 18 March 2020 that private sector entities must lock down their headquarters for 15 days, activate working remotely and adhere to a number of directives. One of the directives is the reduction of staff in branches, offices and other facilities so that the number of employees present at the workplace does not exceed 40% of the total employees at the facility's headquarters taking into account a number of factors.
  - One of these factors is, where the number of employees exceeds 50, the entity must set up a checkpoint at the entrance of the workplace to measure the individuals' temperature and enquire about any COVID-19 associated symptoms and any contact with an individual who is, or might, be infected.
- 
- 2 Can an employer require employees to inform HR / their line manager if their temperature rises above the normal threshold?**
- Yes.
- Private sector entities must ask employees to disclose symptoms associated with COVID-19 such as high temperature (fever), cough, or shortness of breath, or those who have had recent contact with an individual who is, or might, be infected. Employers must immediately refer individuals exhibiting COVID-19 symptoms to medical care.
- 
- 3 Can an employer require employees (and visitors to its premises) to complete a declaration / self-assessment as to whether they have or have plans to travel to any of the high risk areas as designated by the WHO/ local government, or whether they have been in close contact with someone who has been positively tested for COVID-19?**
- Yes.
- Given the circumstances, it is likely that it would be permissible to require both employees and any visitors to its premises to complete a travel declaration / self-assessment form.
  - In any case, individuals who have entered the Kingdom since Friday, 13 March 2020 must self-quarantine and will be granted sick leave for the duration of his/her quarantine. The individual must apply for the sick leave through the Sehaty App.
  - Additionally, employers must impose home quarantine on all employees returning from abroad and prohibit them from working until the expiry of the quarantine period (14 days from entering the Kingdom).
  - In any case, international flights to and from the Kingdom have been suspended for two weeks starting from Sunday, 15 March 2020 (except in exceptional circumstances) and domestic flights are limited. Most land borders have been closed (except for commercial vehicles).
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## 4 Have data privacy regulators issued any guidance either permitting or restricting the collection of personal data for purposes of identifying COVID-19 cases?

No, there has been no announcement from the relevant authorities specifically about the collection of personal data.

- The MHRSD announcement referred to above provides that private sector entities shall put in place a procedure for their employees to report to the relevant administration any individuals who exhibit COVID-19 symptoms, or those who returned to the Kingdom without following the precautionary quarantine measures set by the Ministry of Health. Private sector entities must safeguard the privacy and confidentiality of such report and shall report any cases to the Ministry of Health.
- There are various regulators that regulate some aspects of the data privacy and security including the Cybersecurity Authority which regulates the security over the cyberspace, the Communications and Information Commission which regulates the telecoms and information technology sector (including the cloud computing sector), and; the Saudi Arabian Monetary Authority, which regulates the Banking Control Law and Banking Consumer Protection Principles.
- We are not aware of any guidance that had been issued from any of these authorities in relation to collection of personal data for such purposes.

## 5 Is an employer permitted to disclose the identity of any worker who is confirmed to have COVID-19, to other co-workers?

Yes, although there is no official guidance to this effect.

- There are no regulations or guidelines that address such scenario. However, given the circumstances, it would be prudent to inform workers of the identity of an infected co-worker so the worker can take the relevant precautionary measures: visit a medical center to test whether he/she is infected and ensure he/she self-quarantines.



- 
- 1 Can an employer lawfully conduct temperature checks of employees and visitors in its premises?**
- Depends.
- When the checks are being performed on employees, generally yes, provided that contactless thermometers are used and the checks are performed on a non-discriminatory basis by health care professionals or other employees (or third party personnel) who have first-aid training.
  - In relation to visitors, temperature checks may be considered disproportionate. It will depend on the specific situation (e.g. the time spent by the visitor at the workplace, the regularity of visits, the type of activity performed by the visitor). We think that conducting temperature checks on, for example, delivery people or messengers who are only dropping off goods or correspondence would be considered disproportionate. On the other hand, temperature checks might be allowed if they are being conducted for staff from a cleaning agency.
  - When conducting temperature checks with an electronic thermometer it is also necessary to adhere to GDPR requirements for personal data processing, which means having a legal basis for the processing and ensuring the processing is transparent (individuals must be clearly informed about the data processing activities).
  - When processing data relating to individuals' temperatures, an employer would most likely need to argue that the measure is necessary in the context of substantial public interest, based on the need to protect individuals' health and safety at the workplace, or on the basis of freely given consent. Whether checking individuals' temperatures will be lawful or not will always depend on the individual circumstances, in particular on how necessary the measures are and whether they will be deemed proportionate.
  - In any event, the results of the temperature checks should not be recorded or shared with anyone outside the local entity.
- 
- 2 Can an employer require employees to inform HR / their line manager if their temperature rises above the normal threshold?**
- Yes.
- Employers can ask employees to disclose themselves as being a "risk-factor".
  - Requiring employees to report this is less intrusive than forcing all employees to conduct temperature checks, and is not dissimilar to employees self-certifying to their line manager that they are unwell. In any event, this information should not be recorded or shared with anyone outside the local entity.
- 
- 3 Can an employer require employees (and visitors to its premises) to complete a declaration / self-assessment as to whether they have or have plans to travel to any of the high risk areas as designated by the WHO/ local government, or whether they have been in close contact with someone who has been positively tested for COVID-19?**
- Generally yes.
- Provided that information is limited to actual recent / planned travel, and actual cases of COVID-19. Our view is that this could reasonably be deemed to be proportionate (with the exception of future travel plans of mere visitors).
  - Employees / visitors can also be asked other questions in order to determine whether that person is a "risk-factor", for example whether they have an individual who is confirmed to have COVID-19 living in their household or recently visited an event, which later became known to be a venue from which the COVID-19 disease spread.
  - We would recommend only asking these questions verbally and not recording the received information. If the information is recorded (e.g. by signing a written declaration), it is necessary to adhere to GDPR requirements for personal data processing, including having a legal basis for the processing and ensuring the processing is transparent. Generally, we are of the opinion that if the questions are limited to the above, this could be justified based on the protection of vital interests of natural persons.
-



4

**Have data privacy regulators issued any guidance either permitting or restricting the collection of personal data for purposes of identifying COVID-19 cases?**

Yes.

