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N/REF: 0026/2021

The query asks if it is in accordance with Regulation 2016/679 of the European Parliament and of the Council, of April 27, 2016, regarding the protection of natural persons with regard to data processing data and the free circulation of these data (RGPD) and the Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights, (LOPDGDD) the communication to the Delegates of Prevention in Correos (hereinafter the company), the document relating to the list of occupational accidents and occupational diseases that have caused the worker an incapacity for work greater than one day of work together to the name and surnames of the injured persons, or, if on the contrary, must provide the name and surname of the injured person, being sufficient the communication of the professional identification number NIP.

An extract of an Act of Infraction of the Labor Inspection in which, in summary, it is considered necessary that in work centers with a large volume of staff, communicate to the Prevention Delegates the identification data of the injured person, (name and surnames,) since the provision of the NIP is understood to be insufficient for the purposes of that these delegates can know what happened in the work centers and exercise the powers that Law 31/1995, of November 8, on prevention of Labor Risks (LPRL) attributes them. Adding in said Act, that no We are dealing with health data, and that the legal basis for said treatment is the provided for in article 6.1 c) of the RGPD, in relation to article 8.1 LOPDGDD all in accordance with the LPRL.

I

In the first place, the type of information that is going to be

object of treatment in the sense of whether we are dealing with health data and why

both special categories of data of those provided for in article 9 of the RGPD.

Article 4.15 of the RGPD establishes what is considered “health data”:

personal data relating to the physical or mental health of a natural person,

including the provision of health care services,

reveal

information about your health status;

For its part, Recital 35 of the RGPD tells us that: Among the

personal data relating to health must include all data relating to

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to the state of health of the interested party that give information about their state of

physical or mental health past, present or future. Information is included about

the natural person collected on the occasion of their registration for assistance purposes

health, or on the occasion of the provision of such assistance, in accordance with

Directive 2011/24/EU of the European Parliament and of the Council (9); everything

number, symbol or data assigned to a natural person that identifies it

univocally for health purposes; information obtained from tests or

exams of a body part or a body substance, including

from genetic data and biological samples, and any information

relating, for example, to a disease, a disability, the risk of

disease, medical history, clinical treatment, or condition

physiological or biomedical of the interested party, regardless of its source, by

example a doctor or other healthcare professional, a hospital, a medical device

doctor, or an in vitro diagnostic test.

According to the Dictionary of the Language of the Royal Spanish Academy, the

word “health” refers to :2. F. Set of physical conditions in

an organism is found at a given time.

For its part, the Judgment of the National Court of 11/24/2020 that

resolves Resource No. 791/2018 interprets the concept of health data in

reference to information on doping to understand it finally included in

this category, and it should be brought up because it establishes the need to

perform an extensive interpretation of article 4.15 and of Considering 35, in

the sense that it is irrelevant that the definition contains no exclusion

specific of some concept and that also lacks transcendence that the

treatment of the data, whether it occurs in a hospital environment or not, as it was alleged

by the appellant that in other resolutions of the AEPD and the Court itself

National, this hospitable element always existed and as in the case

analyzed (doping infraction) was not such, that we were not before

health data.

(…) Judgments of this Chamber are cited in the lawsuit to justify that,

According to the Chamber's criteria, health data belongs to the "semantic field

of health/medicine” and that, therefore, outside the hospital setting there is no

talk about health data for the purposes of its enhanced protection; this conclusion

is wrong because one thing is that in the casuistry of resolutions

administrative decisions of the AEPD and in the sentences of this Chamber the most

occur in this field of public health services or

private and quite another is that outside of it they do not have the consideration of

health data, since they are regardless of whether their treatment is

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occurs in the field of health care services or in others of another

class, as is clearly deduced from its grammatical and legal definition in the

RGPD (Art. 4.15, cited above) constitute a special category of data that

has reinforced protection in the law, which considers as very serious the

infractions related to its treatment or transfer, except in the cases and form

legally authorized.(…)

In the present case, it is unquestionable that the data processing

personal part of a medical-hospital environment, since the worker who has

caused sick leave of more than one day has had to be treated and

diagnosed by a medical professional regarding events that have

had an influence on his state of health.

Finally, other reports must also be indicated (for all

issued with numbers 355/2010, 110/2014, 273/2014 and 4/2017), which resolve

queries similar to the one raised and that will be subject to analysis

below, where it has been considered "specially protected data", in the

terminology of the now repealed Organic Law on Data Protection of 1999

(LOPD) the information to which the Delegates of the

Prevention in the exercise of the functions to which the query refers.

Taking into account the above, the information referring to accidents

that a worker has suffered in the development of his work, and that as

consequence has caused sick leave of more than one day, it is a consequence indubitable examination of his state of health as a result of said accident and therefore, when transferring this information to the Prevention Delegate, it is reporting on aspects related to the worker's health.

Indeed, there has been a provision of health services that reveals health status, and that places such information outside the definition of article 4.15 of the RGPD.

In addition, without prejudice to the analysis of the contribution of the NIP or the name and surnames that are discussed later, there is no doubt that this health information, associated with an identifier that allows identifying directly or indirectly to a person, (according to the definition of personal data contained in article 4.1 RGPD) means that we are facing the treatment of personal data related to health and therefore the regimen provided for in article 9 of the aforementioned RGPD.

