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»CPDP opinion on the request of the Ombudsman of the Republic of Bulgaria for an opinion on the application of Regulation (EU) 2016/679 in connection with the certification of temporary incapacity for work before an employer CPDP opinion on the request of the Ombudsman for an opinion on) 2016/679 in connection with the certification of temporary incapacity for work before an employer

OPINION

ON

THE COMMISSION FOR THE PROTECTION OF PERSONAL DATA

Reg. № NDMSP0-17-808 / 17.09.2018

Sofia, October 15, 2018

SUBJECT: Request from the Ombudsman of the Republic of Bulgaria for an opinion on the application of Regulation (EU) 2016/679 in connection with the certification of temporary incapacity for work before an employer.

The Commission for Personal Data Protection (CPDP) composed of: Members: Tsanko Tsolov, Tsvetelin Sofroniev and Veselin Tselkov at a meeting held on 10.10.2018, considered a request for an opinion from Ms. Maya Manolova, Ombudsman of the Republic of Bulgaria, on on the occasion of the complaint received by her in connection with the existing procedure for certifying temporary incapacity for work before an employer. According to the citizen who sent the complaint, the indication of the specific disease in the sick list contradicts the protection of information on the health status of citizens under the Health Act and Regulation (EU) 2016/679. In this regard, Ms. Manolova requested a competent opinion on the case.

Legal analysis

The Health Act (PDA) is the normative act regulating public relations related to the protection of the health of citizens. The issuance of a medical certificate is part of the medical expertise of the ability to work. It includes expertise of temporary incapacity for work and expertise of permanently reduced incapacity for work.

The Ordinance on Medical Expertise (NME) determines the criteria, principles and procedure for performing medical expertise. It also includes expertise of temporary incapacity for work, which is performed by the attending physician / dentist, by the medical advisory commissions, by the territorial expert medical commissions and by the National Medical Advisory

Commission. According to Art. 6, para. 1 of the NME, temporary incapacity for work is present in the cases when the insured person cannot or is prevented from working due to: general illness; accident; occupational disease; treatment abroad; sanatorium treatment; urgent medical examination or examination; quarantine; dismissal by prescription of the health authorities; caring for a sick or quarantined family member; urgent accompaniment of a sick family member for a medical examination; examination or treatment in the same or in another settlement, in the country or abroad, pregnancy and childbirth; caring for a healthy child returned from a childcare facility due to quarantine in the facility.

According to Art. 6, para. 2 NME, the leave due to temporary incapacity for work is formed with a sick leave certificate according to a model approved by an act of the Council of Ministers. According to Art. 103a of the CPA, the bodies of medical expertise shall submit to the National Social Security Institute (NSSI) the data contained in the issued sick leaves and the decisions on their appeal according to an order determined by an act of the Council of Ministers.

The Ordinance on the procedure for submitting to the NSSI the data from the issued sick leaves and the decisions on their appeal (adopted by the Council of Ministers № 241 of 04.08.2014) determines the procedure for submitting by the medical expertise bodies to the NSSI the data contained in the issued hospital records. sheets and in the decisions on their appeal.

The data contained in the sick leaves are presented to the NSSI by the doctors / dentists or the medical advisory commissions. According to Art. 13 of the Ordinance, when issuing a sick leave for temporary incapacity, the data are entered by the above entities, undergo formal and logical control and stored, after which the sick leave is printed, signed and stamped with the seal of the hospital and delivered to the person. Appendix № 3 is a sample hospital record. One of the mandatory details is the diagnosis of the disease.

Regulation (EU) 2016/679 (General Regulation on Data Protection), which has been in force since 25 May 2018, is the normative act laying down the rules related to the protection of personal data of individuals during their processing. The General Regulation builds on the previous data protection regime introduced by Directive 95/46 / EC, transposed into the Bulgarian Personal Data Protection Act of 2002, while taking into account the dynamics of the development of new technologies and data processing activities. personal data.

In order for the processing of personal data to be lawful, at least one of the conditions referred to in Art. 6 (1) (a) to (e) of the General Data Protection Regulation. In connection with the specific case and on the basis of the above, there is a normative basis under Art. 6 (1) (c) - processing is necessary to comply with a legal obligation.

In addition, the General Regulation, in Art. Article 9 (1) prohibits the processing of personal data revealing racial or ethnic origin, political views, religious or philosophical beliefs or trade union membership, as well as the processing of genetic data, biometric data solely for the purpose of identifying an individual, data on the state of health or data on the sexual life or sexual orientation of the individual.

The above does not apply when the conditions referred to in Art. 9 (2) (a) to (j) of the General Regulation. According to the factual situation of the case, the hypothesis of letter "b" is applicable - the processing is necessary for the purposes of fulfilling the obligations and exercising the special rights of the controller or the data subject under labor law and social security law and social protection, in so far as this is permitted by Union law or the law of a Member State, or by collective agreement in accordance with the law of a Member State, which provides appropriate guarantees for the fundamental rights and interests of the data subject.

The processing of special categories of data takes place in the presence of appropriate guarantees for the protection of personal data. Such data may be processed for health purposes when the quality of the procedures related to the settlement and receipt of benefits in the health insurance system is guaranteed. This includes the processing carried out by the competent authorities (NSSI) in connection with the procedure for certifying temporary incapacity for work.

In view of the above and on the grounds of Art. 58 (3) (b) of Regulation (EU) 2016/679, the Commission for Personal Data Protection adopted the following

OPINION:

The indication of the specific disease in the medical record when certifying temporary incapacity for work before the employer does not contradict the norms of Regulation (EU) 2016/679. There is a normative basis for data processing according to Art. 6, paragraph 1, letter "c" of the General Regulation, respectively a condition under Art. 9, paragraph 2, letter "b" of the Regulation, in connection with Art. 13 of the Ordinance on the procedure for submitting to the National Social Security Institute the data from the issued sick leaves and the decisions on their appeal.

MEMBERS:

Tsanko Tsolov

Tsvetelin Sofroniev / p /

Veselin Tselkov / p /

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