- The Slovak supervisory authority has issued a statement, which is available [here](#).
- The Slovak supervisory authority has stated that recording information about an individual's body temperature would be considered as processing special category personal data, and for the lawful processing of such data, the GDPR requires special conditions in Article 9 to be satisfied and a legal basis in Article 6 to be relied upon. According to Art. 9 (2) (i) GDPR it is required for such conditions to be laid down in a law which provides for suitable and specific measures to protect the rights and freedoms of the data subject, such as (in Slovakia) Act No. 42/1994 Coll. which deals with the civil protection of the population (whereas on its basis specific measure must be issued).
- The Slovak supervisory authority furthermore states that if employees work remotely they should secure their computers with passwords and implement other appropriate security measures.

5

**Is an employer permitted to disclose the identity of any worker who is confirmed to have COVID-19, to other co-workers?**

No.



1

**Can an employer lawfully conduct temperature checks of employees and visitors in its premises?**

Yes.

- Pending implementation of the Protection of Personal Information Act (POPI), there will be no difficulty in conducting non-invasive tests with due respect for the privacy of the individual, as protected by the South African Constitution.
- Once POPI is in force, the data subject will need to provide informed consent for temperature checks to be conducted. However, as an alternative, in the case of a significant COVID-19 outbreak in a specific location, checks could be justified as necessary for the protection of a legitimate interest. In particular section 8 of the Occupational Health and Safety Act, (OHSA) provides that every employer is obliged to provide and maintain, as far as reasonably practicable, a working environment that is safe and without risks to the health of its employees. Employers must take such steps as may be reasonably practicable to eliminate or mitigate any hazard or potential hazard to the safety or health of employees, before resorting to utilisation of personal protective equipment, which may in this context include temperature checks.
- We have also seen extraordinary measures taken by Government in declaring COVID-19 a national disaster under the terms of the Disaster Management Act and passing regulations in respect of the conduct of certain business operations. In light of these regulations and those that may follow, such testing could be justified as necessary in order to comply with an obligation imposed by law.

2

**Can an employer require employees to inform HR / their line manager if their temperature rises above the normal threshold?**

Yes.

- OHSA also imposes a duty on employees to take reasonable care of their own health and safety and that of other persons who may be affected by their actions or omissions. They must therefore co-operate with their employer, when their employer has imposed certain requirements which need to be complied with.
- Employees must accordingly obey the health and safety rules and procedures laid down by the employer and carry out any lawful orders given in this regard, including any rules relating to informing HR when their temperature rises above a certain threshold.

3

**Can an employer require employees (and visitors to its premises) to complete a declaration / self-assessment as to whether they have or have plans to travel to any of the high risk areas as designated by the WHO/ local government, or whether they have been in close contact with someone who has been positively tested for COVID-19?**

Yes.

- In terms of the OHSA General Safety Regulations an employer may not permit a person to enter a workplace where the health or safety of such person is at risk or may be at risk, unless the person enters the workplace with the express or implied permission of and subject to the conditions laid down by the employer.
- This means that the employer can require that certain persons may only enter the workplace once they have satisfactorily completed the travel declaration / self-assessment form.





4

**Have data privacy regulators issued any guidance either permitting or restricting the collection of personal data for purposes of identifying COVID-19 cases?**

No.

5

**Is an employer permitted to disclose the identity of any worker who is confirmed to have COVID-19, to other co-workers?**

No, generally speaking.

- Disclosure would likely be a Constitutional infringement of privacy rights, as well as a breach of the National Health Act (NHA), which would not be permitted save in the event of a legitimate basis to make such disclosure.
- Grounds for disclosure include:
  - Where the non-disclosure of the information represents a serious threat to public health (under the NHA); or
  - for the purposes of tracing contact and exposure to the worker



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- |          |  |   |
|----------|--|---|
| <b>1</b> | <b>Can an employer lawfully conduct temperature checks of employees and visitors in its premises?</b>  | <p>Yes, generally.</p> <p>As Spain is facing a major outbreak of COVID-19, carrying out temperature checks as a precautionary measure might potentially be justified on the basis of public interest or for reasons of public interest in the area of public health. That said, we deem it more likely that the collection of the information described in question 2 is a more proportionate measure than requiring all employees and visitors to undergo temperature checks.</p>  |
| <hr/>    |  |   |
| <b>2</b> | <b>Can an employer require employees to inform HR / their line manager if their temperature rises above the normal threshold?</b>  | <p>Yes.</p> <ul style="list-style-type: none"><li>▪ The Spanish DPA has expressly stated that employees “shall immediately inform their superior and the employees designated to carry out protective and preventive activities or, where appropriate, the preventive service, of any situation which, in their opinion, involves a risk to the safety and health of employees.”</li><li>▪ However, we would recommend to require employees to inform HR / their line manager when they feel that they are developing any of the symptoms typical of COVID-19 (not just a temperature increase) since, regardless of the relevant symptom, such notification would trigger the implementation of certain measures.</li><li>▪ In Spain (and more precisely in Madrid), we are now facing a major outbreak of COVID-19, so we understand that the above would more likely be considered proportionate as the processing of the relevant data would be carried out on the basis of substantial public interest or for reasons of public interest in the area of public health.</li></ul> |
| <hr/>    |  |   |
| <b>3</b> | <b>Can an employer require employees (and visitors to its premises) to complete a declaration / self-assessment as to whether they have or have plans to travel to any of the high risk areas as designated by the WHO/ local government, or whether they have been in close contact with someone who has been positively tested for COVID-19?</b> | <p>Yes.</p> <ul style="list-style-type: none"><li>▪ Given the major outbreak of COVID-19 that Spain is facing, we deem it proportionate that employers may require employees and visitors to their premises to provide information regarding any visits to high risk areas. Of course, employers should always adhere to the data protection principles set forth in the applicable legislation (data minimization, storage limitation etc.).</li></ul>   |
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4

**Have data privacy regulators issued any guidance either permitting or restricting the collection of personal data for purposes of identifying COVID-19 cases?**

Yes.

