



Newsflash

New EU General Data Protection Regulation: what impact on human resources management?

Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (also known as the General Data Protection Regulation) has been finally adopted on 27 April 2016. It will apply in all EU Member States from 25 May 2018, after a transitional period of about 2 years. In Belgium, the Regulation will replace the Personal Data Protection Act of 8 December 1992.

How does the General Data Protection Regulation impact human resources management?

The General Data Protection Regulation may not seem so relevant for day-to-day practice, however, its impact on human resources management will be substantial. Human resources management involves processing personal data on a daily basis. Information such as payroll data, employee performance assessments, IT monitoring data, etc., all qualify as personal data and, as such, fall within the Regulation's scope.

The Regulation sets a brand-new legislative framework for the processing of personal data, with the aim of improving the protection of individuals' privacy in a world where big

data, cloud computing and digital environment (once thought of as the future) have now become real daily concerns for all businesses.

From May 2018, the Regulation will impose a new series of obligations on businesses. These obligations concern varying subjects such as the information to provide to individuals (employees), requirements with regard to service contracts involving the processing of personal data (e.g. payroll agent or data hosting service providers), data breaches (e.g. personnel data leak), the sharing of personal data with other entities at national or international level (e.g. internal reporting to a parent company), etc.

To comply or not to comply? That is (no longer) the question

Whereas personal data protection enforcement may (rightfully or not) have been perceived as low in the past, the Regulation now provides regulators (the Privacy Commission in Belgium) with the power to impose very dissuasive sanctions, including fines amounting to 4% of a company's worldwide turnover or EUR 20 million (whichever is higher) for the most serious offences.

The bar for serious offences has not been set high, since international (i.e. outside the European Union) transfer of personal data without adequate safeguards, or neglecting employees' requests to access or rectify their data, are considered serious offences. As for less serious offences, they can be sanctioned with a fine amounting to 2% of the company's worldwide turnover or EUR 10 million (whichever is higher).

It is currently not clear whether enforcement action will swiftly follow once the Regulation becomes applicable. Nevertheless, the mere possibility of such sanctions imposed directly by the Privacy Commission is already a notable evolution (the Commission could, in the past, only refer offences to prosecutors, resulting in somewhat ineffective sanctions). Not complying therefore, will no longer be a (real) option.

Further information to follow

As outlined above, the Regulation will become applicable from May 2018. This leaves businesses with slightly less than two years to take active steps towards compliance.

This newsflash is only the first of a series of regular updates, which will separately address the aspects of the Regulation which are most relevant to human resources management. These will, amongst other topics, cover employee consent, data breaches, the use of third-party processors (such as payroll agents) and international transfers of personal data. Further information will follow.

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