



MANAGING THE  
IMPACTS OF  
COVID-19

### CNPD ISSUES GUIDELINES IN THE CONTEXT OF COVID-19

April 2020

In the context of COVID-19 pandemic and the current exceptional situation, where information is extremely important, the Portuguese Data Protection Authority (CNPD) published guidelines on the collection and processing of personal data of employees and also of citizens infected by COVID-19. These guidelines, although abbreviated, aim to ensure that the processing of personal data resulting from exceptional and temporary measures relating to the epidemiological situation respects the legal data protection regime and minimizes the impact on privacy of data subjects.

#### REMOTE CONTROL IN TELEWORKING SCHEMES

Following the widespread use of teleworking, issues related to the control of working time and labor activity provided in teleworking, from the employee's home, are particularly relevant. Therefore, CNPD issued, for employers, [Guidelines on remote control in teleworking](#) (dated of 17.04.2020) (only available in Portuguese), of which we highlight the following aspects:

#### CONTROL OF THE LABOR PERFORMANCE EXECUTION

In teleworking scheme, the employer maintains the powers to direct and control the execution of labor activity, regardless of the ownership of the working tools;

- Since there is no specific rule for teleworking, the general rule prohibiting the use of means of remote surveillance, for the purpose of controlling the employee's professional performance, is fully applicable;
- For this reason, technological solutions for remote control of labor performance are not allowed, such as software that tracks work and downtime, records the visited internet pages, records terminal location in real time and uses of peripheral devices (mouse and keyboards), as well as captures images of the desktop, monitors when the employee starts accessing an application, controls the document employee is working on and records the respective time spent on each task (e.g., TimeDoctor, Hubstaff, Timing, ManicTime, TimeCamp, Toggl, Harvest);
- Likewise, it is not allowed to impose on the employee to keep the video camera permanently on, nor, in principle, is it allowed to record conference calls between the employer (or managers) and the employees;

- The employer may control the employee's activity in other ways, notably by determining specific goals, reporting obligations, on a periodic basis as deemed adequate, and by scheduling teleconference meetings.

#### RECORDING OF WORKING TIME

- Recording of working time can be made with resort to specific technological solutions in teleworking regime, which should be limited to reproducing the registration carried out when the work is performed at the employer's premises (e.g., registering the beginning and end of the work activity and the lunch break), to ensure full compliance with the principles of privacy by design and by default;
- Not having such tools, it is exceptionally legitimate for the employer to set the obligation to send e-mails, SMS or any other similar way that allows him to demonstrate that the maximum working time allowed by law have not been exceeded, in addition to controlling employees' availability and working time;
- Control of the employee's availability and compliance with working times can also be done via telephone or electronic contact by the employer.

In a nutshell, non-compliance with these rules can lead to a disproportionate and excessive processing of employees' personal data, promoting labor activity control to a much more detailed degree than can be legitimately made in the context of its provision in the employer's premises.

#### COLLECTION OF HEALTH-RELATED DATA FROM EMPLOYEES

CNPD also issued [Guidelines on the collection of health data from employees](#) (dated of 23.04.2020) (only available in Portuguese), since – in order to prevent contamination with the new coronavirus – employers intend to measure body temperature and collect other information regarding alleged risky behavior of their employees. CNPD understands that the need to prevent contamination among employees does not legitimate, without further ado, the adoption of any measures by the employer, highlighting the following:

- Data relating to employees' health is especially protected personal data, given that it can generate discrimination, it does not have to be known by the employer, nor can it be directly collected or registered by the latter;
- The need to prevent contamination may justify the intensification of employees' hygiene care (e.g., regarding hand washing), as well as the adoption of organizational measures concerning the distribution of employees throughout working spaces or employees' physical protection, and some surveillance measures, as established in the guidelines of the national health authority;
- However, prevention of contamination does not justify any actions that, under national law, only the health authorities or the employee himself, in a self-monitoring process, can perform;
- Therefore, an employer cannot collect and record the employee's body temperature or other information related to health, or any eventual hazardous conduct of its employees;
- It is still possible that the health professional, in the scope of occupational medicine, assesses the health status of employees and obtains the information that is necessary to assess their aptitude for work, under the general terms defined in the law of safety and occupational health;
- The possible collection, by questionnaires completed by the employee, of health information or private life information related to his health (e.g., if he was in contact with contaminated people), is only legitimate if it is carried out directly and exclusively by the occupational medicine professional, in order to adopt appropriate procedures to safeguard his own health and the health of others.

Therefore, CNPD determines that, by reference to their territorial area, local authorities:

- Cannot publish health related data with identification of the people it respects to, given that such information is capable of promoting stigmatization and discrimination of the respective holders – such public disclosure will always be considerate disproportionate;
- Additionally, cannot publish health related data, even without identifying the patients, when their small number in a given territorial area, depending on their population size, allows the identification of infected individuals;
- Must refrain from adopting initiatives that involve the collection and disclosure of personal data of citizens when they have no legal basis, or that are not a result of execution of guidelines issued by the national health authority.

## **DISCLOSURE OF INFORMATION RELATED TO PEOPLE INFECTED BY COVID-19**

CNPD also issued [Guidelines on the disclosure of information related to people infected by Covid-19](#) (dated of 22.04.2020) (only available in Portuguese), following complaints from citizens whose personal data, such as identification and contact details, including those of children, were displayed on the pages and social networks under the authority's responsibility, after confirmation of the Covid-19 diagnosis.

Some local authorities do not expose the personal data of those infected, but provide information broken down by parish, without cautioning the small number of cases, which easily leads, especially in small towns, to the identification of patients.

Although the publication of information regarding the evolution of the pandemic is essential – primarily to ensure that the population understands the measures adopted and complies with the guidelines of the health authorities – it cannot fail to comply with the legal data protection regime.

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