II

Section 2 of article 9 RGPD establishes the assumptions that allow exceptions to the general prohibition of treatment of categories

special data, having to stop in relation to the query raised in section b) refers to when:

(...) the treatment is necessary for the fulfillment of obligations and the exercise of specific rights of the person in charge of the treatment or of the

interested in the field of labor law and safety and protection

social, to the extent authorized by the Law of the Union of the

Member States or a collective agreement under the law of the

Member States that establishes adequate guarantees of respect for the

fundamental rights and the interests of the interested party; (...)

In this sense, of the LPRL regarding the processing of data of the

workers by the Prevention Delegates as a result of

communication to be made by the employer, the following must be cited

precepts:

Article 23 under the name "Documentation" establishes what

following: 1. The employer must prepare and keep available to the

labor authority the following documentation regarding the obligations

established in the previous articles:

(…)and)

List of occupational accidents and illnesses

professionals who have caused the worker an incapacity for work

more than one day's work. In these cases, the employer will also carry out

the notification referred to in section 3 of this article.(...)

Although this article refers to the documentation that the employer

must prepare to make available to the labor authority, as will be seen below

Then, this information must be transferred to the Delegates of

Prevention to be able to exercise the competences and attributions that the

norm confers on them.

It is also noteworthy that the precept says nothing about the

identification of the “accidents”, neither in a dissociated or anonymized way,

pseudonymized, or in any other way, but refers to the relationship of

accidents.

Indeed, Article 36 of the LPRL under the name

"Competences and faculties of the Prevention Delegates" establishes the

following:

1. The powers of the Prevention Delegates are:

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(...)d) Exercise surveillance and control over compliance with

occupational risk prevention regulations.

(…)

2. In the exercise of the powers attributed to the Delegates of

Prevention, they will be empowered to:

b) Have access, with the limitations set forth in section 4 of the

Article 22 of this Law, to the information and documentation related to the

working conditions that are necessary for the exercise of their functions

and, in particular, the provisions of articles 18 and 23 of this Law. When the

information is subject to the limitations outlined,

can only be

provided in a manner that guarantees respect for confidentiality.

c) Be informed by the employer about the damages produced in the

health of the workers once he had been aware of

them, being able to appear, even outside of their working day, in the place of the

made to know the circumstances of the same.

To which we must add that the Royal Legislative Decree 5/2000, of 4

August, which approves the consolidated text of the Law on Infractions and

Sanctions in the Social Order, (TRLISOS hereinafter) typifies as

serious infraction in its article 12 “Not providing the training or the means

appropriate for the development of their functions to the designated workers

for prevention activities and prevention delegates.”

According to the above, it can be stated that the treatment is

necessary to comply with a legal obligation of the data controller (the

entrepreneur) that arises from labor law (LPRL and TRLISOS).

And with respect to the adequate guarantees required by the aforementioned section 2

b) of article 9 RGPD, article 37 of the LRPR, under the heading “Guarantees and

professional secrecy of Prevention Delegates” establishes in its section 3,

the next:

3. Prevention Delegates will be subject to the provisions

in section 2 of article 65 of the Workers' Statute regarding the

professional secrecy due to the information to which they had access

as a result of their performance in the company.

For its part, article 65 of the ET in section 2 indicates the following:

The members of the works council and this as a whole, as well as,

where appropriate, the experts who assist them must observe the duty of secrecy

With respect to that information that, in the legitimate and objective interest of the

company or workplace, has been expressly communicated with

reserved character.

Likewise, TRLISOS considers as a very serious infraction in its

article 13.5 “Breach of the duty of confidentiality in the use of data

related to the surveillance of the health of workers, in the terms

provided for in section 4 of article 22 of the Risk Prevention Law

Labor.”

All this without prejudice to what is established in the RGPD itself regarding

the principles in the treatment of data, and especially the one foreseen in the

Paragraph 1 . f), referring to the principle of confidentiality and integrity according to the

which personal data will be treated in such a way as to guarantee a

adequate security of personal data, including protection against

unauthorized or unlawful processing and against loss, destruction or damage

accidental, through the application of technical or organizational measures

appropriate ("integrity and confidentiality") and the provisions of articles 24

and 32 of the aforementioned RGPD.

III

Therefore, once the general ban on the processing of

In accordance with section 2.b) of article 9 of the RGPD, it is necessary to find

a legal basis of those provided for in article 6 that gives legality to the treatment.

Indeed, as the LPRL itself has indicated (and indirectly in

TRLISOS) the obligation is established with respect to the person responsible for the

treatment, in this case, the employer, to carry out the treatment object

consultation, so in accordance with section 1. c) of article 6 of the

RGPD the treatment is considered necessary for the fulfillment of a

legal obligation applicable to the data controller.

And regarding what is indicated in article 8.1 of the LOPDGDD, the standard

with legal status that must concur is the LPRL and the TRLISOS.

Therefore, the legal basis that legitimizes said treatment is the

provided for in article 6.1 c) of the RGPD.

