

Press release of the TLfDI

Decision of the DSK: processing of the date

"Vaccination status" of employees by the employer

or the employer

Erfurt, October 28th, 2021:

The Thuringian state commissioner for data protection and freedom of information

(TLfDI), Dr. Lutz Hasse would like to inform you about the following current today

Decision of the Conference of Independent Data Protection Authorities

Inform the federal and state governments.

Due to given occasion, special attention is paid to the possibility of processing

of the date based on a

voluntary consent of

workers advised:

Processing of the "vaccination status" date of employees by the

employer

Employers are allowed to check the "vaccination status" date of their employees

generally not process without an express legal authorization -

not even in the context of the COVID-19 pandemic. The legal basis for the

Processing of the date "vaccination status" of employees § 26 paragraph 3 sentence 1 of the

Federal Data Protection Act (BDSG) does not apply. On the date "vaccination status"

it is a health date in accordance with Article 4 Number 15 of the Ordinance

(EU) 2016/679 (General Data Protection Regulation – GDPR) and thus one

special category of personal data, Article 9 Paragraph 1 GDPR. Whose

Processing is strictly prohibited and only permitted in exceptional cases.

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

Fax: 0361 57 3112904

Email*: poststelle@datenschutz.thueringen.de

Internet: www.tlfdi.de

PO Box 900455

99107 Erfurt

Office building: Hässlerstraße 8

99096 Erfurt

- 2 -

In individual cases, the "vaccination status" data is processed on the basis of legal regulations possible:

☐ Certain employers – specified in the law – from the

Health sector (hospitals, medical practices, etc.) may, under the conditions specified in §§ 23a, 23

Unit volume

3

of

Infection Protection Act

(IfSG)

mentioned

legal

Requirements to process the vaccination status of their employees;

☐ Certain employers specified in the law, for example

sponsors of child day-care facilities, outpatient care services, etc.,

are allowed to check the vaccination status under the conditions specified in § 36 paragraph 3 IfSG

process their employees in connection with COVID-19;

☐ Employers are allowed to check the vaccination status of their employees

process that

against them a claim for monetary compensation

(Wage replacement) according to § 56 paragraph 1 IfSG. Its prerequisites

can also occur in individual cases in the event of a possible infection with CO-VID-19 and a

subsequent quarantine. Eligibility requirement

is under

other things, whether there was a possibility of vaccination.

☐ Employers are also allowed to check the vaccination status of employees

process, insofar as this is based on statutory regulations for combating pandemics

based on the IfSG.

The processing of employees' "vaccination status" dates on the basis of

Consent is only possible if the consent is voluntary and therefore legally

has been effectively granted, § 26 paragraph 3 sentence 2 and paragraph 2 BDSG. Because of

between employers and their employees

superior and subordinate relationship, there are regular doubts about the voluntary

validity and thus legal validity of the consent of employees.

- 3 -

In connection with querying the "vaccination status" date, the following should also be noted:

☐ Principle of "data minimization", Article 5 paragraph 1 letter c DS-

GVO: First of all, it must be checked whether simply querying the vaccination status

achievement of purpose is already sufficient. Then no storage is required.

If the vaccination status is to be saved, no copies of vaccination cards or

comparable certificates (in the original or as a copy) in the personnel file

be included. It is sufficient if it is noted that these

have been submitted.

□ Principle of "storage limitation", Article 5 paragraph 1 letter e GDPR,

Right to erasure, Article 17 GDPR: As soon as the purpose for storing the

Vaccination status has been omitted, this personal data must be deleted.

□ Principle of "accountability", Article 5(2) GDPR: data controllers

and employers must - if relevant - also voluntarily

be able to prove consent, Article 7 Paragraph 1 DS-GVO.

Dr Lutz Hasse

Thuringia State Commissioner for Data Protection

and freedom of information

Hässlerstrasse 8

99096 Erfurt

www.tlfdi.de