

Home »Practice» CPDP opinions for 2020 »CPDP opinion on the processing of personal health data and the level of information of employees in case of infection with COVID-19 CPDP opinion on the processing of personal health data and the level of information of employees in case of infection with COVID-19 OPINION OF THE COMMISSION FOR PERSONAL DATA PROTECTION reg. № PNMD-17-114 / 2020 Sofia, 26.05.2020 SUBJECT: informing the employees in case of presence of an employee infected with COVID-19 Personal Data Protection Commission (CPDP) composed of - Chairman: Ventsislav Karadzhov and members: Tsanko Tsolov, Maria Mateva and Veselin Tselkov, at a meeting held on 19.05.2020 year, considered a file with ent. № PNMD-17-114 / 17.03.2020, by which the manager of E. EOOD addressed the Commission with a request to express an opinion in connection with the processing of data on the health of employees in the context of the pandemic of COVID-19. In this connection, the Commission is asked the following questions: 1. Does the employer have the right to request from its employees (working from home) information on whether they are infected with COVID-19, they or members of their households, and whether they are in quarantine due to suspicion of illness, provided that by Friday 13 March they were at work and the company was operating normally and each employee was in contact with his colleagues (it is specified that the number of employees is over 100)? 2. In the event that an employee of the company or a member of his / her household is found to be clearly infected with COVID-19, do we have the right to inform other employees of this fact and how this data processing should be carried out ( sharing health information with other employees) so as not to violate the provisions of Regulation (EU) 2016/679 and the Personal Data Protection Act (PDPA)? Legal analysis: According to Art. 275, para. 1 of the Labor Code (LC), the employer is obliged to ensure healthy and safe working conditions so that the dangers to the life and health of the employee are eliminated, limited or reduced. With the provision of art. 282 of the Labor Code introduces the obligation of the employer to provide conditions for sanitary and medical services to employees in accordance with sanitary norms and requirements. The Health and Safety at Work Act (OHSA) regulates the rights and obligations of employers and employees to ensure healthy and safe working conditions. The measures that the employer may apply in accordance with Art. 4, para. 1 of the Health and Safety at Work Act are exhaustively listed: 1. prevention of occupational risks; 2. provision of information and training; 3. providing the necessary organization and funds. In the conditions of state of emergency, the Minister of Labor and Social Policy issued Order № ПД01-219 from 02.04. 2020 (Pursuant to Article 276, paragraph 1 of the Labor Code, in connection with Article 36, item 2 of the Health and Safety at Work Act and the state of emergency declared by a decision of the National Assembly of 13 March 2020 (d), which sets out measures to prevent the risk of the spread of

COVID-19 and includes instructions for ensuring appropriate working conditions. The order in question is valid at the workplace on the employer's premises. As far as the issue of information on the health of employees working from home is concerned, it is not appropriate for the measures in place to be necessarily applicable at home, given that employer control cannot extend to the home and family of its employees. In this sense, there is no legal basis for the employer to require the provision of such information by employees, as they are currently in social isolation, do not endanger the health of the team. This depends on the mode of work and the meetings between employees. It is possible that due to the peculiarities of the disease, the employee himself does not know that he is infected and therefore any information provided by him may not be true. Employers are given the opportunity to check the temperature of employees who visit their workplace and, if there are symptoms, to remove any infected employee. The employer is obliged to introduce a pass regime, which will guarantee control and prevention on the territory of the enterprise of employees, as well as outsiders, with manifestations of acute infectious diseases. In case an infected employee is found on the territory of the enterprise, the employer may notify the health authorities, which within their competence to take certain actions. The lawful processing of personal data is carried out only in the presence of at least one of the grounds specified in Art. 6, para. 1 or art. 9, para. 2, when it comes to special categories of data, as well as in the obligatory observance of the principles for processing, indicated in art. 5 of Regulation (EU) 2016/679. In the specific case the health authorities may carry out their activity on the grounds of art. 9, para. 2 (i) of Regulation (EU) 2016/679 - processing is necessary for reasons of public interest in the field of public health, such as protection against serious cross-border threats to health..., based on Union law or the law of a Member State, which provides for appropriate and specific measures to guarantee the rights and freedoms of the data subject, in particular the protection of professional secrecy. The employer may provide information to the staff about the presence of an infected employee, without providing data for his identification, when such is established in an indisputable manner on the basis of Art. 4, para. 1 of the Health and Safety at Work Act. Health authorities should take action to identify and investigate contact persons. With regard to persons working from home, as there is no legal basis to require information about the health condition, such information can be processed only in the case of Art. 9, para. 2 (e) of Regulation (EU) 2016/679, where the processing relates to personal data which are clearly made public by the data subject, ie. when the person himself has shared the presence of the infection. Another hypothesis is when the employer processes health data, when his employee presents a sick note to certify that he has been treated for COVID-19. Information about the illness of a member of the employee's household may reach the employer if the sick leave

certificate is issued in connection with his / her care. Such processing of health data is based on the provision of Art. 9, para. 2 (b) of Regulation (EU) 2016/679 - processing is necessary for the purposes of fulfilling the obligations and exercising the special rights of the controller or the data subject under labor and social security and social protection law , to the extent 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. Until the presentation of the sick leave, the employer does not need to process data on the health of the person working from home. The processing of health data (whether a person is infected or not, testing of the genetic material contained in the samples taken, etc.) is carried out by licensed laboratories, which in the presence of a positive sample, although in a group test, have protocols for detection of the infected person and notification of the authorities for further measures. In this sense, consent to follow-up testing cannot be relied on due to the high risk of spreading the disease. For the respective laboratories, as well as for the health authorities, as administrators of personal data, the appropriate grounds of art. 9, para. 2 of Regulation (EU) 2016/679, including the public interest, which is usually inherent in public authorities. This analysis is based entirely on the long-standing practice of the CPDP related to the processing of personal data of data subjects for health purposes, as well as the case law on complaints in this matter and the guidelines of the European Data Protection Board in this regard. The opinion of the CPDP has an advisory nature for the controller of personal data in applying the relevant legal norms. This opinion has only an explanatory character on the application of the norms commented in it, without creating rights and / or obligations for the interested parties. Pursuant to Regulation (EU) 2016/679 - General Regulation on Data Protection, the controller of personal data alone or jointly with another controller determines the rules and procedures for data processing, which must comply with the law and the Regulation. The rules of accountability, transparency, good faith and the norms related to administrative liability in relation to the legality of the processing carried out by him / her shall apply to the data processing actions taken by the controller or joint administrators. In connection with the above and on the grounds of Art. 58, § 3, b. "B" of Regulation (EU) 2016/679, the Commission for Personal Data Protection expresses the following OPINION: 1. There is no legal basis for requesting information from employees working from home about their health and that of their family members . The employer may introduce a pass regime on the territory of the enterprise only when the specific work activity requires it. All other measures related to the search for the contact persons of the infected person are within the competence of the health authorities. 2. The employer may provide information to the staff about the presence of an infected employee, without providing

data for his identification, and when such is established in an indisputable manner on the grounds of art. 4, para. 1 of the Health and Safety at Work Act. Health authorities should take action to identify and investigate contact persons.

THE CHAIRMAN:

MEMBERS:

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