

ABOUT THE CORONAVIRUS

In the context of the emergency health program implemented to face the spread of the COVID 19 coronavirus, the Spanish Data Protection Agency, is receiving queries, both from citizens and companies and other subjects obligated to compliance with data protection regulations on the processing of personal data related to health.

These FAQs try to answer the most frequently asked questions received.

- Can employers process information about whether workers are infected with the coronavirus?

In application of the current legal provisions relating to health, labour and, in particular, those relating to occupational health and safety, employers may obtain, according with said regulations and with the guarantees therein established, the personal data necessary to guarantee your health and to allow the competent authorities taking the necessary measures to ensure the right to protection of the health of the rest of the staff and to avoid contagions within the company and/or their work centres, that can spread the disease to the entire population.

The company will be able to know if the worker is infected or not, to design through its occupational health service the contingency plans that are dealt to be necessary, or that have been foreseen by the health authorities.

This information can also be obtained by asking staff some specific questions. However, questions should be limited exclusively to inquiring about the existence of symptoms, or if the worker has been diagnosed as coronavirus COVID 19 infected, or subject to quarantine. Circulating extensive and detailed health questionnaires, or including questions not related to the disease would be contrary to the principle of data minimization.

Can they transmit this information to the staff?

This information should be provided without identifying the person affected to maintain his/her privacy and could be transmitted only at the request of the competent authorities, notably the health authorities. The information must be provided with due respect to the data protection principles of purpose limitation and proportionality and always within the provisions of the recommendations or directions issued by the competent authorities, notably sanitary authorities. As a matter of example, if it is possible to achieve the purpose of protecting the staff's health by reporting the existence of a contagion, without specifying the identity of the infected person should proceed in this way. On the contrary, when that objective cannot be achieved through the provision partial information, or the practice is discouraged by the competent authorities, the health and identifying information could be provided.

- Can you ask workers and visitors outside the company data such as countries that they have visited previously, or if they do have symptoms related to the coronavirus?

Even though the competent authorities, in particular the health authorities, have established these measures for a matter of public health and communicated them to the work-centres, employers have the legal obligation to protect the health of their employees and to maintain the place of work free of health hazards. Therefore, requesting information to employees and external visitors about symptoms or risk factors without the need to ask for your explicit consent (under GDPR and the ACT 31 of 8th November 1995 on Prevention Occupational Risks) shall be legally justified. The information to be requested should respond to the data protection principles of proportionality and purpose limitation and limited to asking workers about their visits to countries with a high prevalence of the COVID 19 coronavirus and about visits within the incubation time of this disease that have taken place in the last 2 weeks, or to inquiring if the worker has suffered from any of the symptoms of the coronavirus disease. The use of extensive and detailed health questionnaires or questionnaires that include questions not related to the coronavirus disease would turn out contrary to the principle of data minimization.

Can coronavirus-related workers' health data be processed?

To comply with decisions about the coronavirus pandemic that are adopted by the competent authorities, particularly health authorities, data protection regulations should not be used to hinder or limit the effectiveness of the measures that these authorities adopt in the fight against the said pandemic.

Data protection regulations allow adopting the necessary measures to safeguard the vital interests of natural persons, the essential public interest in the field of health, the performance of medical diagnoses, or compliance with legal obligations in the workplace, including the processing of health data without the need for the explicit consent of the affected party.

In any case, the processing of these data must observe the principles established in the RGPD, notably those of minimization, purpose limitation and data minimization.

- In the case of being subject to preventive quarantine or being affected by the coronavirus COVID-19, is the worker obliged to inform his employer of this circumstance?

Workers who, after having had contact with a case of coronavirus, could be affected by said disease and who, by applying the protocols established by the competent Health Authorities, are subjected to the corresponding preventive isolation to avoid the risks of contagion derived from said situation, until the corresponding diagnosis is available, must inform their employer, the Safety and Health Committee or where appropriate, the prevention representative (in accordance with the Act 31 of 8th November 1995 on Prevention of Occupational Risks) The worker in a situation of sick leave does not have

an obligation to inform the company of the reason for the withdrawal, however, this individual right may yield against the defence of other rights such as the right to health protection of the collective of workers in pandemic situations and, more generally, against the defence of the health of the entire population.

- Can security staff take the temperature of workers to detect coronavirus cases?

Verifying if the health status of workers may constitute a danger to themselves, to the rest of the staff or to other persons related to the company constitutes a measure related to monitoring workers' health, which, in accordance with the Act 31 of 8th November 1995 on Prevention of Occupational Risks is mandatory for the employer and should be carried out by medical staff. In any case, the processing of health data obtained from the temperature measurements must respect the data protection regulations and, therefore, and among other obligations, must obey the specific purpose of containing the spread of the coronavirus COVID 19, limiting itself to that purpose and not extend to any other purpose, and kept no longer than necessary for the purpose for which they are collected.