- The DPA mentions that, whilst there are necessary safeguards and rules to legitimately allow the processing of personal data in a situation like this (in which there is a health emergency of wide scope), data protection legislation should not act as a stopper when adopting measures for the management of COVID-19.
- According to the DPA, the following are possible legal grounds for data processing activities in the context of COVID-19:
  - Processing is necessary on the grounds of public interest (Art. 6.1 e GDPR) and the vital interests of the data subject or other individuals (Art. 6.1.d GDPR). The DPA emphasizes the processing is justified not only when it comes to the vital interests of the data subject but also with regards to the vital interests of "other individuals", even if they are unnamed or in principle unidentified or identifiable persons.
  - Processing is necessary for compliance with legal obligations.
- According to the DPA, the following are possible legal grounds for the processing of health data in the context of COVID-19:
  - Processing is necessary for reasons of substantial public interest in the area of public health (Art. 9.2 g and i GDPR).
  - Processing is necessary for medical diagnosis or for the assessment of the working capacity of the employee (Art. 9.2 GDPR).
  - Processing is necessary to protect the vital interests of the data subject or of another natural person where the data subject is physically or legally incapable of giving consent (9.2 c GDPR).
- In any case, privacy principles still apply and must be respected. Importantly the DPA reminds companies not to confuse "necessity" with "convenience" when applying the data minimization principle.

5

**Is an employer permitted to disclose the identity of any worker who is confirmed to have COVID-19, to other co-workers?**

No, generally speaking.

- Informing employees or others about the identity of any specific employee who is confirmed to have COVID-19 would involve disclosing special category personal data, and so has the potential to both be unlawful from a data privacy perspective and employment law perspective (since it may carry a certain stigma, cause embarrassment etc.).
- It will generally not be necessary to disclose an individual's identity, even where implementing appropriate precautions. If you have assessed that a certain group of people are at high-risk of infection and should self-isolate, you can do this without disclosing the particular employee's identity.
- This involves a balancing act, and where an infected employee's identity can be kept anonymous, that is preferable.
- There may be very limited circumstances where, based on the nature of the job, or an inability by the employer to assess whether a high risk of infection exists, confirming the identity of an infected person could be justified because of the high risk of onward infection (on the basis of substantial public interest, or vital interests).
- Also, where an employee has tested positive, then the relevant notification should be made to the competent authorities and the latter should provide guidance on whether the employer should notify any other employees or instead or whether the competent authorities are responsible for such notifications.
- Organisations should prepare an impact assessment which records how they will approach the issue of identifying infected persons.



## 1 Can an employer lawfully conduct temperature checks of employees and visitors in its premises?

No.

- Measuring individuals' body temperature is a significant intrusion of their privacy. Whether employers are entitled to conduct controls and employees' obligations to undergo such controls are however mainly regulated by employment regulations and is not subject to the Data Protection Authority's authority as a supervisory authority. Guidance can be sought from the Swedish Work Environment Authority's website **Arbetsmiljöverkets webbplats** or by contacting the authority via telephone.
- However, if an employer chooses to record personal data from such controls, e.g., in an IT-based visitor system, such processing is however subject to the GDPR and hence the Data Protection Authority's authority as a supervisory authority. Such processing of personal data is normally not allowed.

## 2 Can an employer require employees to inform HR / their line manager if their temperature rises above the normal threshold?

Yes.

- Requiring employees to do this is less intrusive than forcing all employees to conduct temperature checks, and is not dissimilar to employees self-certifying to their line manager that they are unwell.
- In the context of a major outbreak of COVID-19 in Sweden, this is more likely to be considered proportionate in the circumstances. In any event, employees are under a legal obligation to disclose if they have tested positive for COVID-19 themselves or have a reason to suspect that they have it.
- Also, in the context of a major outbreak of COVID-19 in Sweden, it is likely to be considered proportionate for an employer to ask its employees to disclose if they are a potential "risk-factor", for example because they have been in contact with a confirmed case of COVID-19, or because they have visited a high-risk area.

## 3 Can an employer require employees (and visitors to its premises) to complete a declaration / self-assessment as to whether they have or have plans to travel to any of the high risk areas as designated by the WHO/ local government, or whether they have been in close contact with someone who has been positively tested for COVID-19?

The Data Protection Authority has stated that the systematic collection of health related data should be avoided. If an employer has specific reasons for the collection of personal data relating to employees or visitors, guidance can be sought from the Swedish Work Environment Authority's website **Arbetsmiljöverkets webbplats** or by contacting the authority via telephone.



## 4

### Have data privacy regulators issued any guidance either permitting or restricting the collection of personal data for purposes of identifying COVID-19 cases?

Yes.

The guidance was published on 13 March 2020, revised on 18 and 26 March 2020 and is available **here** in Swedish.

Information about health is considered sensitive personal data. The main rule is that processing of sensitive personal data is prohibited, but employers may process sensitive personal data when necessary to fulfil their duties in an employment context. On the Swedish Work Environment Authority's website **Arbetsmiljöverkets webbplats**, you can find more information about the coronavirus, from a work environment perspective.

The current situation may require that information must be collected quickly in order to take necessary measures. At the same time, information relating to health is sensitive personal data that is subject to strict requirements as to how the information is handled. An employer should avoid systematic collection of data about sickness from its employees, or their relatives. The measures that an employer takes shall never be so far-reaching so that the employer in practice assumes tasks that are incumbent on authorities.

For the coronavirus and personal data, it is important to be aware of the following:

- information disclosing that someone has been infected is personal data relating to health
- information disclosing that an employee has returned from a so-called risk area is not considered as personal data relating to health but qualifies as personal data
- information disclosing that someone is quarantined in the sense that he/she is not at the workplace for precautionary reasons (without any further information) is not considered as personal data relating to health
- information disclosing that someone is quarantined under the Communicable Diseases Act (Sw: Smittskyddslagen) is likely personal data relating to health
- information relating to health is sensitive personal data

Information about individuals that is not considered as personal data relating to health, is still personal data. This means that certain requirements for the processing need to be fulfilled, i.e., the fundamental principles and legal bases.

The Data Protection Authority stresses that the GDPR does not hinder that necessary measures are taken in order to decrease spread of the Coronavirus. It is however important that individuals' right to privacy and protection of their personal data is safeguarded, also under these special circumstances. This means that an employer may only process personal data that is necessary for the purpose at hand and that the access to such personal data shall be limited to those that need such access to fulfil their work duties. Only necessary information shall be disclosed.



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The individual shall be provided with information about how his or her personal data is processed, e.g., for what purpose. The information shall be easily available and in a clear language. An employer must always protect the personal data that is being processed by taking necessary security measures in order to prevent unauthorized access to the information. This is particularly important with respect to sensitive personal data. The employer should also document the measures that have been taken and the assessments that have been made.

