

Registering an Employer as a Personal Data Administrator
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In the last few years, an ever growing number of companies strictly abide by the Personal data Protection Act. However, worrisome cases of unfamiliarity with this act are still being observed throughout the country. The bigger part of the employers collects and processes employee's personal data, without having passed the registration procedure before the Commission on the Protection of Personal Data. Others regard the Commission certificate as an evidence of their obligation fulfillment, becoming uninterested towards any further developments and improvement of the personal data protection process within the company or the introduction of new technical and organizational measures supporting this process. Therefore it would be wise to recall certain legal regulations together with practical advice for their application.

The concept “personal data” is only used for physical persons and means “all information, regarding the physical person, which is identified or may be identified directly or indirectly by an identification number or via one or more specific characteristics. The legally identifying characteristics of a juridical person – UIC, name, headquarters – do not fall under the Personal Data Protection Act.

„Specific characteristics” are the ones linked with the physical, physiological, genetic, psychic, economic, cultural, social or other identity of the person. Among characteristics of the physical identity are names, the uniform civil number, address, place of birth, phone numbers, passport data, etc.; under economic identity fall property/financial status, company shares, etc.; social identity includes origin, background, habits, education, extra qualifications, previous labor activity, etc.

Personal data is being collected by practically all employers in the context of the establishment, existence and termination of labor relations. Thus each employer appears to be covered by liabilities under the Personal Data Protection Act. Therefore, an employer ought to apply for registration under article 17 of the Personal Data Protection Act prior to the personal data processing. In this way he declares himself as a personal data administrator and accounts for his registers.

Regarding the personal data administrator registration procedure, some clarifications need to be made:

- Even in the case of a relatively small number of employees, the employer is still obliged to store and process their personal data according to the legal regulations. Statutes of the Commission on the Protection of Personal Data provide for a possibility - if the personal data administrator processes not more than 15 employees' personal data, the commission may relieve him from his obligations to register. This relief however, does not prevent the commission's control over the respective administrators, nor does it relieve them from their remaining legal obligations. Not abiding by these could lead to administrative penalties to the amount of BGN100 000.

- If the personal data administrator is an employer within labor relations and an assigner within civil contracts, the reasonable thing to do would be to keep within a single register both employees' and assignees' personal data. In this case, job applicants, as well as already engaged in labor relations physical persons, may be indicated as categories within the register. An important thing is that employees' personal data ought to be processed only for the purposes of human resources management and social matters. If the personal data holder explicitly suggests, processing of his personal data for other purposes may become inadmissible.

- Sometimes, difficulties appear as to the determination of the personal data storage period. Regarding the “Personnel” register, article 42, paragraph 1 of the Accountancy Act needs to be considered, under which pay-rolls ought to be kept within the company for a 50-year period. Pay-rolls include personal data of the relevant people and therefore are not to be kept for more than 50 years.

- Once the administrator has applied for data processing under article 5, paragraph 1 of the Personal Data Protection Act, the following procedure entails a compulsory verification by the Commission on the Protection of Personal Data. The procedure deals with data, whose processing is generally prohibited (identifying race and ethnic background, political, philosophical or religious beliefs, syndical organizations), unless under legally regulated circumstances. The prohibition is not to be applied when the “processing is needed for the purposes of covering specific rights and liabilities under the labor legislation”. Therefore, nothing obstructs the employer from informing the Commission of his intent to collect personal data regarding the syndical affiliations of his employees, in which case the register procedure appears more complex (the Commission carries out a compulsory verification).

- An essential matter when evaluating whether personal data processing has been lawful, is the presence or lack of the personal data holder’s explicit consent. An ever growing number of employers require explicit consent from their employees for the processing of personal data (in the form of a declaration or a labor contract clause). This is a positive trend because at the very least employees become informed of their rights as personal data holders. What the explicit consent regarding personal data processing does is it creates security for the employer together with minimizing the risk of disputing his rights as a personal data administrator.

Personal data protection guarantees the basic rights and liberties of each person, and especially the right to personal life and to inviolability of person. The irresponsible personal data collection and processing is a harsh interference in their holder’s life that may lead to moral as well as material damages in the event of personal data abuse. Therefore, personal data protection regulations, and specifically those of the personnel, are to be regarded seriously by the employer, and covered like any other liability within labor relations.