

FAQ

to the

processing of employee data

in connection with the

corona pandemic

after the

current legislation

As of December 9, 2021

Postal address :

*The specified email address is only used to receive simple messages without signature/encryption and for messages encrypted with PGP.

Telephone: 0361 57 3112900

Email*: poststelle@datenschutz.thueringen.de

Internet: www.tlfdi.de

PO Box 900455

99107 Erfurt

Office building: Hässlerstraße 8

99096 Erfurt

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The conference of the independent data protection supervisory authorities of the federal and Länder last objected to the processing of the

Vaccination status expressed by the employer based on the then legal regulation.

The decision is available at <https://www.datenschutzkonferenz->

[online.de/media/dskb/20211025_DSK_Beschluss_Impfstatus_von_Besch%C3%A4ftigten.pdf](https://www.datenschutzkonferenz-online.de/media/dskb/20211025_DSK_Beschluss_Impfstatus_von_Besch%C3%A4ftigten.pdf) available.

Changes to the Infection Protection Act (IfSG) will come into force on November 24, 2021

kicked. With the new § 28b IfSG, the legal basis now applies nationwide

one

3G access regulation

to the

workplace

and

one

express

Processing authorization for the employer.

These regulations apply until the end of March 19, 2022

The text of the law can be found here: https://www.gesetze-im-internet.de/ifsg/___28b.html

Subject to an ordinance by the Federal Ministry of Labor and Social Affairs

on the authorization basis of § 28b paragraph 6 IfSG, in the details of the

Monitoring and documentation obligations to be taken by employers

can be further specified, the following applies from a data protection point of view:

1. What obligations do employees have under the new regulations?

According to § 28b paragraph 1 sentence 1 IfSG, both employers and employees may

Workplaces in which physical contact with each other or with third parties is not possible

can be excluded, only enter

☐ if they have been vaccinated, recovered or tested within the meaning of Section 2 number 2, number

4 or number 6 of the COVID-19 Protection Measures Exception Ordinance of

May 8, 2021 (BAntz AT May 8, 2021 V1) are and

☐ proof of vaccination, proof of convalescence or proof of testing im

Within the meaning of § 2 number 3, number 5 or number 7 of the above COVID-19

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Carry protective measures regulation with you, keep available for inspection

or have deposited with the employer.

☐ This also applies to the transport of several employees to or from the workplace.

Apart from that, according to § 28b paragraph 1 sentence 3 IfSG, the workplace without the mentioned proofs are exceptionally entered to immediately before a corona test provided by the employer carry out or accept a vaccination offer from the employee.

For

certain facilities

and companies

(care, preventive,

Rehabilitation facilities and also outpatient care services) applies according to § 28b

Para. 2 that in addition to the employers and the employees also visitors respectively must carry proof of testing with them.

2. What are the employer's obligations with regard to the evidence?

According to § 28b Abs. 3 IfSG, employers are obliged to comply with the under 1.

the above-mentioned obligations of the employees through verification checks on a daily basis monitor and document regularly. To do this, employees must

present proof upon request. For the documentation it is sufficient that

the control procedure is verifiably implemented in the infection protection concept

was made or separate specifications were made in this regard.

3. Which personal data may the employer process?

Insofar as it is necessary to fulfill the inspection and documentation obligation,

may the employer process personal data including data on vaccination, sero

and process test status in relation to COVID-19 (§ 28b Para. 3 Sentence 3 IfSG). About that

In addition, the data may also be used to adapt the operational hygiene concept

the basis of the risk assessment in accordance with Sections 5 and 6 of the Occupational Health and Safety Act be used where necessary. Section 22 (2) BDSG applies accordingly.

According to this, the processing of personal data is of a special nature category, permitted under certain conditions (link to § 22

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BDSG: <https://dsgvo-gesetz.de/bdsg/22-bdsg/>).

4. Can the employer make copies of proof of vaccinations, convalescence or tests prepare or request from the employees and save them?

The obligation for employees to submit means that the relevant proof submitted and viewed by the person authorized to do so. The obligation to Documentation can the employer taking into account the requirement of Comply with data minimization by having him or someone commissioned by him to do so person notes the template after the name of the submitting person ("check off").

For this it is not necessary and therefore inadmissible to make copies of the submitted create and store documents.

The fact that the evidence can be "deposited" does not mean that employers of can require employees to submit the relevant documents in general to send a copy. In the absence of more specific provisions, the legal text for deposit, in our view, can only be interpreted in such a way that the employees the opportunity to deposit is given, which you can make use of, if they don't want to submit their evidence every day. So the employer can do not ask for the deposit, only offer it. Above all, he can't either require the evidence by e-mail without proper protection against unauthorized knowledge (through suitable encryption technology).