IV

Regarding what information should be given to Prevention Delegates

to exercise the powers that the LPRL itself attributes to them, in this case the

provided for in article 36.1 d) LPRL referring to surveillance and control work

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on compliance with occupational risk prevention regulations, it is

It is necessary to analyze what is indicated in the norm, what the jurisprudence says and what has been

indicated in previous reports of this Legal Office for the purposes

determine the scope of the information that is necessary for the

Prevention Delegates carry out their legally assigned functions.

Article 36. 2 b) and c) of the LPRL, indicates the right of the Delegates

of Prevention to have access with the limitations of article 22.4 LPRL to the

information and documentation relating to working conditions, which are

necessary for the exercise of their functions, and especially those provided for in the

articles 18 and 23 and secondly the right of the Delegates

of Prevention to be informed about damage to the health of workers

so that they can know the circumstances in which they have been

produced the same.

Article 22.4 LPRL provides that:

The data related to the surveillance of the health of the workers

may be used for discriminatory purposes or to the detriment of the worker.

Access to personal health information will be limited to the

medical personnel and health authorities carrying out surveillance

of the health of the workers, without it being possible to provide the employer or

other people without the express consent of the worker.

Notwithstanding the foregoing, the employer and the persons or bodies with

responsibilities in terms of prevention shall be informed of the

conclusions derived from the acknowledgments made in relation to

with the aptitude of the worker to perform the job or with the

need to introduce or improve protection and prevention measures, in order to

that they can correctly carry out their functions in preventive matters.

The precept refers to medical information and the recipients of

the same, whether it is the medical staff or health authorities, whether it is the

employer and those persons with responsibilities in matters of

prevention of occupational risks, and how the aforementioned information must arrive

depending on one case or another.

That is, it refers to information of a medical nature

derived from tests or medical examinations in relation to the aptitude of

worker who are part of the risk prevention plan in the company and

secondly, of the information referring to introducing or improving the

protection and prevention measures.

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Well, it will be in this where the information can be incardinated object of consultation, the list of damages produced in the health of the workers, because as will be seen later, article 16.2 a) LPRL allows update the initial prevention plan on the occasion of damage to health that have occurred.

In other words, to the extent that Prevention Delegates are recipients of the Occupational Risk Prevention Plan, in which includes the initial plan, and taking into account that it may be subject to revision When the assumption referred to in the query occurs, the communication of the damage to health ex article 36.2 c) LPRL finds its limits, in addition to the provisions of article 22.4 LPRL itself in the regulations for the protection of data as shown below.

Article 18 LPRL imposes the obligation on the employer to adopt measures and inform workers in relation to the risks for the safety and health, the measures adopted in relation to said risks and the emergency measures. It is logical that after an accident at work to the extent where possible and related, measures are taken (to be included in the plan) of prevention of the company) to avoid its production in the future and that derived from what is indicated in the aforementioned article 18, the workers or either directly or through the Prevention Delegates.

Article 23 LPRL under the heading "Documentation" establishes a list of documentation that the employer must make available to the labor authority, and by application of article 36.2 b) LRPR also to the Prevention Delegates, consisting of the following:

a) Occupational risk prevention plan, in accordance with the provisions of

section 1 of article 16 of this law.

b) Assessment of risks for safety and health at work,

including the result of regular checks of working conditions and

of the activity of the workers, in accordance with the provisions of paragraph a)

of section 2 of article 16 of this law.

c) Planning of the preventive activity, including measures of

protection and prevention to be adopted and, where appropriate, protective material that

must be used, in accordance with paragraph b) of paragraph 2 of article 16

of this law.

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d) Practice of controls of the health status of workers

provided for in article 22 of this Law and conclusions obtained from them

in the terms set forth in the last paragraph of section 4 of the aforementioned article.

e) List of occupational accidents and occupational diseases

that have caused the worker an incapacity for work of more than one day of

job. In these cases, the employer will also notify the

refers to section 3 of this article.

v

As background, it should be mentioned that regarding sections a and b of the

article 23.1 LPRL the Judgment of the Supreme Court of the Social Chamber of

February 24, 2016 (Casation Appeal No. 79/2015) allows the

Prevention delegates know the same information as the authority

employment in the exercise of their functions in relation to the global process of

occupational risk assessment:

(...) prevention delegates have the right to access, as well as

labor authorities, to the reports and documents resulting from the

investigation by the company of damage to the health of workers,

since these reports are part of the overall process of evaluating

occupational risks, even when there may be certain limitations due to

various causes(...)

(…)The art. 23 LPRL contemplates the right of information of the

labor authority (and, therefore, of the prevention delegates) regarding the

"Assessment of occupational safety and health risks, including

result of regular checks of working conditions and

activity of the workers, in accordance with the provisions of paragraph a) of the

section 2 of article 16 of this law".

Well, article 16.2 a) LPRL provides the following:

a) The employer must carry out an initial evaluation of the

risks to the safety and health of workers, taking into account

account, in general, the nature of the activity, the

Characteristics of existing jobs and workers

that they must perform. The same evaluation should be done with

occasion of the choice of work teams, substances or

chemical preparations and conditioning of workplaces.

