

THE CHAIRMAN OF PERSONAL DATA PROTECTION

Warsaw, on 20

March

2019

DECISION

ZSZZS.440.727.2018

Based on Article. 104 § 1 of the Act of June 14, 1960 Code of Administrative Procedure (Journal of Laws of 2017, item 1257, as amended), art. 6 sec. 1 lit. b) and c), art. 9 sec. 2 lit. b) and art. 28 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 / EC (Official Journal of the European Union , L 119, May 4, 2016), after conducting the administrative procedure regarding the complaint of Ms MJ, about irregularities in the processing of her personal data by L. Sp. z o.o. consisting in disclosing her personal data to unauthorized persons, President of the Office for Personal Data Protection

refuses to accept the request.

Justification

The Office for Personal Data Protection received a complaint, Ms M.J., hereinafter referred to as the complainant, about irregularities in the processing of her personal data by L. Sp. z o.o., hereinafter also referred to as the Company, consisting in disclosing its personal data to unauthorized persons.

In the content of the complaint, the complainant indicated that on [...] September 2018, the Company, being her employer, decided to check the validity of the sick leave she was on. For this purpose, two men came to the applicant's place of residence. One of them asked the quote "how do I feel and informed that because he found me at home, it is not justified to leave me a letter asking for explanation of the absence". In connection with the above, the complainant requested that the persons to whom her personal data was provided not be made available to them and that the Company should be fined an administrative penalty.

In the course of the administrative proceedings, the President of the Personal Data Protection Office established the following facts.

The complainant was employed by the Company under an employment contract for an indefinite period. On [...] August 2018, the above-mentioned the contract was terminated with one month's notice. The applicant was also released from the obligation to perform work. Due to the employment relationship between the Complainant and the Company, the Company processed the Complainant's personal data in order to implement the rights and obligations relating to the employment of employees.

On [...] August 2018, the complainant submitted a medical certificate, therefore the Company, on [...] September 2018, commissioned an external company, ie G. Sp. z o.o. carrying out a control of the legitimacy of the use of this exemption. The above inspection was carried out by the entity with which the Company concluded a cooperation agreement on [...] August 2018 for the provision of services related to the control of sickness absenteeism of employees, as well as an agreement for entrusting the processing of personal data. In addition, two persons were authorized by name to carry out the inspection, i.e. Mr. S.J. and Mr. P.P. The company made the above-mentioned persons, the complainant's personal data in the form of name and surname, address of residence and information about being on sick leave in order to check whether the applicant is staying at the place of residence, i.e. whether she uses the sick leave in accordance with its purpose. These persons, apart from the personal authorization to conduct the inspection, did not receive any documents containing the applicant's personal data.

The company, in a letter dated [...] November 2018, stated that it employs more than 20 employees, i.e. in accordance with §1 sec. 1 of the Regulation of the Minister of Labor and Social Policy of 27 July 1999 on detailed rules and procedures for controlling the correct use of sick leave from work and formal control of medical certificates, as well as in accordance with Art. 68 sec. 1 of the Act of June 25, 1999 on cash benefits from social insurance in the event of sickness and maternity, could carry out the inspection.

In this factual state of the case, the President of the Office considered the following.

It should be noted that Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 defines the obligations of the data controller, which includes the processing of personal data, in compliance with the conditions set out in this Regulation. Art. 6 sec. 1 of the GDPR, according to which data processing is allowed only if one of the conditions set out in this provision is met. The catalog of premises listed in Art. 6 sec. 1 GDPR is closed. Each of the premises legalizing the processing of personal data is autonomous and independent. This means that these conditions are, in principle, equal, and therefore the fulfillment of at least one of them determines the lawful processing of personal data. As a consequence, the

consent of the data subject is not the only basis for the processing of personal data, as the data processing process will be consistent with the Regulation also when the data controller demonstrates that another of the above-mentioned conditions is met. Regardless of the consent of the data subject (Article 6 (1) (a) of the GDPR), the processing of personal data is permitted, inter alia, when it is necessary for the performance of a contract to which the data subject is a party or to undertake actions at the request of the data subject, prior to the conclusion of the contract (Article 6 (1) (b) of the GDPR), as well as when it is necessary to fulfill the legal obligation incumbent on the controller (Article 6 (1) (c) of the GDPR.).

On the other hand, the conditions for the legality of processing special categories of personal data, including personal data relating to health, are set out in Art. 9 sec. 2 GDPR. These conditions are autonomous, so in order for the administrator to consider the processing of personal data lawful, it is enough for him to meet one of these conditions. Formulated in art. 9 sec. 2 GDPR, the catalog of circumstances legalizing the processing of sensitive data includes, among others the consent of the data subject (Article 9 (2) (a) of the GDPR) or the situation where the processing is necessary for the performance of obligations and the exercise of specific rights by the controller or the data subject in the field of labor law, social security and social protection, as far as this is permitted by EU law or the law of a Member State, or by collective agreements under the law of a Member State providing for adequate safeguards for the fundamental rights and interests of the data subject (Article 9 (2) (b) of the GDPR).