The DPA has also made some FAQs available, including amongst others the following:

**Can an employer inform their employees that a colleague might have been infected with the virus?**

The employer shall take all necessary measures to prevent that employees are exposed to illness and diseases. Normally, it should be possible to inform the employees who need the information without mentioning the name of the colleague who might have been infected. Only in exceptional cases should it be necessary to reveal who the possibly infected person is. If the employer assesses that it is absolutely necessary to reveal the identity of that person, e.g., due to employment regulations, he/she must be informed thereof beforehand. The employer should also take measures to protect the privacy of that person. Information that is disclosed shall always be factual and correct and must not be humiliating for the employee. As always, the employer may not record or disclose more personal data than is necessary in order to achieve the purpose at hand. In addition to data protection rules, there are rules on confidentiality and secrecy that may affect what information about employees' diseases that an employer may disclose.

**How long may information be retained?**

Personal data may not be retained for longer than is necessary for the purposes for which the personal data is processed. Once these are fulfilled, the main rule is that the information at hand shall be de-identified or deleted.

**Can an employer unilaterally decide whether employees must work from home or at the office due to the Coronavirus?**

Questions relating to whether an employer may request or forbid employees to work from home is not a data protection issue. It is hence not up to the Data Protection Authority to assess.

**Other information**

If an employer has found out that an employee is infected or quarantined, advice for follow up and actions to prevent further spread of infection can be found at the Public Health Agency's website **Folkhälsomyndighetens webbplats** or by using the national phone number 113 13

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**Is an employer permitted to disclose the identity of any worker who is confirmed to have COVID-19, to other co-workers?**

Generally speaking, no.

- Informing employees or others about the identity of any specific employee who is confirmed to have COVID-19 would involve disclosing special category personal data, and so has the potential to both be unlawful from a data privacy perspective and employment law perspective (since it may carry a certain stigma, cause embarrassment etc.).
- It will generally not be necessary to disclose an individual's identity, even where appropriate precautions are implemented. If the employer deems it necessary to disclose the name, e.g., due to employment regulations, the infected person shall be informed beforehand. If it is assessed that a certain group of people are at high-risk of infection and should self-isolate, this can be done without disclosing the particular employee's identity.
- This involves a balancing act, and where an infected employee's identity can be kept anonymous, that is preferable.
- There may be very limited circumstances where, based on the nature of the job, or an inability by the employer to assess whether a high risk of infection exists, confirming the identity of an infected person could be justified because of the high risk of onward infection. Advice for follow up and actions to prevent further spread of infection can be found at the Public Health Agency's website **Folkhälsomyndighetens webbplats**.
- Organizations should prepare an impact assessment which records how they will approach the issue of identifying infected persons.



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| <b>1</b> | <b>Can an employer lawfully conduct temperature checks of employees and visitors in its premises?</b> | <p>Yes.</p> <ul style="list-style-type: none"><li>▪ Yes, as long as there is no direct physical bodily contact between persons is required to conduct the checks.</li><li>▪ Processing of such data must be kept to a minimum, and must be limited to what is necessary to achieve the purpose of the check (taking into account both the data collected, and how long it is retained for).</li></ul> |
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| <b>2</b> | <b>Can an employer require employees to inform HR / their line manager if their temperature rises above the normal threshold?</b> | <p>Yes.</p> <ul style="list-style-type: none"><li>▪ Yes, as long as the information is necessary for the employer to decide what measures are appropriate to protect its other employees and provided that the questions are proportionate in light of the information that the employee needs to disclose.</li><li>▪ Requiring employees to do this is less intrusive than forcing all employees to conduct temperature checks, and is not dissimilar to employees self-certifying to their line manager that they are unwell.</li><li>▪ In the context of a major outbreak of COVID-19 this is more likely to be considered proportionate in the circumstances, and in any event employees are under an express and implied duty to their employer to disclose themselves as a "risk-factor" to their employer if they have been in contact with a confirmed case of COVID-19, or because they have visited a high-risk area.</li></ul> |
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| <b>3</b> | <b>Can an employer require employees (and visitors to its premises) to complete a declaration / self-assessment as to whether they have or have plans to travel to any of the high risk areas as designated by the WHO/ local government, or whether they have been in close contact with someone who has been positively tested for COVID-19?</b> | <p>Yes.</p> <ul style="list-style-type: none"><li>▪ Yes, as long as the information is necessary for the employer to assess the appropriate measures to protect its other employees and provided that the question is proportionate in light of the information that the employee needs to disclose, employers may ask employees and/or visitors questions relating to risks posed by exposure to COVID-19.</li><li>▪ Assuming information is limited to actual recent / planned travel, and actual cases of COVID-19, our view is that this could reasonably be deemed to be proportionate and low risk in the context of the current situation.</li><li>▪ We recommend that such a declaration form focuses only on those areas of risk and limits personal data processing by asking:<ul style="list-style-type: none"><li>- whether the employee / visitor has recently visited any of those areas designated as highest risk;</li><li>- if yes, have they been tested for COVID-19 and, if so, what are the results; and</li><li>- whether the employee has plans to visit any of those areas designated as highest risk.</li></ul></li><li>▪ The information and self-determination of the persons concerned must be respected when collecting data.</li></ul> |
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4

**Have data privacy regulators issued any guidance either permitting or restricting the collection of personal data for purposes of identifying COVID-19 cases?**

Yes. You can find the guidance [here](#). The guidance is high level and says:

- Data processing by private parties must always comply with the requirements of the Federal Data Protection Act.
- In particular, health data is particularly worthy of protection and, as a matter of principle, may not be obtained by private parties against the will of the persons concerned; such processing must be purpose-related and proportionate.
- Wherever possible, appropriate data about flu symptoms (such as fever, or high temperature) should be collected and passed on by those affected themselves.
- Tracking of mobility / proximity by digital means by employers must always remain proportionate to the aim to contain the situation. We point out that the public authorities use large-scale tracking of position data (via SIM cards in smartphones) only on an aggregate, anonymized basis in order to monitor the population's behaviour with regard to movement restrictions. The Federal Commissioner for Data Protection is closely monitoring such projects.

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**Is an employer permitted to disclose the identity of any worker who is confirmed to have COVID-19, to other co-workers?**

No, generally speaking.

