

# BETTER DATA, BETTER YOU.

## European Data Protection Board Issues COVID-19 Statement



Many of BRG's clients operate in the European Union or are subject to the EU General Data Protection Regulation (GDPR), which regulates the use of personal information in the EU. During the novel coronavirus (COVID-19) outbreak, issues surrounding the interplay of public health and personal privacy are complex and deserve special attention. On March 19, the European Data Protection Board (EDPB), the body that oversees data protection issues in the EU, [issued a statement on how to interpret the GDPR in the context of responding to the COVID-19 crisis.](#)

Andrea Jelinek, chair of the EDPB, said:

***“Data protection rules (such as GDPR) do not hinder measures taken in the fight against the coronavirus pandemic. However, I would like to underline that, even in these exceptional times, the data controller [the entity that decides how and when data is processed] must ensure the protection of the personal data of the data subjects. Therefore, a number of considerations should be taken into account to guarantee the lawful processing of personal data.”***

### WHEN CAN BUSINESSES PROCESS PERSONAL DATA WITHOUT CONSENT IN THE CONTEXT OF COVID-19?

The GDPR is broad but provides businesses with avenues to comply with its terms. The GDPR enumerates legal grounds for processing personal data without the consent of the data subject, which may be required to mitigate the spread of pandemics. Specifically, consent is unnecessary when the employer is required to process personal data:

**(1)** to protect “public interest in the area of public health”;

**(2)** to protect vital interests of individuals (individual health); or

**(3)** to comply with another European legal obligation.

Note that this third legal basis is limited to EU law. Laws outside of the EU do not provide a legal basis for processing personal data in the EU.

## CAN AN EMPLOYER REQUIRE VISITORS OR EMPLOYEES TO PROVIDE SPECIFIC HEALTH INFORMATION IN THE CONTEXT OF COVID-19?

According to the EDPB, companies must consider the principles of proportionality and data minimization (i.e., disclosing only information that is necessary to protect the public or the individual) when providing information about an individual's health.

## CAN AN EMPLOYER NOTIFY PUBLIC HEALTH AUTHORITIES OF WORKERS INFECTED WITH COVID-19?

The EDPB states that the employer should only disclose specific, identifiable health information if national health laws require it. And again, such disclosures must be proportionate with and provide the minimum amount of information necessary to meet the legal requirement.

## IS AN EMPLOYER ALLOWED TO PERFORM MEDICAL CHECKUPS ON EMPLOYEES?

Here, again, the answer is determined by national law relating to employment or health and safety. Employers should only access and process employee health data if their own legal obligations allow it. Employers should speak with legal counsel to understand the workplace health reporting and disclosure requirements in the nations where they operate.

## CAN AN EMPLOYER DISCLOSE THAT AN EMPLOYEE IS INFECTED WITH COVID-19 TO THE EMPLOYEE'S COLLEAGUES OR TO EXTERNAL THIRD PARTIES?

It depends. Employers are permitted to inform staff about COVID-19 cases generally and to take protective measures to prevent further infection, but they should not communicate more information than necessary. In cases where it is necessary to reveal the name of the employee(s) who contracted the virus (e.g., in a preventive context) and the national law allows it, the employer must notify the employee beforehand that his or her information will be disclosed to a limited number of individuals in order to protect their health, and the employer must make the disclosure in such a way as to "maximize personal dignity."

The EDPB's statement is in keeping with other national privacy authorities' guidance on balancing privacy and public health in the context of a global pandemic.

As always, the BRG privacy compliance group is available to help you navigate these unprecedented times.



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