

Deliberation n ° D-106-EUS / 2020 of 23/04/2020 relating to the temperature measurement, in view of access to the workplace, for the duration of the state of health emergency.

The CNDP (National Commission for the Protection of Personal Data Staff),

Under the chairmanship of Mr. Omar Seghrouchni;

Taking into consideration the observations of the members Ms. Souad El Kohen, Gentlemen Driss Belmahi, Abdelaziz Benzakour, Brahim Bouabid;

Considering article 24 of the Constitution of the Kingdom which provides that: “Everyone has the right to protection of his privacy ”;

Having regard to Convention No. 108 of the Council of Europe for the protection of individuals with regard to automated processing of personal data to which the Kingdom of Morocco has joined on 05/28/2019;

Considering the law n ° 09-08 promulgated by the Dahir 1-09-15, of February 18, 2009, relating to the of natural persons with regard to the processing of personal data (BO n ° 5714 of 05/03/2009);

Considering the law n ° 65-99 relating to the labor code (BO n ° 5210 of May 06, 2004);

Having regard to Decree-Law No. 2.20.292 enacting specific provisions for the state of health emergency and the measures of its declaration;

Considering the decree n ° 2-09-165 of May 21, 2009 taken for the application of the aforementioned law n ° 09-08 (BO n ° 5744 of 06/18/2009);

Considering the decree n ° 2.20.293 declaring the state of health emergency on the whole of the National Territory in order to stop the spread of the Coronavirus "Covid-19";

Considering decree n ° 2.20.330 extending the period of validity of the state of emergency health throughout the National Territory in order to stop the spread of the Coronavirus "Covid-19";

Having regard to the internal regulations of the CNDP (approved by decision of the Prime Minister n ° 3-33-11 of March 28, 2011 / BO n ° 5932 of 04/07/2011);

Having regard to the observations of Messrs Driss Belmahi and Brahim Bouabid, rapporteurs appointed by the Commission.

The National Commission, specifying the conditions for the implementation of temperature of employees during the state of health emergency issues the following notice:

In a normal situation and following his recruitment, an employee cannot access the place of work, or be authorized to work only if the occupational medicine issues a certificate aptitude or the like.

In addition, the employer is responsible for the health (individual and collective) of his employees in the workplace.

Health data is considered under Law 09-08, relating to the protection of natural persons with regard to the processing of personal data, such as sensitive data requiring the implementation of reinforced measures of protection and security.

Thus, the employer cannot take measures likely to undermine compliance with the privacy of the persons concerned, in particular through the collection of health data, which would go beyond the management of suspicions of exposure to the virus. These data are subject special protection, both by the aforementioned law 09-08, and by the provisions of public health regulations.

As a result, and in a context of execution under the responsibility of occupational medicine, and exceptionally, during the state of health emergency, the CNDP (Commission National Supervisory Authority for the Protection of Personal Data) affirms:

- the possibility of using the temperature measurement tools of employees, subcontractors and visitors, person by person, based on the principle of legitimate interest for employers and contract employers. It should be noted that the controller is required to inform the data subjects, by means of a poster or a pictogram placed at the entrance to the workplace, the use of temperature measurement for access control and treatment characteristics implemented.
- the possibility offered to the employer to refuse access to its premises to any person refusing this temperature measurement, on condition, however, that it does not constitute a discriminatory measure against the data subject, but aimed at preserving the community health;
- the possibility of using, under the supervision of occupational medicine and according to the recommendations from health authorities, appropriate technological means allowing individual body temperature to be collected;
- the possibility of establishing, under the control of occupational medicine, and for the duration recommended by health authorities, historical temperature curves

with the sole purpose of detecting situations requiring intervention preventive in the interests of the health of individuals and the community.

Given the purpose of this processing, namely access control for health security purposes, the CNDP estimates that for companies that depend on a structure outside the national territory, only the representative established in Morocco is authorized to process data relating to the taking of temperature in accordance with the terms set out in this deliberation.

The principles of minimality, proportionality and non-diversion of purposes are rigor.

All the treatments mentioned above must be notified by the data controller with the CNDP. A simplified notification procedure by request for authorization unique is set up for this purpose.

All personal data collected in this context must be destroyed as soon as the declared or authorized purpose is achieved.

Rabat, April 23, 2020
Omar Seghrouchni
President of the CNDP