

THE STATE OFFICER FOR DATA PROTECTION AND FREEDOM OF INFORMATION

Press Office of the State Commissioner for the

Data protection and freedom of information

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PRESS RELEASE

health data queries

employers?

By law, yes - but only with clear limits

Currently

seems clear to the legislature given

increasing numbers of infections, employers

to grant the general power to collect health data from

employees

(immunization status

Vaccinated/Recovered/

Tested) to collect and use. With that he would

Legislators because of the pandemic with the previously respected

breaking the tradition that employees have personal,

sensitive and for the continuation of the employment relationship

decisive

information not

in employment

have to reveal.

Decides

the legislature

now to this

serious step, he took in the design of the

regulations

however clear borders after European

data protection law

(General Data Protection Regulation DS-GVO)

and

national

constitutional law

(fundamental right

on

informational self-determination from Art. 1 and 2 GG).

Pay attention to the ones to be reminded here:

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So far

employers

the

elevation

from

health data

their employees should be allowed to

this must be in a parliamentary law to achieve a

suitable, necessary and appropriate for the specified purpose

be

(Principle

the

proportionality

and

the

Data minimization, Article 5 paragraph 1 letter c DS-GVO).

It follows:

a) In order to achieve the purpose of the law, it must be straight

on the knowledge of the employer side about the

Immunization status of the respective employees

arrive. As far as the same level of protection also through

reasonable, not the informational

Alternative measures relating to the right to self-determination

such as wearing protective masks or complying with

Distances or further hygiene measures achieved

can be made, these measures have legal priority.

After that, it is preferable that employees

regularly by yourself, by the employer or

providers independent of the employer or through the

to the employer or

Employer sworn to secrecy

Have company medicine tested for Covid-19. If then

the concrete immunization status none at all

no longer plays a relevant role, he is also not allowed to ask will.

b) According to the principle of data minimization, it is sufficient

to ask whether the employee concerned

immunization against the at the time of the query

Corona virus is present. On the other hand, it is not required

the question of whether the immunization is based on a vaccination or

based on recovery.

Otherwise there would be a concrete risk of a (later)

Disadvantage for those who have recovered compared to those who have been vaccinated, for example

the decision to accept or extend it

of an employment relationship because the employer side

possible long-term consequences of a disease

Covid-19 ("Long Covid") fears or other reservations

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towards those who have recovered.

c) It would be particularly critical to assess if the

Employers not only the immunization status

raise, but also in the case of non-immunized people

Reasons for the lack of immunization (e.g.: the existence

a medical contraindication) and later

should use.

d) A legal basis is only proportionate if

if they have the right to process health data

limited by employers.

e) The legislature must also examine and clearly decide whether the employer side the health data only may collect, or even store: it must comply with the norms specify whether and for how long storage may take place. Here, too, the principle of data minimization applies note. As far as, for example, access to certain Premises of a proven immunization is made dependent, a saving of this appears Information by no means mandatory; much more a mere daily update is usually sufficient Access control in the form of a visual inspection. It is also possible to consider the possibility that immunized employees – without taking a Storage by the employer or the Employer – receive an immunization card, with which they - if necessary - their immunization respectively can prove.

f) In addition, the legislature must ensure that that any further processing by the Employer side only to those stipulated by law Purposes takes place, purpose changes through Employers are therefore excluded.

g) The legislature must give the employer or impose on the employer responsible for the protection of Health data required technical and to take organizational protective measures. Also

within the company allowed the immunization status

will only be disclosed to those persons whose

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knowledge is absolutely necessary. These people are from

Employer with regard to the

To determine health data beforehand and to

to swear to secrecy.

The LfDI urgently appeals to the legislator that the

manifestations of the principle of proportionality

are expressly reflected in the legal text. Alone

References to the GDPR or the Basic Law are not sufficient

because they face the state's duty to protect

Employees - vaccinated as well as unvaccinated - are not enough

would.

The state representative Dr. Stefan Brink: "Unfortunately, they have

Legislative bodies have so far failed to pass the advice

to use state data protection officers. He likes this

due to the great haste of the procedure, but should not

lead to the fact that the now apparently sought access of

Employers on employee health data

less targeted and cautious than possible."