- Informing employees or others about the identity of any specific employee who is confirmed to have COVID-19 would involve disclosing special category personal data, and so has the potential to both be unlawful from a data privacy perspective and employment law perspective (since it may carry a certain stigma, cause embarrassment etc.).
- It will generally not be necessary to disclose an individual's identity, even where implementing appropriate precautions. If you have assessed that a certain group of people are at high-risk of infection and should self-isolate, you can do this without disclosing the particular employee's identity.
- This involves a balancing act, and where an infected employee's identity can be kept anonymous, that is preferable.
- There may be very limited circumstances where, based on the nature of the job, or an inability by the employer to assess whether a high risk of infection exists, confirming the identity of an infected person could be justified because of the high risk of onward infection (on the basis of substantial public interest, or vital interests).



## 1 Can an employer lawfully conduct temperature checks of employees and visitors in its premises?

Yes, if the checks are conducted by authorised health personnel.

- If the checks are conducted by other persons, these should not be conducted without prior employee consent. Information relating to employees' temperatures must not be stored in any case.
- Temperatures of employees or visitors would constitute health information and, therefore, special category personal data.
- Without explicit consent, employers may process this information only if (i) conducted by authorized health personnel (such as a workplace doctor) for public health and safety purposes or if (ii) there is an express legal basis for doing so under Turkish law (which may include any specific instructions released by the competent state agencies, which may happen given the severity of the pandemic).

## 2 Can an employer require employees to inform HR / their line manager if their temperature rises above the normal threshold?

Yes.

- Ideally, it would be better for the employee to inform the designated workplace doctor, if available, or request permission to leave the workplace to see a health professional.
- The Turkish Data Protection Authority considers all information related to an individual's health, with a broad interpretation, as health information and thus, special category personal data. See Q1 for lawful bases to process such information.
- However, employers may implement this measure in a similar manner to employees declaring that they are unfit and/or unwell for the work. In that regard, employers may request employees to declare such cases to HR or their line manager. However, employers cannot force employees to declare specifics about their health to a person who is not a health professional.
- Please also see DPA statement on the matter below in Question 4.

## 3 Can an employer require employees (and visitors to its premises) to complete a declaration / self-assessment as to whether they have or have plans to travel to any of the high risk areas as designated by the WHO/ local government, or whether they have been in close contact with someone who has been positively tested for COVID-19?

Depends on whether the self-assessment includes health-related information. If the content includes any health information, it is similar to conducting temperature checks (see Q1 above).

- If it is restricted to travel information, location and contact with persons confirmed as COVID-19 positive, then there is an argument that such information does not directly relate to an individual's health and therefore, it is not specifically "health-related information". In that case, employers may use such self-assessments based on their (i) legal obligation to provide occupational health and safety standards for their employees and/or (ii) legitimate interest to protect business continuity. Clearly, they must still inform relevant individuals regarding the processing activity and comply with the general principles of data privacy such as fairness and proportionality with limited scope of purposes for processing.
- However, the Turkish Data Protection Authority adopts a wide interpretation of "health information" and, for example, states that "information that someone is on sick leave" might constitute health information. In the same manner, one might also argue that information on whether someone has been in the high risk areas or in contact with a COVID-19 positive person constitutes health information. In such case, our answers above in Q1 would apply.
- In any case, we would recommend that such assessments are made as a verbal exchange instead of using written or electronic records, to be on the safe side.
- Please also see DPA statement on the matter below in Question 4.



## 4

### Have data privacy regulators issued any guidance either permitting or restricting the collection of personal data for purposes of identifying COVID-19 cases?

Yes, Turkish Data Protection Authority made two announcements in relation to COVID-19:

- I. "Public Announcement on COVID-19" on 23 March 2020: The Personal Data Protection Board will pay regard to the extraordinary conditions in the country while considering the periods for data subject requests and data breach notifications that data controllers are obliged to comply with on a case-by-case basis. The English version of the announcement can be accessed [here](#).
- II. "Public Announcement" on 27 March 2020: The DPA confirmed that the processing of personal data is crucial and inevitable to execute the measures applied by public and private organizations and institutions against COVID-19. That said, the DPA gave emphasis on the data minimization principle and the general principles of the data protection regulations and stated that data processing activities must be in accordance with the purposes of processing, limited, and proportionate. The DPA also emphasized the importance of taking the necessary organizational and technical measures to ensure data security during the outbreak. The Turkish version of the announcement can be accessed [here](#).
- The DPA also noted that employers might obtain employees' explicit consents for the processing of their health data. According to the DPA, given the rate that the virus is spreading, employees can also notify their employers that they have contracted or are experiencing symptoms of the virus. However, the DPA gave a reminder that only workplace doctors are allowed to process health data without explicit consent. On the notice requirement, the DPA stated that data controllers must inform data subjects on the data processing activities by providing them with a short, accessible and easy-to-understand notice written in clear and plain language.
- The DPA also made reference to the exemptions under the regulations, with a reminder that data protection regulations do not apply to the processing activities carried out by the Ministry of Health and authorized public authorities and institutions for the protection of public health and order.

DPA also provided answers to the following FAQs within the second announcement:

- **1. Can a health organization contact data subjects in relation to COVID-19 without their prior consent?**  
Yes. Public institutions and organizations may have to collect or share personal data as part of the measures against severe threats to public health. In this respect, the relevant health organizations and institutions may send communications to data subjects in relation to public health through the telephone, text messages or e-mail.
- **2. What are the security measures for remote working/working from home?**  
To reduce data security risks during remote working, data controllers must inform their employees of the importance of personal data safety and take all necessary measures. In particular, employers must ensure that data traffic between the systems is carried out with secure communication protocols and contains no vulnerability, and that anti-virus systems and firewalls are kept up-to-date. The DPA also stated that these measures do not remove data controllers' obligation related to data safety and security under the Law.
- **3. Can an employer disclose to its employees that a certain colleague/employee is COVID-19 positive?**  
An employer may inform its personnel about COVID-19 cases in the company. Employers do not have to provide the names of the infected employees and must avoid providing any information that is redundant or unnecessary. In the



event that it is mandatory for the employer to disclose the names of the employees infected with COVID-19, the employer must initially notify the infected employees about this disclosure. The DPA offered a notice example: "We would like to inform you that a colleague working on the fifth floor of our head office tested positive for COVID-19. We will discover the dates in which this colleague who tested positive for COVID-19 was at the head office, and will identify and inform individuals who may have been in contact with the relevant colleague."