The initial evaluation will take into account those other actions that

must be developed in accordance with the provisions of the regulations

on protection of specific risks and activities of special

dangerousness. The evaluation will be updated when the conditions change.

working conditions and, in any case, will be submitted to consideration and

will be reviewed, if necessary, on the occasion of damage to health

that have occurred. (…)

In this sense, the initial evaluation of the health risks that

must be carried out by the employer may be subject to review on the occasion of the

damage to health that has occurred, a circumstance that also serves

budget for the application of article 36.2 c) LPRL, which is the one

circumscribe the query.

Notwithstanding the foregoing, the Tribunal considers that the initial evaluation, and

the budget of its review, that is, the production of damage to health, is

It is part of the general evaluation process on occupational risks

whose information and documentation must be available, both to the

labor authority, as well as the Prevention Delegates. In this sense

The statement continues by stating:

e) Therefore, the investigation of work accidents and

occupational diseases (understood as investigation of the damages

for health, that is, from diseases, pathologies or injuries

suffered by reason or occasion of work, as defined by art. 4.3º of

the Law), is not an autonomous activity, but a part of the process of

assessment of occupational risks, as an element eventually

determinant of the review of the initial evaluation. Access to

results of said investigation is part of the right to

information on the risk assessment and is included within

of art. 23 of Law 31/1995, so that the labor authority has

right to access such investigations and therefore (as far as

the regulation of art. 36.2.b is a mere reference to art. 23), also

prevention delegates have the right to do so.

Regarding the extension of the right to information that the

Delegates of Prevention, the Sentence of the High Court of Justice of

Cantabria of June 1, 2005 (AS 2005, 1191) stated that "the right to

prevention delegates goes beyond mere consultation. Thus it is established

specifically that: Apart from the fact that in certain cases the information

is subject to limitations and can only be provided in a manner that

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guarantees respect for confidentiality (art. 22.4), access to information

information must be understood in the broadest sense, that is, in the way

that the function and attributions of the delegates be facilitated or made more comfortable.

It makes no sense to think that, given the variety of information that can be

receive (risks to the health and safety of workers, safety measures,

protection and prevention, emergency measures) and wide scope of the

documentation prepared (risk assessment, prevention measures and

protection, result of the periodic controls, practice of the controls of the

state of health and relation to accidents at work) obtaining and transmitting

of such singular and transcendental data should be entrusted to the mere consultation».

In fact, as the Judgment of the Social Chamber of the

Superior Court of Justice of Catalonia of December 20, 2005 (AS

2006, 809) , the right to information of prevention delegates «is not

refers to a mere right to be informed, but we are faced with the

instrumentation of information as a tool for the exercise of

participation function described through the competences attributed to the

prevention delegates» .

Having said the foregoing, and regarding "the limitations" on the access and use of

the information of which the Prevention Delegates are creditors in

application of the Judgment of the Supreme Court (and by extension of the other

that are cited), it indicates that "what is resolved here is done without prejudice to

such limitations and the confidentiality and confidentiality obligations that

are incumbent on prevention delegates”

For its part, the Judgment of the National High Court, number 177/2014 of

October 30, 2015 of the Labor Chamber, which is subject to review by the

judgment of the Supreme Court cited, indicates with respect to the limitations in the

access and use of information the following:

The only specific limitation alleged by the State Attorney

is the existence of personal data in the investigation reports of

accidents, which will actually occur to the extent that

a dissociation procedure has been carried out (article 3.f of

Organic Law 15/1999, of December 13 (RCL 1999, 3058), of

Protection of Personal Data), which will obviously be very

difficult in these cases, at least completely, since the

investigation must deal with a specific accident with data

sufficient identification of what happened and, even when the

identification of the person of the injured in the copy of the report, in

many times that identification will be perfectly possible in the

context of the company or workplace. In any case the

consequence would not be the illegality per se of data communication,

but the need, for it to be lawful, of the consent of the affected party

and article 11.2.a of the aforementioned Organic Law 15/1999 tells us that for

the communication of personal data does not require consent

of the affected party when the assignment is authorized by law, as occurs

in this case".

As can be seen, the judgment states that article 11.2 of the

LOPD will allow the transfer of data without the consent of the

workers.

However, as noted above, currently the

RGPD in force determines what assumptions allow the processing of data, in the

article 6.1 RGPD and the LOPDGDD in its article 8.1 and what is indicated in the LPRL

will allow such treatment under the provisions of articles

9.2 b) and 6.1 c) GDPR.

But it must also be remembered that the treatment, in addition to fulfilling

with the principle of legality, must respect the principle of minimization and be

in accordance with the principle of proportionality, whose analysis is done in

subsequent sections of this report.

From what has been indicated so far, it turns out that access to information

on the health of workers that can be accessed by the Delegates of

Prevention, you will find its limits, in addition to what is indicated in the article

22.4 LPRL, in what is stated in the data protection regulations of a character

personal.

That is to say, despite the jurisprudential doctrine in favor of

Prevention delegates when it comes to knowing information and documentation

on the evaluation processes (initial and global) on occupational risks,

the full validity of the limitations derived from the very

LPRL and the LOPD currently replaced by the LOPDGDD and the RGPD, whose

Application to the specific case is analyzed in the following sections.

