

CHRO Today Executive Network



Content Presentation

GDPR *Data Protection for Employers* *Coronavirus and GDPR*

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Discussion facilitated by
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Data Protection for Employers



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If you recruit them...it will come?

- No automatic applicability of GDPR
- Do you have EU subs / JV's
- Does it apply to the US entity



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Extraterritorial Application of GDPR



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Extraterritorial Application

- Have an establishment in the EU (broad)
- set out to provide services to individuals residing in the EU
- Track / monitor EU individuals (cookies)






So GDPR Applies...that Don't Impress Me Much?






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Recent Enforcement Actions

Country	Fine/ Remedy	Violation
	EUR 20,000	Airline employee got unauthorized access to passenger data.
	EUR 60,000	Six unencrypted USB sticks lost that contained personal information (including employment info) of 11,000 people.
	EUR 900,000	Dutch employee insurance service provider did not use multi-factor authentication when accessing the online employer portal

Recent Enforcement Actions (2)

Country	Fine/ Remedy	Violation
	EUR 20,000	CCTV monitoring of employee in workplace without adequate disclosure + excessive
	EUR 150,000	Processing employee personal data using consent a legal basis (PWC)
	EUR 400,000	Deficient employee profile provisioning; fake and obsolete profiles in of medical staff in hospital; unrestricted access to all patient files.

Data Mapping

- Start with the big picture
- Map the data flows (HR and Non-HR Data!)
- Art 30 Record of Processing Activities





For all things GDPR/HR – Engage. Local. Counsel.

HR rights are EU Member State Specific

- Different legal basis
- Works council
- Biometrics
- Labor tribunals
- Local language



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The One Where Employees Have Rights



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(Key) Data Subject Rights

- Right to Information (Transparency)
- Right of Access
- Right to Amend
- Right to Delete
- Right to file a Complaint



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Right of Information

- HR Privacy notice (“Notice of Fair Processing”)
 - Purpose of processing
 - Legal basis (Legitimate interest?)
 - Recipients
 - Cross border transfer
 - Data retention
 - Data Subject rights
 - Right to complain
 - Automated decision making



Right of Access

- Right to receive a copy of “all personal data”, ever
- Right to know (information as above)

Consider:

- Where is the data? Third parties?
- Embarrassing notes / reviews
- Information about others /whistleblowers



Right to Delete

- Delete or anonymize
- Is the right triggered? (get counsel /memo)
 - No longer necessary
 - Unlawfully processed
 - Need to be deleted to comply with law



Right to Delete

- Is there an exception (get counsel /memo)
 - Necessary for the purpose
 - Compliance with EU legal obligation
 - Establishment, exercise or defense of legal claims
 - Public Interest
 - Public health
 - Archiving



Mind your Service Providers



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Service Providers

- Data Processor v. Co / Joint / Separate Controllers
- Art 28 DPA
- Art 26 Agreement (Inter company?)



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Information Security



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Adequate measures

- Adequate technical and organizational measures
- Commensurate with nature of the information
- Beware of “special category data”
- Ensure you have a way to prove they are sufficient



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Data Breach and Incident Response

- Notify the regulator w/in 72 hrs.
- Documented plan
- Revisit periodically
- Tabletop exercises
- Consider third parties

Training

- Specific training for individuals involved in the process
- Documented training policy for large organizations



Accountability

- Demonstrate compliance
- Policies
- Evidence of consents
- Test results for consumer portal



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Really, not a Word about CCPA?



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Ballot Initiative

- Signed into law on June 28, 2018.
- Started as a ballot initiative – Mactaggart invested \$3.5M
- Took just a few days to legislate



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Scope

- You collect **California consumers' personal information** (or such information is collected on your behalf)
- You **determine the purposes and means of processing** California consumers' personal information
- You **control or are controlled by an entity** that meets the above criteria and **share common branding** with that entity



“Doing Business in California”

- Headquarters are in California
- Employees in California
- Entity incorporated in California
- California ‘foreign entity’
- Out of state with sales/transactions into California



“Business”

Over 500,000 for-profit businesses doing business in California

[one or more of the following]

- Annual gross revenues > \$25 million
- Personal information of $\geq 50,000$ consumers, households, or devices
- Sale of Personal information accounts for $\geq 50\%$ of annual revenues



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Not really “consumer”


- California Resident
- But ...not really employees (1/1/2021)
 - Collected and used in course of application / job solely within the context of the role as employee.
 - Emergency contact information
 - Information collected to administer benefits.
- Will be revisited in 1/2020..



