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Temperature measuring and personal data. New document retention terms. Clarifications re switch to electronic records books. Fine for Pension Fund reporting rules breach

Employer compliance with personal data regulations when measuring temperatures

Roskomnadzor has clarified how to avoid breaching personal data legislation when measuring employee and visitor temperatures

According to Roskomnadzor, though body temperature is health-related information included in special categories of personal data, employers are not required to obtain written consents to process such data since "disease screening measures are taken to determine an employee's ability to perform his/her function".

Furthermore, it was noted that visitors not employed by the employer implicitly express their consent to the collection of body temperature information by visiting the employer's premises. However, this contradicts Article 10 of Federal Law No. 152-FZ On Personal Data dated 27 July 2007 (the ***Law***) under which the processing of special categories of personal data requires written consent in a prescribed form.

Roskomnadzor recommended destroying such data within 24 hours of obtaining it. However, Article 21 of the Law provides for a 30-day term in which to destroy data from the date of achieving the processing goals, i.e., from the date on which the temperature was measured.

The regulator's clarifications only apply to employers and not to third parties sometimes engaged for similar actions, e.g., companies providing building security services. Based on the above clarifications, it could be concluded that Roskomnadzor believes an individual's consent is not required for the measuring of their temperature by persons other than such individual's employer but it does not comment on whether such persons must obtain the individual's written consent to the transfer of their personal data to their employers or whether employers must notify the employees of having obtained such data from such persons. As mentioned above, third parties cannot process special categories of personal data without the individual's prior written consent and, in accordance with Article 18 of the Law, companies must notify individuals prior to the start of processing if such individuals' personal data has been obtained from third parties.

Despite the above differences between the provisions of the Law and the opinion of Roskomnadzor, it is likely that compliance with the recommendations will reduce the risk of operators being held liable for breaching personal data legislation.

(Information from the Federal Service for Supervision in the Sphere of Telecom, Information Technologies and Mass Communications dated 10 March 2020).

Document retention periods have changed

New document retention periods established for employers

On 18 February 2020, Federal Archival Agency Order No. 236 On Approval of the List of Standard Management Archival Documents Generated by State Authorities, Local Government Authorities and other Organisations with Periods for Retention thereof came into force (the ***Order***).

Under the Order, the following periods were established for retention of HR documents:

- three years for notices and warnings given to employees;
- three years (previously one year) for holiday schedules;
- one year (previously no period established) for employee applications for job-related documents or copies thereof;
- three years (previously five years) for documents on disciplinary measures taken;
- six months (previously five years) for salary-related documents;
- five years (previously seventy-five years) for information registers relating to individuals' income;
- forty-five years (previously indefinitely) for ledgers, registers, records and databases of work-related accidents and emergency situations; and
- five years (previously indefinitely) for documents regarding the status of, and measures to improve, labour safety.

The above documents may be stored by the employer or be transferred to the archives.

(Federal Archival Agency Order No. 236 On Approval of the List of Standard Management Archival Documents Generated by State Authorities, Local Government Authorities and other Organisations with Periods for Retention thereof dated 20 December 2019)

Employers are not obliged to notify those of their employees for whom they are not the primary employer of the switch to electronic employment records books

It is not necessary to notify secondary employees of the switch to electronic employment records books

According to the State Labour Inspectorate, employers are not obliged to notify those of their employees for whom they are not the primary employer of the switch to electronic employment records books in view of the fact that employment records books are maintained at the place of their primary employment.

(Onlineinspektsiya.RF website: https://xn--80akibcicpdbetz7e2g.xn--p1ai/questions/view/118971)

Applications to switch to electronic employment records books may not be withdrawn

Employees may not withdraw applications to switch to electronic employment records books

According to the State Labour Inspectorate, employees may not withdraw applications to switch to electronic employment records books because no such option is provided by law.

However, if an employee does not decide upon such switch and submit the relevant application, he/she may do so later.

(Onlineinspektsiya.RF website: https://xn--80akibcicpdbetz7e2g.xn--p1ai/questions/viewFaq/1592).

Fines for repeated breaches of the procedure for and timing of provision of employment details

A fine may be introduced for breaches of the procedure for and timing of provision of employment details to the RF Pension Fund

On 17 March 2020, a draft law amending the Administrative Offences Code of the Russian Federation was adopted in its third reading.

Under the draft law, any repeated (twice or more) breach of the timing for provision of employment details or repeated provision of incomplete details will be subject to a fine of between 300 and 500 roubles for responsible persons.

(Objekty zakonotvorchestva website: https://sozd.duma.gov.ru/bill/748758-7).

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