SAW

Having said the above and taking into account the assumption of the query,

we must stop at the last section of article 23.1 e) LPRL that is

refers to the relationship between work accidents and occupational diseases that

have caused an incapacity for work greater than one day's work.

From what has been indicated so far, and from the literal interpretation of the norm,

It follows that within the information that the employer must provide to

Prevention Delegates, necessarily find the names and

surnames of the victims, but not the other way around either, that is to say, that

should be, since it will depend on the specific case.

Therefore, it would be necessary for the person responsible for the

treatment, a trial or test of necessity or proportionality of the

proposed treatment in relation to the attributions that the LPRL makes in

favor of the Prevention Delegates.

Previously, it should be remembered that they have already raised

consultations similar to the one analyzed being resolved by the AEPD, among others, in

the following reports:

Reports No. 110/2004 and No. 273/2004 conclude,

respectively the following:

(...) there will be a legal authorization for the transfer of data of the

workers affected without their consent, in the event of compliance

of the obligations established in paragraph a) of section 1 of article 23

of Law 31/1995, and within the scope of the functions of the

Personnel Delegates established by article 36.2 of the aforementioned Law of

Prevention of occupational hazards(…)

"(…) Prevention Delegates can access the data

relating to damage caused to the health of workers by

because of the work carried out in the company (...)

And in both the knowledge by the Delegates of

Prevention of such information, based on the provisions of article 7 of the

Regulation of occupational risk prevention services approved by

Royal Decree 39/1997, of January 17, which specifies the obligation provided for in the

article 23 that was cited when establishing that "In the documentation to which

referenced in paragraph a) of section 1 of article 23 of the LPRL must

be reflected, for each job whose evaluation reveals the

need to take some preventive measure, the following data:

a) The identification of the job.

b) The existing risk or risks and the list of workers

affected.

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c) The result of the evaluation and the appropriate preventive measures,

taking into account the provisions of article 3.

d) The reference of the evaluation criteria and procedures and of the

methods of measurement, analysis or testing used, in the cases in which it is

application of the provisions of section 3 of article 5."

However, it should be remembered that the object of the query does not refer to

to article 23.1 a) of the LPRL (of the prevention plan), but to the one provided for in the

section e) referring to the list of occupational accidents and illnesses

professionals who have caused sick leave of more than one day, so the

The conclusion reached in the aforementioned reports would not apply to the

analyzed case.

Secondly, it is appropriate to bring up what is indicated in Report No.

355/2010 cited by the consultant and that in addition to the analysis of what is due

understand information about "damage to health", it is related to the

necessity or proportionality of the treatment and the adoption of measures to

safeguard the principle of confidentiality, such as data dissociation:

(...) In this sense, they may access (the Delegates of

Prevention) to personal data on damage to the health of

workers when they have their origin in a harmful event, related

with the work environment, only for the purpose of control attributed to them

the LPRL and limited to the strictly necessary data, understanding by

such as those relating to the severity and nature of the damage. The delegate

is an assignee, is bound by the principles of protection of

personal data, and must keep in particular the duty of

confidentiality in accordance with the LOPD and the specific legislation in the

matter. (….)

IV

In order to approach a uniform and legally secure concept

of what is meant by damage to the health of workers in the

Law 31/1995, we must bear in mind that the employer (article 23.1

e) and 3) is obliged to report the health damage caused

as a result of work, that is, accidents at work and

occupational diseases, in accordance with the procedure

establish by regulation, the labor authority, at the service of

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prevention and the Mutual of accidents at work and illnesses

professionals with which you have contracted the coverage of these

contingencies.(…)

This Order comes to define the scope of the information on the
damage caused to the health of the worker, and that for the sake of
legal certainty, must be the same for all recipients of
said notification. So if article 36.2 c) of Law 31/1995
recognizes prevention delegates the right that the employer
inform them about the health damage caused to workers,
It seems logical that, using the same concept (damage to health)
for notification by the employer to the labor authority (article 23.2
c)), and to the prevention delegates, the information on the damage must
be the same in its content, that is, the one that is reflected in the part of
accident at work or occupational disease.
In turn, Order TAS/2926/2002, of November 19, has
replaced the official models corresponding to the accident report
that were established by the Order of December 16,
1987, although they do not include variation with respect to the data in the sense
analyzed, establishing in its first additional provision that
“One year after the entry into force of this Order (1
of January 2003), the completion and transmission of the models
established in article 1, may only be carried out by means
electronically through the computer application approved in article
3rd of this rule.
Consequently, although this work accident report
the employer does not have to send a copy to the prevention delegates,
we must understand that, for the fulfillment of its functions of
monitoring and control of occupational risk prevention standards and
For this exclusive purpose, prevention delegates are

must provide the same information that the cited Order provides for

the labor authority. Thus, the concept of damage to health would include the

same information, and the scope of what is stated in the

article 36.2 sections b) and c) in relation to article 23 of the Law

31/1995 on Prevention of Occupational Risks.

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However, information on damage to health or

occupational diseases of the affected workers could

communicate in a dissociated way, that is, without referring to the subject

rough concrete, so that in this way the

principle of confidentiality, recognized by article 36 itself.

