

APRIL 29, 2020

COVID-19

IMPACT ON THE PROCESSING OF PERSONAL DATA – UPDATE ⁽¹⁾

At the time of the preparation and publication of our Newsletter regarding the impact of COVID-19 on the processing of personal data, the National Data Protection Commission (“CNPD”) had not yet given any guidance on the processing of workers’ sensitive data in the context of virus prevention and mitigation.

The issues raised concerning this matter would, therefore, have to be analysed and answered in accordance to what the applicable legislation on personal data provides⁽²⁾ and, of course, as far as possible and applicable, in the light of the guidelines issued by other authorities on personal data, such as the European Data Protection Committee.

For that matter, and always subject to the verification of some formalities and requirements, the possibility of employers carrying out certain processing operations concerning the sensitive data of their employees, that would not be admitted under ‘normal circumstances’, on the ground of public interest in the domain of public health, was admitted.

Meanwhile, on the 23rd of Abril of 2020, CNPD issued a guideline on this particular matter, thus leaving its understanding on the topic express.

According to that guideline, CNPD considers that the employer may not collect and record the body temperature of workers or other information regarding their health or any risk behaviour, even if such processing is carried out as a result of the implementation and application of prevention and virus mitigation measures.

⁽¹⁾ Following the National Data Protection Commission (“CNPD”) guideline published on the 23rd of Abril of 2020 and available at:

https://www.cnpd.pt/home/orientacoes/Orientacoes_divulgacao_informacao_infetados_Covid-19.pdf

⁽²⁾ In particular, the Regulation (EU) 2016/679 of the European Parliament and of the Council of the 27th of April of 2016 (RGPD) and Law n.º 58/2019, of 8th of August

However, the CNPD points out the possibility of such data being processed by qualified health professionals in the field of occupational medicine, particularly aiming for the assessment of workers state of health and obtaining information that may be necessary to determine aptitude for work, under the general terms defined by the law on occupational safety and health.

PARES | Advogados is available to provide information on this and other matters in a more concrete and adequate way, suited to the reality of each Client, and is able to offer all necessary support regarding personal data protection.

José Maria Simão
jms@paresadvogados.com

This Newsletter is addressed to clients and lawyers and does not constitute advertising, being prohibited its copy, circulation or other form of reproduction without the express authorization of its authors. The information provided is generic and does not dispense the need to resort to legal advice prior to any decision being taken regarding the matter in question. For further information please contact **José Maria Simão** (jms@paresadvogados.com).