▪ **4. Can an employer request that its personnel or office visitors provide them information about their recent travels or whether they have COVID-19 symptoms, such as fever?**

Employers may have reasonable grounds for requesting information from its personnel or visitors about their recent travels and whether they are displaying any symptoms of COVID-19 as part of their obligation to ensure the safety of its employees and to provide a safe working environment. Accordingly, this information request must be necessary, proportionate and justifiable, based on a risk assessment. Data controllers may take into account employees with chronic illnesses or who are vulnerable to the virus, as well as public authorities' instructions and guidance in this regard.

▪ **5. Can employers disclose health information to the authorities for the sake of public health?**

In light of Article 8 of the Law and other requirements under the relevant legislation regarding contagious diseases, employers may disclose to the relevant authorities the personal data related to individuals, who has a notifiable contagious disease.

▪ **6. Are the legal timelines under the Law and relevant legislation related to responses to data subjects' requests and the obligations of the data controllers still effective and applicable?**

The DPA stated that the legal timelines under the Law and relevant legislation are still effective and these timelines will not be altered. However, the DPA noted that it would factor in the current extraordinary circumstances when assessing the legal timelines for applications or data breach notifications.

## 5 Is an employer permitted to disclose the identity of any worker who is confirmed to have COVID-19, to other co-workers?

No.

- The information would constitute health information and disclosure of that information without explicit consent might constitute violation of the relevant employee's privacy, as protected under the Constitution, Data Protection Law and Turkish Criminal Law. We assume obtaining valid explicit consent from the relevant employee would be highly unlikely.
- Disclosing the identity of the employee as a COVID-19 positive person would be unnecessary for the employer. If the employer determines that a certain group of employees are at high risk, the employer may prevent them from entering the workplace and refer them to the workplace doctor or any other health professional for the implementation of appropriate measures and provision of care.
- If the employer is unable to determine the employees that are at high-risk without disclosing the identity of the relevant employee, they may disclose the employee's identity without disclosing that the employee tested positive for COVID-19.
- Example notice provided by DPA: "We would like to inform you that a colleague working on the fifth floor of our head office tested positive for COVID-19. We will discover the dates in which this colleague who tested positive for COVID-19 was at the head office, and will identify and inform individuals who may have been in contact with the relevant colleague."
- We recommend that employers document their evaluations and the bases for their decisions in any case.
- Please also see DPA statement on the matter above in Question 4.





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**1 Can an employer lawfully conduct temperature checks of employees and visitors in its premises?**

Yes, with safeguards. (It may be challenging to justify in strict data protection law terms, but the ICO has said generally they will take into account the compelling public interest in safety).

- Employees' or others' temperatures would constitute special category personal data - these could only be collected in this way if there is a substantial public interest, or a public interest in the area of public health, in doing so. (We assume that consent doesn't work in this context).
- Given the developments in the UK where (i) self-isolation is required for anyone with mild COVID-19 symptoms for 7 days, (ii) 14 day isolation is required for households where anyone has had symptoms, and (iii) people are being told to avoid bars, pubs, theatres, and other places with groups of people, the COVID-19 situation has developed considerably, and this type of intrusion into privacy should be justifiable on public health grounds.
- Whilst some businesses are removing to full remote working, many cannot (e.g. manufacturing, retail). Already, businesses in these sectors are introducing temperature testing at their facilities. The feedback from employees about this step has generally been positive as it enables employees to keep actively working.
- There is a very small risk that this measure would be considered disproportionate by the data protection regulator in the UK (the ICO), especially if it is enforced on all employees or visitors as a blanket measure. However, the regulator says it will take a pragmatic approach to enforcement (see question 3) and we think enforcement is very unlikely.
- Employers would still need to conduct temperature checks in a compliant and sensitive way, avoiding embarrassment for those who are identified as having a temperature, providing a privacy notice to explain what will happen with the temperature checking data (this likely isn't covered in many existing employee privacy notices), having a clear retention policy with a short retention period (a retention period of longer than 30 days would seem disproportionate), limit those who have access to the temperature check information, and handle it safely and securely.

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**2 Can an employer require employees to inform HR / their line manager if their temperature rises above the normal threshold?**

Yes.

- Requiring employees to do this is less intrusive than forcing all employees to conduct temperature checks, and is not dissimilar to employees self-certifying to their line manager that they are unwell.
  - In the context of a major outbreak of COVID-19 this is more likely to be considered proportionate in the circumstances, and in any event employees are under an express and implied duty to their employer to disclose themselves as a "risk-factor" to their employer if they have been in contact with a confirmed case of COVID-19, or because they have visited a high-risk area.
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**3 Can an employer require employees (and visitors to its premises) to complete a declaration / self-assessment as to whether they have or have plans to travel to any of the high risk areas as designated by the WHO/ local government, or whether they have been in close contact with someone who has been positively tested for COVID-19?**

Yes, assuming information is limited to actual recent / planned travel, and actual cases of COVID-19. Our view is that this could reasonably be deemed to be proportionate and low risk in the context of a major COVID-19 outbreak in the UK. According to the ICO, "it's reasonable to ask people to tell you if they have visited a particular country, or are experiencing COVID-19 symptoms".

We recommend that such a declaration form focuses only on those areas of risk and limits personal data processing by asking:

- whether the employee / visitor has recently visited any of those areas designated as highest risk
- if yes, have they been tested for COVID-19 and, if so, what are the results
- whether the employee has plans to visit any of those areas designated as highest risk
- whether the employee / visitor has been in close contact (within 2 meters for 2 minutes or more) with anyone who has tested positive for COVID-19
- whether they have, or have had in the past 7 days, any of the symptoms of COVID-19

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**4 Have data privacy regulators issued any guidance either permitting or restricting the collection of personal data for purposes of identifying COVID-19 cases?**

Yes.

You can find the guidance here. It is, as expected, highly pragmatic. In the ICO's own words: "The ICO is a reasonable and pragmatic regulator, one that does not operate in isolation from matters of serious public concern. Regarding compliance with data protection, we will take into account the compelling public interest in the current health emergency. The safety and security of the public remains our primary concern." The guidance is high level and says:

- The ICO recognises that responding to information requests may take longer than usual - and the ICO will not take regulatory action against organisations that have to prioritise other areas during this extraordinary period. Information requests is not defined, but we assume it will include data subject rights requests.
  - Data protection should not be a barrier to increased homeworking, and usual security measures should be applied.
  - Staff can be kept informed of potential COVID-19 cases, but you probably don't need to name individuals to provide what is necessary.
  - It's ok to ask people (visitors/employees) if they've visited a particular country or experiencing COVID-19 symptoms. It does not deal with temperature checks head-on but the guidance leaves room for those to be ok.
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**5****Is an employer permitted to disclose the identity of any worker who is confirmed to have COVID-19, to other co-workers?**

No, generally speaking.