Therefore, we must conclude that both the ratio of

accidents at work such as information on health damage

that appear in the work accident reports of the

workers who determine an absence from work of more than one day,

may be provided to prevention delegates in a dissociated form,

said communication having the legal coverage required by article 7.3

of the LOPD in article 36 in relation to article 23 of the Law

31/1995 analyzed, and would result in accordance with the provisions of the Law

Organic Law 15/1999, when the data communicated respects the

principles indicated in article 4 of said Law, which says: “1. The

personal data may only be collected for processing,

as well as subjecting them to said treatment, when appropriate,

relevant and not excessive in relation to the scope and purposes

determined, explicit and legitimate for which they have been obtained.

2. The personal data object of treatment does not

may be used for purposes incompatible with those for which

the data had been collected. “

Lastly, it should be remembered that prevention delegates

They must keep the information thus obtained secret.

(article 10 of the LOPD).

And finally, Report No. 4/2017 concludes that (...) the Delegates of

Prevention can access personal data relating to damage

caused to the health of workers due to the work carried out in

the company, for the purpose of control attributed to them by the law on the prevention of

occupational risks and limited to the data strictly necessary, understanding

by such those related to the seriousness and nature of the damage (...)

From what has been indicated so far, it can be affirmed that, under the repealed

LOPD and Directive 95/46, the criterion of this Agency has been that the

Prevention Delegates can access the information referred to in the

article 23.1 e) in relation to article 36.2 c) both of the LPRL, and must

be interpreted in accordance with article 4 of the LOPD and article 10 of the

LOPD, that is, said information is specified in what is strictly necessary,

that relating to the seriousness and nature of the damage and regarding the

identity of those affected, that the information is dissociated. (from

in accordance with RD 1720/2007, of December 21, which approves the

LOPD Development Regulation, Data is considered dissociated to that which

does not allow the identification of an affected or interested party.)

7th

Currently, the current RGPD includes in its article 5 the principles

in the processing of data, and in relation to the supposed object of consultation,

must be taken into account, especially those provided for in section 1 c) and f),

whose content the personal data will be:

c) adequate, pertinent and limited to what is necessary in relation to the

purposes for which they are processed (“data minimization”);

f) processed in such a way as to ensure adequate security of

personal data, including protection against unauthorized processing

or illicit and against loss, destruction or accidental damage, through the

application of appropriate technical or organizational measures ("integrity and

confidentiality").

And also what is indicated in section 2 of the aforementioned article 5 of the RGPD,

that includes the principle of proactive responsibility, which provides that, The

responsible for the treatment will be responsible for compliance with the provisions

in paragraph 1 and able to demonstrate it ("proactive responsibility").

That is to say, it will correspond to the person in charge of the treatment the previous

assessment of the concurrent circumstances of the specific case to apply

effectively, the indicated principles, on the one hand, legality, loyalty and

transparency (section 1. a) of article 5 RGPD) and another, minimization and

confidentiality (section 1. c) and f) of article 5 RGPD).

Likewise, what is indicated in Considering 4 of the

RGPD that recognizes that the right to data protection is not a right

absolute but must be considered in relation to its function in society

and maintain the balance with other fundamental rights, in accordance with the

principle of proportionality.

Regarding the principle of minimization, it should be noted that it is

closely related to the principle of proportionality contained in the

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doctrine of the Constitutional Court and that, among other issues, serves to

resolve whether the interference in a fundamental right is in accordance with the law in

relation to the preservation of other rights or legal assets or in

application of other rules, when we are faced with a conflict between two or more

options offered by the legal system in its application to a case

concrete.

Constitutional Judgment No. 186/2000, Rec. Appeal for amparo

2,662/1997, of July 10, 2000, has had the opportunity to rule on

the extension of the principle of proportionality. Well, in accordance with

doctrine of the high court: «the constitutionality of any restrictive measure

of fundamental rights is determined by the strict observance of the

principle of proportionality. For the purposes that matter here, it suffices to

remember that (as synthesized by the SSTC 66/1995, of May 8, FJ 5; 55/1996,

of March 28, FFJJ 6, 7, 8 and 9; 207/1996, of December 16, FJ 4 e), and

37/1998, of February 17, FJ 8) to check whether a restrictive measure of

a fundamental right overcomes the judgment of proportionality, it is necessary

Check if you meet the following three requirements or conditions:

if such a measure is capable of achieving the proposed objective (judgment

suitability);

yes, furthermore, it is necessary, in the sense that there is no other measure

more moderate for the achievement of such purpose with equal effectiveness (judgment of

need);

and, finally, if it is weighted or balanced, because it is derived from

her more benefits or advantages for the general interest than harm to others

goods or values in conflict (judgment of proportionality in the strict sense).»

Indeed, suitability consists of the causal relationship, of

to end, between the means adopted and the end proposed. That is, it is the analysis

of a means-end relationship.

For the assumption cited in the query, and without prejudice to the analysis

that the person in charge of the treatment must carry out, by way of example it could be

affirm that the communication to the Prevention Delegates of the names and

surnames, of workers who have suffered an accident or illness

professional and who have been sick for more than a day, could be ideal

so that the Prevention Delegates can exercise the powers that the

LPRL grants them in article 36. 1 d) LPRL.