CCPA Employee rights in 2020

- Employee privacy notice
- Data breach class action lawsuit

Coronavirus and GDPR




- Data protection law does not stand in the way of the provision of healthcare and the management of public health issues
- Actions in personal data should be necessary and proportionate
- You must have a legal basis.

Coronavirus and GDPR



- DON'T - disclose that an employee has the virus to their colleagues.
- DON'T – request/collect information on the presence of any flu symptoms or travel of the worker and his closest contacts
- DON'T - collect temperature at the entrance

Coronavirus and GDPR



- DO - give employees information about the disease and steps to take as well as any applicable travel warnings
- DO - invite employees to report conditions where applicable
- DO- facilitate the procedures for making the reports including by setting up dedicated channels;

Coronavirus and GDPR



- DO - educate and invite employees to self check
- DO - promote remote working methods and encourage the use of occupational medicine
- DO – Implement clear procedures on self-isolation in case of contagion

Coronavirus and GDPR



CONSIDER:

- Is there a good reason to record or disclose the information?
- Is it necessary to specify the information, -- can the purpose be achieved by "telling less"
- Is it necessary to name the person infected and / or in the home quarantine

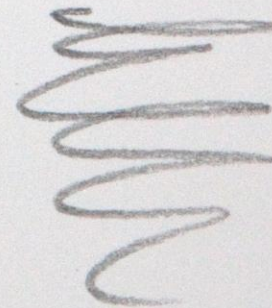
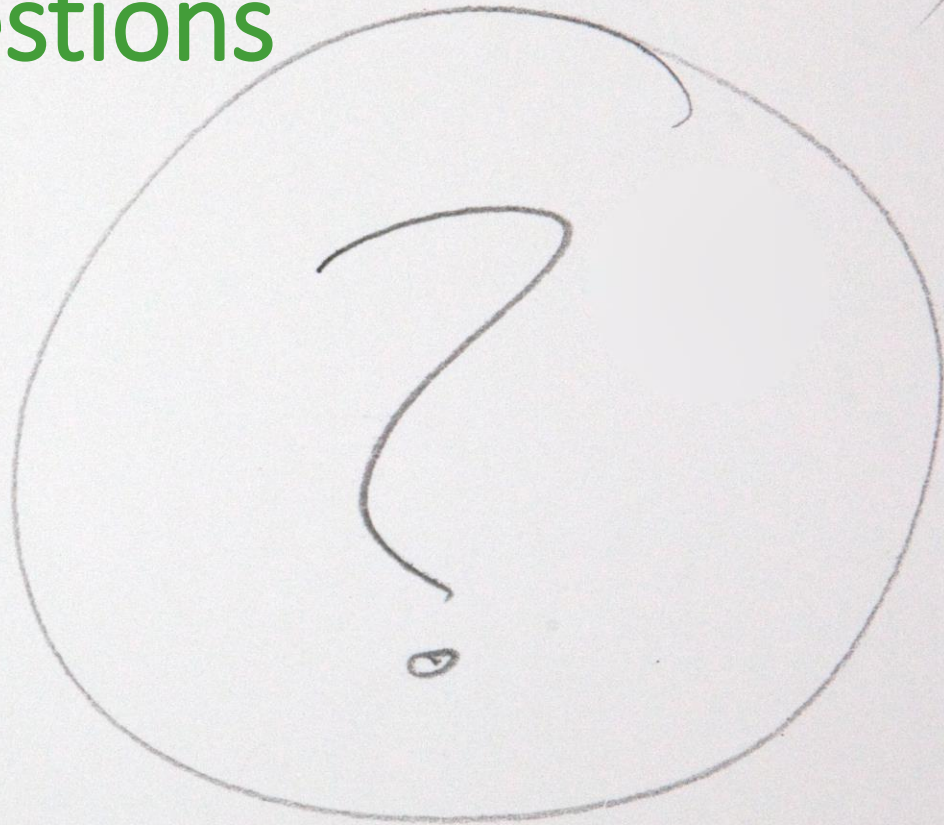
Coronavirus and GDPR



If an employee reports an illness you may record:

- the date and identity of the person;
- the organizational measures taken (confinement, teleworking, orientation and contact with the occupational doctor, etc.)

Takeaways and Questions



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Up next...



Tuesday, April 14th 3pm ET/12am PT
Content Presentation (Zoom Video Conference)

- ▶ **HR Technology**
Guest Speaker: Dr. Peter Cappelli, Wharton Center for HR

**** Monday, May 4th 8:00am – 1:00pm ****

Live Meeting at the HRO Today Forum, North America. Loews Vanderbilt Hotel, Nashville, TN