- Informing employees or others about the identity of any specific employee who is confirmed to have COVID-19 would involve disclosing special category personal data, and so has the potential to both be unlawful from a data privacy perspective and employment law perspective (since it may carry a certain stigma, cause embarrassment etc.).
- It will generally not be necessary to disclose an individual's identity, even where implementing appropriate precautions. If you have assessed that a certain group of people are at high-risk of infection and should self-isolate, you can do this without disclosing the particular employee's identity. This is also consistent with the ICO Guidance.
- This involves a balancing act, and where an infected employee's identity can be kept anonymous, that is preferable.
- There may be very limited circumstances where, based on the nature of the job, or an inability by the employer to assess whether a high risk of infection exists, confirming the identity of an infected person could be justified because of the high risk of onward infection (on the basis of substantial public interest, or vital interests).
- Organisations should prepare an impact assessment which records how they will approach the issue of identifying infected persons.



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| <b>1</b> | <b>Can an employer lawfully conduct temperature checks of employees and visitors in its premises?</b>  | <p>Yes.</p> <ul style="list-style-type: none"><li>▪ Strictly speaking, there is nothing to prevent an employer from conducting temperature checks on its employees and visitors to its premises; however, it is highly advisable to obtain consent before doing so, particularly where the information obtained will be disclosed to other persons, to mitigate against the risk of breaching the broad provisions of UAE criminal law.</li><li>▪ Where an individual refuses to give their consent, an employer would be unable to force the individual to comply. However, the employer could refuse to grant the individual access to the premises provided the employer has adopted a policy concerning employee screening and that this has been notified to employees.</li></ul>  |
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| <b>2</b> | <b>Can an employer require employees to inform HR / their line manager if their temperature rises above the normal threshold?</b>  | <p>Yes.</p> <ul style="list-style-type: none"><li>▪ This practice is acceptable particularly in the context of a significant outbreak of COVID-19.</li><li>▪ Employers are under a duty to ensure (as far as is reasonably practicable) the health, safety and welfare of employees. Confirming that an employee has a fever furthers the employer's efforts in this regard. It is likely to be reasonable for employers to request this information as it could give an indication that further measures are required to mitigate against the risks of spreading the infection (e.g., self-isolation).</li><li>▪ There is a duty on employees not only to take reasonable care of their own health, but also the health of those who may be affected by their conduct. It would be reasonable to expect employees to notify HR / their line manager if they are exhibiting symptoms, which may pose a risk to others. It could potentially be considered a criminal offence for an employee to know that they are suffering from COVID-19 and attempt to conceal it.</li></ul> |
| <hr/>    |  |   |
| <b>3</b> | <b>Can an employer require employees (and visitors to its premises) to complete a declaration / self-assessment as to whether they have or have plans to travel to any of the high risk areas as designated by the WHO/ local government, or whether they have been in close contact with someone who has been positively tested for COVID-19?</b> | <p>Yes.</p> <ul style="list-style-type: none"><li>▪ There is nothing to prevent an employer requesting this information; however, it is highly advisable to obtain consent before doing so, particularly where the information obtained will be disclosed to other persons, to mitigate against the risk of breaching the broad provisions of UAE criminal law.</li><li>▪ There are no restrictions regarding the types of information that might be requested. However, the broader the categories of information requested the more challenging it is likely to be for an employer to obtain consent in practice.</li></ul>   |
| <hr/>    |  |   |
| <b>4</b> | <b>Have data privacy regulators issued any guidance either permitting or restricting the collection of personal data for purposes of identifying COVID-19 cases?</b>   | <p>No.</p> <ul style="list-style-type: none"><li>▪ Guidance has been issued by certain regulators on best practice to limit the spread of COVID-19 but to date no specific guidance has been issued permitting or restricting the collection of personal data for the purposes of identifying COVID-19 risks.</li></ul>   |
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**Is an employer permitted to disclose the identity of any worker who is confirmed to have COVID-19, to other co-workers?**

No.

- This information relates to the health of the employee, and an employer would need to have obtained consent in order to disclose it.
- Blanket consents are permitted under UAE law and accordingly an employer may be able to rely on existing consents, provided in employee handbooks or privacy policies to permit disclosure of information, which relates to the employee in certain circumstances.
- In general, we note that it is unlikely to be truly necessary to disclose the identity of the worker in most circumstances, and there are likely to be measures that can be implemented to reduce the risk of further infection, without disclosing the identity of the infected worker (e.g., self-isolation, working from home measures). Employers may also wish to avoid doing so due to the risk of committing the offence of defamation, which in the UAE can occur even where the statement made is true.



## 1 Can an employer lawfully conduct temperature checks of employees and visitors in its premises?

No.

- The temperatures of employees and visitors would constitute sensitive personal data.
- Whilst employers have a general duty to provide and maintain (as far as is reasonably practicable) a workplace that is safe and without risks to employee health or welfare, they also have a duty to ensure any data processed is adequate, relevant and not excessive in relation to the purposes for which it is collected and/or further processed.
- There is a risk that conducting temperature checks would be considered excessive, as there are likely to be less intrusive measures by which employers can ensure health and safety and mitigate the risks of COVID-19 without taking the temperatures of employees. This risk is heightened if applied as a blanket measure without any indication that the relevant individuals pose any threat to the health and safety of other individuals.
- If the temperature checks are used only in respect of employees or visitors who have indicated that they feel unwell, or that their temperature has risen above their normal threshold, or that they have been in contact with someone who has been infected, then this is less likely to be viewed as excessive.
- Obtaining consent from employees and/or visitors prior to conducting temperature checks may be an option, particularly given that obtaining consent for data processing remains commonplace to mitigate against the risk of breaching the UAE criminal law relating to data privacy, which also applies in the ADGM.

## 2 Can an employer require employees to inform HR / their line manager if their temperature rises above the normal threshold?

