

Process No. 9699/2018

AUTHORIZATION No. 7217/ 2018

MEDWAY - Transporter Ferroviário e Logístico de Mercadorias, SA has notified a data processing for the purpose of preventive medicine in the context of controlling the consumption of psychoactive substances.

It was declared:

- ☐ Controlling the consumption of alcohol/other psychoactive substances;
- ☐ Adopting internal regulations on substance use control

psychoactive substances, which is in accordance with the Deliberation of the National Commission for Data Protection (CNPd) no. 890/20101;

- ☐ That there is a workers' committee.

The CNPD, in Deliberation no. 890/2010, of 15 November, stated

guidelines and rules to which the processing of personal data must comply with the purpose referred to above. They derive from these principles and from the legal norms set forth, in particular from the Law 67/98, of October 26, amended by Law No. 103/2015, of August 24 (Law for the Protection of Data - LPD), the following general limits apply:

- ☐ Control procedures must always be carried out by the medical services in the work, by health professionals subject to secrecy (cf. article 107 of Law No. 102/2009, of September 10th);

- ☐ Health information, which includes test results, in any case may be communicated to the employer, and only the state of the aptitude of the worker through a form with the mention of "fit" or "not fit" (cf. no. 3 of article 19 of the Labor Code);

- ☐ Aptitude sheets – and only these, not test results – can be used for the purposes of evidence in a disciplinary procedure whose reasoning is based on the causes typified, as the case may be, in the General Labor Law in Public Functions or in the Code

of Work; consumption itself does not constitute a disciplinary infraction but only and only the behavior that may arise from it;

□ It is not the finding of any blood alcohol level that can determine whether the worker is fit or unfit for work; Such a statement can only be made by the occupational physician on the basis of worker observation and based on criteria clinicians;

□ The legitimacy ground is the important public interest underlying the treatment of data, embodied in the prevention of danger to the physical integrity of the person or of the 3rd. Thus, the scope of application must be restricted to workers of categories professionals whose activity may endanger their physical integrity or that of third parties and, at any time, to workers who request it;

□ No financial burden can be incurred by the worker as a result of the execution of measures to control psychoactive substances in the workplace or any possible counter-proof (cf. no. 12 of article 15 of Law no. 102/2009, of 10 September);

□ The entity responsible for processing has the duty to notify the CNPD of any future changes in terms of subcontracting entities in terms of occupational medicine;

□ Medical tests and examinations carried out as part of alcohol checks constitute workers' health data and the respective safekeeping and conservation are subject to the

1 Available at http://www.cnpd.pt/bin/orientacoes/20_890_2010.pdf

special security measures provided for in article 15 of the LPD.

Thus, with the limits set and the grounds contained in Deliberation no.

890/2010, the notified processing is authorized under the provisions of articles 7, paragraph 2, 28.

1, point a), 29 and 30, no. 1 of the LPD, in the following terms:

Responsible

MEDWAY - Rail and Logistics Operator of Goods, SA

Goal

Preventive medicine in the control of:

Alcohol/narcotics and psychotropic substances

Personal data category

treaties

Form of exercising the right

of access

Data communication

interconnections

cross-border flow to

third countries

data conservation

- User identification data;

- Data related to consumption control (results of

exams plan

therapeutics, control target substances,

circumstances of test application, identification data

of the health professionals involved in the detection, frequency of

control and its justification, date of completion of the

control and possible retest results by body

accredited);

- Procedures adopted in case of disability;

The right of access is exercised with the doctor of the

medicine at work, through a doctor chosen by the

data subject and upon request to the person responsible in the

following address/contact: Avenida da República, 66 1050-197

Lisbon

There is not

There is not

There is not

One year after the tests and eventual retest. At

pending case

information can be

preserved until the decision becomes final.

judicial to

The obligation to inform workers in advance must be fulfilled, in accordance with the

article 10 of the Data Protection Law, and they are also made aware of the regulation

internal company on carrying out the control of the consumption of psychoactive substances, being

clear the purpose of the medical examinations and the possibility of carrying out a retest at no cost

for the worker.

The security measures provided for in article 15 of the LPD, and those indicated in the

Resolution No. 890/2010.

Lisbon, 24-05-2018

The president

Filipa Calvão