Even in the case of deposit, it is sufficient in our view that only information from the evidence, namely the name, the designation of the document and the

Validity period, provided it was before March 19, 2022 (validity of the legal regulation) expires, are stored. In addition, the consent of to document this for employees within the meaning of Section 26 (2) and (3) BDSG, which can be revoked at any time.

5. How long may information on the submitted evidence be stored

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will?

According to § 28b paragraph 3 sentence 9 IfSG, the data collected by the employer according to sentence 3 to delete data no later than the end of the sixth month after their collection;

the provisions of general data protection law remain unaffected.

a) Lists for documenting the submission of the required evidence:

Section 28 (1) and (3) IfSG does not mean that storage of the

3G detection data of employees and workers on the daily

Obligation to monitor over a longer period of time is necessary. The purpose

a daily control of the access restriction under the stipulation of the 3G

Evidence and thus compliance with the obligations under paragraph 1 is included in each case

reached the end of the working day. It is therefore within the bounds of necessity

with regard to the achievement of the purpose, no further storage of the 3G

evidence necessary. The respective list of the previous day can therefore be changed on

be destroyed the following day.

b) Information stored by the employer:

The ones expressly requested by the employees

Proof of vaccination or recovery may be submitted by the end of the

be retained for a maximum period of 6 months, unless

o the document loses its validity beforehand, then the data is included

Delete expiration date

O

in the event of a revocation of the declaration, the data and the declaration
to be deleted immediately. The revocation is after one day as well
to delete.

After the revocation or the expiry of the validity, the proof according to § 28b

Para. 1 IfSG to be kept daily again by submission.

6. Where may the information on vaccination, convalescence and test evidence of the

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employees are saved?

Since the data is temporarily used for infection protection purposes and not for
are required to carry out the employment relationship, they may not be used
personnel files are taken.

Since the existence of the evidence is carried along by the employees or
deposited are required for the purpose of access to the workplace,
should the regular documentation or the stored information from the body
are stored, which is responsible for the control and, if necessary, access to the information
must have for precisely these control purposes.

Since the information is health data according to Art 9 DS-GVO,
according to § 28 paragraph 3 sentence 5 IfSG i. V. m. Section 22 (2) BDSG appropriate specific
provide for measures to protect the interests of the data subjects and
hold true. There are therefore technical and organizational measures for protection
against unauthorized inspection and access, who are processing persons
regarding access restrictions and data security
sensitize.

7. May the information from the

daily access controls or

Deposits are passed on to other bodies by the employer?

The processing of the information from the daily checks and the deposited

Information is earmarked for access control to the workplace and, if necessary, for

Purposes of the adaptation of the hygiene protection concept (§ 28b Abs. 3 IfSG) only by the

responsible employer or their authorized persons

to process. The information may not be used by third parties for their own control obligations or

be made available for other purposes.

In the case of changing workplaces/locations for employees (e.g.

cleaning services, construction site work, etc.) there is initially the obligation of the

own employer according to § 28b Abs. 1 and 3 IfSG, the necessary evidence for

Access

to the place of work

to

check.

Is at the place of use/place of

Neither does physical contact with third parties

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excluded, it is up to the responsible office there, according to the for this

to check the conditions applicable at the location.

In cases where the employees are the employing company before

Do not go to work and do not take a joint transport from there

benefit other employees

can due to the protective purpose of the

Infection protection regulations also include an on-site inspection

Access control carried out by a person commissioned by the employer

if access control is carried out by representatives of the person responsible there

is not provided or required.

8. Transparency for the data subjects, obligation to provide information in accordance with Art. 13

GDPR

At the time of collecting the data from the submitted or deposited

The employer must prove the persons concerned according to Art. 13 DS-GVO

inform about the data processing. The information must include the contact details of the

Those responsible, possibly also the data protection officer, the purpose and the

Legal basis of the processing, the data categories, the regular storage period

contain. In addition, the right of the data subject to information (Art.

15 DS-GVO), correction (Art. 16 DS-GVO), deletion (Art. 17 DS-GVO), on

Restriction of processing (Art. 18 DS-GVO), the right to object (Art.

21 DS-GVO) and the right to lodge a complaint with the data protection supervisory authority

to turn, to point out.

dr Lutz Hasse

Thuringia State Commissioner for Data Protection

and freedom of information

Hässlerstrasse 8

99096 Erfurt

www.tlfdi.de