It requires that, in accordance with Art. 68 sec. 1 of the Act of 25 June 1999 on cash benefits from social insurance in the event of sickness and maternity (Journal of Laws 2017.1368, i.e. the correctness of the use of dismissals in accordance with their purpose and are authorized to formally control medical certificates. Moreover, pursuant to §1 sec. 1 of the Regulation of the Minister of Labor and Social Policy of 27 July 1999 on detailed rules and procedures for controlling the correct use of sick leave from work and formal control of medical certificates (Journal of Laws 1999.65.743), hereinafter referred to as the Regulation, on the control of the correct use of sick leave medical examinations due to illness or the need for the insured to care for a family member are made by payers of sickness insurance contributions who register more than 20 insured persons for sickness insurance. The control of the correct use of sick leave due to illness consists in determining whether the insured person does not perform paid work or does not use the sick leave from work in a manner inconsistent with its purpose during the period of the declared incapacity for work (§ 5 (1) of the Regulation). To the person controlling the correct use of sick leave from work, the contribution payer issues a personal authorization which entitles the inspector to perform the inspection also at

the place of residence, temporary stay or place of employment of the inspected person. The template of the authorization is attached as Annex 1 to the Regulation (§8 of the Regulation).

The explanations provided by the Company in the letter of [...] November 2018 show that it employs more than 20 employees. In connection with the above, it should be stated that the Company, in accordance with the applicable legal regulations, could control whether the applicant had taken the sick leave justifiably. The inspection was carried out by an entity with which the Company, on [...] August 2018, concluded an agreement specifying the terms of cooperation in the implementation of services related to the control of sickness absenteeism and consultancy in this regard, as well as an agreement for entrusting the processing of personal data. Pursuant to Art. 28 sec. 3 GDPR, the processing of personal data by the processor takes place on the basis of a contract or other legal instrument, which are governed by Union law or the law of a Member State and are binding on the processor and the controller, define the subject and duration of the processing, nature and purpose of processing, type of personal data and categories data subjects, obligations and rights of the controller. Pursuant to § 1 of the contract for entrusting the processing of personal data, the Company, being the data controller, entrusted the entity that processes personal data for processing in order to enable this entity to perform its obligations under the cooperation agreement of [...] August 2018 regarding, inter alia, provision of services related to the control of sickness absenteeism of the Company's employees. Pursuant to § 3 of the agreement, the processor is authorized to process the personal data of the Company's employees only in the scope of: name and surname, address, telephone number, PESEL number and information about being on sick leave. In addition, under the contractual provisions, the processor undertook to exercise due diligence in the processing of personal data entrusted to him, to protect them by applying appropriate technical and organizational measures ensuring an adequate level of security corresponding to the risk related to the processing of personal data and to keep secret personal data received from administrator. The contract for entrusting the processing of personal data was concluded for an indefinite period until the term of the cooperation contract in the implementation of services related to the control of sickness absenteeism and consultancy in this area.

Considering the above, it should be stated that the applicable legal provisions do not limit the employer's ability to entrust an external entity with the control of the use of a sick leave inconsistently with its purpose, which was also the case in the present case. It also requires indications that the above-mentioned entity, in accordance with Art. 28 sec. 3 GDPR, was entitled to process the complainant's personal data on the basis of the contract for entrusting the processing of personal data concluded

with the Company on [...] August 2018. In addition, the inspection was carried out by persons with personal authorizations that comply with the authorization template attached to 1 of the Regulation. Based on the above-mentioned the authorizations of the persons conducting the inspection were entitled to carry it out at the applicant's place of residence. Moreover, the Company provided the above-mentioned persons, the complainant's personal data in the form of name, surname, address and information about being on sick leave, i.e. data in the scope resulting from the contract for entrusting the processing of personal data, which were necessary to carry out the inspection in question.

It should be noted that the Company, when carrying out on [...] September 2018, the examination of the legitimacy of the use of the sick leave by the complainant, exercised its right specified in Art. 68 sec. 1 of the Act of June 25, 1999 on cash benefits from social insurance in the event of sickness and maternity and in § 1 of the Regulation of the Minister of Labor and Social Policy of July 27, 1999 on detailed rules and procedures for controlling the correct use of sick leave from work and the formal control of medical certificates, which is the fulfillment of the premise legalizing the processing of personal data, pursuant to art. 6 sec. 1 lit. b) and c) GDPR in the scope of ordinary personal data of the complainant and art. 9 sec. 2 lit. b) GDPR in terms of health data.

The assessment carried out by the President of the Personal Data Protection Office in each case serves to examine the legitimacy of the referral to a specific subject of the order, corresponding to the disposition of art. 58 sec. 2 GDPR, aimed at restoring a legal state in the process of data processing - so it is justified and necessary only insofar as there are irregularities in the processing of personal data. In the opinion of the President of the Personal Data Protection Office, there are no grounds to conclude that the complainant's personal data were processed by the Company in a manner inconsistent with the GDPR.

The appealed trial was based on Art. 28 GDPR in connection with with the conditions set out in Art. 6 sec. 1 lit. b) and c) GDPR in the scope of the so-called ordinary data, i.e. name, surname and address of residence and art. 9 sec. 2 lit. b) GDPR regarding data on the complainant's health.

In this factual and legal state, the President of the Personal Data Protection Office resolved as in the sentence.

The decision is final. Based on Article. 7 sec. 2 and sec. 4 of the Act of May 10, 2018 on the Protection of Personal Data (Journal of Laws of 2018, item 1000) in connection with joke. 13 § 2, art. 53 § 1 and art. 54 of the Act of August 30, 2002, Law on Administrative Court Proceedings (Journal of Laws of 2018, item 1302), the party dissatisfied with this decision has the right to lodge a complaint with the Provincial Administrative Court in Warsaw within 30 days from the date of delivery to her side.

The complaint is lodged through the President of the Office for Personal Data Protection (address: Office for Personal Data Protection, ul. Stawki 2, 00-193 Warsaw). The entry fee for the complaint is PLN 200. The party has the right to apply for an exemption from court costs or the right to assistance.

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