Yes.

- This is less intrusive than forcing all employees to conduct temperature checks, and is unlikely to be viewed as excessive, particularly in the context of a significant outbreak of COVID-19.
- Employers are under a duty to ensure (as far as is reasonably practicable) the health, safety and welfare of employees. Confirming that an employee has a fever furthers the employer's efforts in this regard. It is likely to be reasonable for employers to request this information as it could give an indication that further measures are required to mitigate against the risks of spreading the infection (e.g., self-isolation).
- There is a duty on the part of employees not only to take reasonable care of their own health but also the health of those who may be affected by their conduct. It would be reasonable to expect employees to notify HR / their line manager if they are exhibiting symptoms, which may pose a risk to others.



<b>3</b> Can an employer require employees (and visitors to its premises) to complete a declaration / self-assessment as to whether they have or have plans to travel to any of the high risk areas as designated by the WHO/ local government, or whether they have been in close contact with someone who has been positively tested for COVID-19?	<p>Yes, as long as the information requested is relevant and not excessive.</p> <ul style="list-style-type: none"><li>▪ The broader the categories of information requested (e.g. information regarding travel plans in general beyond those countries, which have been identified as having a significant outbreak or which are not known to be high risk for COVID-19) the greater the risk that the request will be considered to be excessive or not relevant - and therefore impermissible.</li><li>▪ Assuming that the information requested is limited to recent travel or planned travel to high risk areas, we consider that the risk that the request will be viewed as excessive is low.</li><li>▪ Requesting information about whether someone has been in close contact with someone who has tested positive for COVID-19, is likely to be permissible in the context of a major outbreak of COVID-19, noting that the virus is more likely to be transmitted through contact with an infected person, and therefore, requesting this information could give the employer an indication as to the potential risk of the employee being infected.</li></ul>
<b>4</b> Have data privacy regulators issued any guidance either permitting or restricting the collection of personal data for purposes of identifying COVID-19 cases?	<p>No.</p> <ul style="list-style-type: none"><li>▪ Guidance has been issued by certain regulators on best practice to limit the spread of COVID-19 but to date no specific guidance has been issued permitting or restricting the collection of personal data for the purposes of identifying COVID-19. These matters have been left to the individual companies concerned.</li></ul>
<b>5</b> Is an employer permitted to disclose the identity of any worker who is confirmed to have COVID-19, to other co-workers?	<p>No.</p> <ul style="list-style-type: none"><li>▪ This information relates to the health of the employee, and would constitute sensitive personal data.</li><li>▪ In general, it is unlikely that it would be truly necessary to disclose the identity of the worker in order to fulfil the employers duties to ensure the health and safety of employees, and there are likely to be measures that can be implemented to reduce the risk of further infection, without disclosing the identity of the infected worker (e.g. self-isolation, working from home measures).</li><li>▪ It may be possible, in limited circumstances, that employers are able to justify disclosing the identity of an individual with COVID-19. However, employers should carefully consider if it is absolutely necessary, and whether it is possible to achieve the desired objective without disclosing the individual's identity, particularly in light of the risks highlighted below.</li><li>▪ Employers should weigh the risk that expressly disclosing the health status of an individual with COVID-19 could potentially result in embarrassment, or stigma or could constitute the offence of defamation, which in the UAE can be committed even where the statement is true. Employers are obliged to maintain a workplace that is free from harassment.</li></ul>





## 1 Can an employer lawfully conduct temperature checks of employees and visitors in its premises?

No.

- The temperatures of employees and visitors would constitute sensitive personal data.
- Whilst employers have a general duty to ensure (as far as is reasonably practicable) the health, safety and welfare of employees at work, they also have a duty to ensure any data processed is adequate, relevant and not excessive in relation to the purposes for which it is collected and/or further processed.
- There is a risk that conducting temperature checks would be considered excessive, as there are likely to be less intrusive measures by which employers can ensure health and safety and mitigate the risks of COVID-19 without taking employees' temperatures. This risk is heightened if applied as a blanket measure without any indication that the relevant individuals pose any threat to the health and safety of other individuals.
- If the temperature checks are used only in respect of employees or visitors who have indicated that they feel unwell, or that their temperature has risen above their normal threshold or that they have been in contact with someone who has been infected then this is less likely to be viewed as excessive.
- Obtaining consent from employees and/or visitors prior to conducting temperature checks may be an option, particularly given that obtaining consent for data processing remains commonplace to mitigate against the risk of breaching UAE criminal law relating to data privacy, which also applies in the DIFC.

## 2 Can an employer require employees to inform HR / their line manager if their temperature rises above the normal threshold?

Yes.

- This is less intrusive than forcing all employees to conduct temperature checks, and is unlikely to be viewed as excessive, particularly in the context of a significant outbreak of COVID-19.
- Employers are under a duty to ensure (as far as is reasonably practicable) the health, safety and welfare of employees. Confirming that an employee has a fever furthers the employer's efforts in this regard. It is likely to be reasonable for employers to request this information as it could give an indication that further measures are required to mitigate against the risks of spreading the infection (e.g., self-isolation).
- There is a duty on employees not only to take reasonable care of their own health but also the health of those who may be affected by their conduct. It would be reasonable to expect employees to notify HR / their line manager if they are exhibiting symptoms, which may pose a risk to others.



<b>3</b> Can an employer require employees (and visitors to its premises) to complete a declaration / self-assessment as to whether they have or have plans to travel to any of the high risk areas as designated by the WHO/ local government, or whether they have been in close contact with someone who has been positively tested for COVID-19?	<p>Yes, as long as the information requested is relevant and not excessive.</p> <ul style="list-style-type: none"><li>▪ The broader the categories of information requested (e.g. information regarding travel plans in general beyond those countries, which have been identified as having a significant outbreak or which are not known to be high risk for COVID-19) the greater the risk that the request will be considered to be excessive or not relevant - and therefore impermissible.</li><li>▪ Assuming that the information requested is limited to recent travel or planned travel to high risk areas, we consider that the risk that the request will be viewed as excessive is low.</li><li>▪ Requesting information regarding whether someone has been in close contact with someone who has tested positive for COVID-19, is likely to be permissible in the context of a major outbreak of COVID-19 noting that the virus is more likely to be transmitted through contact with an infected person, and therefore, requesting this information could give the employer an indication as to the potential risk of the employee being infected.</li></ul>
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