In relation to the need, this will consist of examining whether there are
other alternative means to the chosen one that are not burdensome or at least
be less intense. This is the analysis of a mean-medium relationship,
that is, of a comparison between means; the chosen one and the hypothetical one(s) that
could have been adopted to achieve the same end.
In this case, the Agency considers, in general and as
is collected in the aforementioned reports, that the knowledge of the
names and surnames of the injured workers is not considered necessary,
because to exercise the functions of the Prevention Delegates before
indicated, it would suffice to know the characteristics of the job, the
events that occurred and the consequences on the health of the aforementioned worker. -the
severity and nature of the damage. In the present case, considering that
these are large groups of workers, it should be assessed whether
knowing the place where the accident occurred would be enough
know which department or division of the work center to which
corresponds to the personal identification number.
And finally, proportionality in the strict sense or weighting,
goes through the comparison between the degree of realization or optimization of the end and the
intensity of the intervention in the law.

In this case, it should be assessed whether there are more advantages or benefits
for the general interest, that damages for the worker, taking into account if
there are other means of knowing where, when and how the
accident in question, without the name and surnames of the worker
related to your health data, have to be communicated.
The damage or interference in the rights of the affected by the mere

treatment of health data, is proportional to the scope of the protection that

the RGPD itself and other sector regulations provide the information related to

with health.

Thus, Recital 35 of the RGPD tells us that (...) The categories

special personal data that deserve greater protection only

should be processed for health-related purposes when necessary to

achieve these goals for the benefit of individuals and society as a whole.

set (...) or the LPRL itself, which in its article 22.4 requires the consent

of the worker to know health data in certain cases, or the

numerous references in the labor legislation on the confidentiality of the

that is creditor those that treat data related to the health of the

workers.

The treatment of health data outside the protection that the

legal system grants you, (without necessity or without due guarantees)

may have negative effects on the exercise and development of other rights

that rest on article 10 of the Constitution, as well as the

health information has been considered by the Constitutional Court

(STC 70/2009, of March 23 [RTC 2009, 70) as part of the right

fundamental to privacy and its inappropriate use or without due guarantees

can stigmatize the affected person, be the object of public scrutiny and accusation

and ultimately undermine their freedom and the free development of their personality.

Therefore, considering the importance of the information on
health (derived from the level of protection that the legal system itself
granted), it could only be estimated that more benefits are produced for the
generality of the workers in the workforce that damages the affected party, if
It is strictly essential that the Prevention Delegates
know the name and surnames of the affected worker for the appropriate
exercise of their functions.

In accordance with the foregoing, and notwithstanding that the valuation of the
effective application of the principle of minimization and confidentiality corresponds
to the controller (in accordance with the principle of responsibility
proactive provided for in article 5.2 RGPD), the first conclusion to which
would arrive is that knowledge, in general, of the name and surnames of
workers affected by the Prevention Delegates, in the
exercise of the function provided for in article 36.2) LRPR would not pass the judgment
of proportionality, and therefore, it would also be contrary to the principle of
minimization, which states that the data will be adequate, relevant and
limited to what is necessary.

Now, as indicated before, it is the person responsible for the
treatment, advised, where appropriate, by the data protection delegate, to the
that corresponds to carry out the weighing judgment and the application of the principle of
minimization, taking into account the circumstances of the specific case, derived, in
the present case, on the size of the workforce to the extent that, in addition to
that said assessment is a consequence of the application of the principle of
proactive responsibility, has the information that this Agency
unknown, about the structure, organization, staff, etc., of the entity, which
may be taken into account when making the aforementioned assessment.

Therefore, the data controller must take into account whether the

communication of personal data to the Prevention Delegates, exceeds

the judgment of proportionality in relation to the application of the principle of

minimization, taking into account that it is he who knows the characteristics

of the structure and organization of the work center and can establish whether

certain information is or is not necessary for the delegates of

Prevention develop their functions.

And in any case, (and also as a manifestation of the principle of

proactive responsibility), the conclusion reached on said

necessity, it must be documented and justified in order to be in

conditions to demonstrate that it complies with the RGPD (article 5.2).

7th

Regarding the principle of confidentiality, Article 5 of the

LOPDGDD under the name "Duty of confidentiality", indicates what

following:

1. Those responsible and in charge of data processing as well as

All persons involved in any phase of this will be subject to

to the duty of confidentiality referred to in article 5.1.f) of the Regulation

(EU) 2016/679.

2. The general obligation indicated in the previous section will be

complementary to the duties of professional secrecy in accordance with its

applicable regulations.

This principle together with those described in article 5 of the RGPD, serve to the purpose that the processing of personal data respects the privacy of those affected and deploy their effectiveness through the use of instruments such as anonymization or pseudonymization.

Being the main difference between one and the other, the existence or not of reversibility of the identification on the data that are object of treatment, therefore, that they are subject to the scope of protection of the RGPD or by the otherwise they are excluded.

Consider article 4.5) of the RGPD as “pseudonymization”: the processing of personal data in such a way that they can no longer be attributed to a data subject without using additional information, provided that such information is listed separately and is subject to technical and organizational measures

intended to ensure that personal data is not attributed to a identified or identifiable natural person;

Regarding the application of the RGPD to anonymous data or to pseudonymised, recital 26 states the following:

“The principles of data protection must apply to the entire information relating to an identified or identifiable natural person. The data pseudonymized personal data, which could be attributed to a natural person through the use of additional information, should be considered information on

an identifiable natural person. To determine whether a natural person is identifiable, all means must be taken into account, such as singularization, which can reasonably be used by the person responsible for the treatment or any other person to directly or indirectly identify the physical person. To determine whether there is a reasonable probability that means are used to identify a natural person, they should be taken into account account all objective factors, such as costs and time required for identification, taking into account both the technology available in the time of treatment as technological advances. Therefore the data protection principles should not apply to anonymous information, that is, information that is not related to an identified natural person or identifiable, nor to the data anonymised in such a way that the interested party is not identifiable, or ceases to be so. Consequently, the present Regulation does not affect the treatment of said anonymous information, including for statistical or research purposes.

In this sense, Report 355/2010 cited above proposed a treatment of the data of the workers in a dissociated way, that is to say, that according to the definition of Royal Decree 1720/2007, of December 21, by which the Development Regulation of the LOPD is approved, it referred to the one that does not allows the identification of an affected or interested party. Now, said provision makes no reference to reversibility or the possibility of identification using additional information.

In this query it is indicated that, among the data provide to the Prevention Delegates is the NIP, and therefore, is information that allows direct or indirect identification of the workers affected by the work-related accident or illness

professional. Indeed, with the query from the staff regarding who occupies the

positions and the PIN assigned to said position, it is perfectly

identifiable person behind that information, notwithstanding that

it would be “necessary to combine it with another”.

Therefore, at this point it is necessary to remember what is indicated in the

article 24 of the RGPD according to which

“Taking into account the state of the art, the cost of the application and

the nature, scope, context and purposes of the treatment, as well as the risks of

different probability and seriousness that treatment entails for the rights and

freedoms of natural persons, the data controller will apply, both

at the time of determining the means of treatment as at the time

of the treatment itself, appropriate technical and organizational measures, such as

pseudonymization, designed to effectively apply the principles of

data protection, such as data minimization, and integrate guarantees

necessary in the treatment, in order to meet the requirements of this

Regulation and protect the rights of the interested parties”

Therefore, the treatment that is carried out by the entity

consultant, consisting of the communication of information to the Delegates of

Prevention, of pseudonymized data, is deemed appropriate for the application

effectiveness of principles such as minimization and confidentiality.

IX

In conclusion, the scope of the information provided to the

Prevention Delegates will be conditioned by multiple factors that will be

of application to the specific case and whose assessment corresponds to the person in charge

treatment, as one more manifestation of the principle of responsibility

active (article 5.2 RGPD).

That is to say, it corresponds to the person in charge of the treatment, advised, in his

case, by the data protection delegate, assess the coexistence and

application of the principle of legality, loyalty and transparency with the principle of

minimization and confidentiality, since it is the one who knows the specific

characteristics of the organization, the accident and the previous information (in

quantitative and qualitative terms) to which they can have access

Prevention delegates in the work center on organization and

template, and the result of said assessment must be duly

justified and documented.

Indeed, it will depend on the circumstances of the accident that has occurred.

produced, the special characteristics of the workplace, the

information to which the Delegates of

Prevention to the effects if combining it with another is enough for

can perform their duties, etc.

In this sense, in the aforementioned Minutes of the Labor Inspection it is indicated

that the PIN is insufficient and that it would be convenient to provide the name and

surnames. However, it is not explained nor is it deduced, why with the
name and surname of the victim, the Prevention Delegates could
perform their duties effectively, since it could happen that, as with
with the NIP, in large work centers, this should also be combined
information with another, such as the structure and physical location of the job
to know how and where the accident occurred.
In short, the treatment proposed in the consultation finds its basis
legal in article 6.1 c) of the RGPD, in relation to article 9.2 b) of the
RGPD and in application of the principle of minimization and responsibility
proactively, the data controller must determine, justify and
document that the information provided to the Delegates of
Prevention is strictly necessary in relation to the specific case and
that allows compliance with the powers granted by the LPRL in its article 36.2 c)
LPRL to the Prevention Delegates (to be informed about the damages
produced in the health of workers).
That is, the one related to the conditions in which the accident occurred.
that has had an impact on the worker's health, such as
location of the workstation, the severity and nature of the damage.
Without prejudice to the fact that, taking into account the circumstances of the case, and prior
assessment and justification by the data controller, said
information must be expanded with another, which may include the name
and surnames of those affected.
Finally, indicate that said information must be provided
using instruments or techniques aimed at guaranteeing the effective application of
minimization, confidentiality and integrity of data, such as
example, pseudonymization or even anonymization, as long as

These techniques allow the purpose of said communication to be fulfilled.

Prevention Delegates.

All this without prejudice to the information and documentation to which

Prevention Delegates access, as a result of the revision of the

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initial plan for the prevention of occupational risks as a result of the production of

occupational accidents (STS No. 79/2015 of 02/24/2016) and with the limitations

that have just been indicated in this report.

Madrid, May 07, 2021