In the light of the Coronavirus (‘COVID-19’) outbreak, employers adopt measures for the purpose of preventing and/or containing COVID-19. Such measures may involve extensive collection and processing of personal data, including health data. To this end, data protection should constitute an integral part in both corporate and state responses.

With the spread of the Coronavirus (“COVID-19”), corporations engage in an extensive collection of personal data for the purposes of preventing and / or containing the COVID-19 from spreading within their businesses.

The foregoing measures may involve processing of both personal data and special categories of personal data. The former may include travel-reporting information, information about infection-related events and tracing of personal contacts. The latter concern health data, such as health examinations and the reporting of symptoms.

Such data can be collected through questionnaires, health checks and thermal cameras, while they may refer to employees, contractors and their relatives as well as visitors and/or clients’ representatives.

Compliance of public sector measures taken for the prevention and containment of the Coronavirus with data protection law is explicitly stipulated as a statutory requirement in article 1 § 3 of the relevant Emergency Acts, dated 25.02.2020 (Government Gazette 42/A/25-02-2020). Correspondingly, any measures of emergency taken by corporations in response to COVID-19 are still required to fully comply with the GDPR and Greek Law 4624/2019.
1. Lawful Processing of Personal Data by Corporations in Relation to COVID-19

Law 3850/2010 establishes employers’ responsibility to ensure the health and safety of their employees. To this end and in the light of the COVID-19 spread, employers are required to undertake necessary preventive measures, including collective measures of protection (art.42§ 1, 5, 6 and 7 of L. 3850/2010). In the context of the latter, employers may lawfully process personal data, in case such processing is necessary to comply with their foregoing obligations (art.6§1c GDPR).

Furthermore, employers may lawfully process personal data, if such processing is necessary in order to protect the vital interests of their personnel and relatives (article 6 § 1 d’ of the GDPR). An interest is deemed to be vital only when it is essential for the life of the data subject or that of another natural person. The monitoring of epidemics is a type of processing, which may serve both important grounds of public interest and the vital interests of the data subject (recital 46 of the GDPR). Given that the COVID-19 fatality rates are relatively high and the extent of the outbreak, employers may lawfully collect and process employee personal data on the grounds that such processing is necessary to protect the vital interests of their personnel by deterring or delimiting exposure of their employees to COVID-19. Still, processing of personal data based on the vital interest of another natural person should in principle take place only where the processing cannot be manifestly based on another legal basis.

On the other hand, employers may not be able to process personal data for the performance of tasks carried out in the public interest under article 6 § 1 e’ of the GDPR. Such processing ought to be explicitly stipulated in EU or national statutory provisions, carefully crafted to balance public interest objectives with the fundamental rights of data subjects. COVID-related emergency acts issued in Greece in the last days do not fulfill such criteria.

In all cases, employers are required to comply with the general principles of processing enlisted under article 5 of the GDPR, the principles of data minimization and storage limitation being of particular relevance.

2. Lawful Processing of Special Categories of Data by Corporations in Relation to COVID-19

As far as the processing of employee health data are concerned, far stricter rules apply.

As a general rule, employers may lawfully process special categories of employee data only if processing is necessary for the assessment of the working capacity of an employee by or under the responsibility of a professional subject to the obligation of professional secrecy (article 9 § 2 h’ of the GDPR). Such processing may only be related to specific cases, where there is strong suspicion of infection, and may only be conducted by an occupational physician or other healthcare practitioner.

Hence, blanket measures of health data processing across all employees, contractors and visitors cannot be accommodated under this legal basis.

The processing of special categories of data for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health, may also be lawful. In this context, recital 52 of the GDPR explicitly makes reference to the prevention or control of communicable diseases and other serious threats to health as a specific example for the processing of special categories of data in the public interest. Yet, such processing is required to be executed on the basis of Union or Member State law which provides for suitable and specific measures to safeguard the rights and freedoms of the data subject, in particular professional secrecy (article 9 § 2 i’ of the GDPR). Again, COVID-related emergency acts issued within the last days in Greece do not fulfill such criteria.

Yet, according to article 49 § 1 and 2 of the L.3850/2010, employees have the obligation to comply with corporate health and safety rules and to take care of both their health the health of other persons, by, among others, reporting immediately to their employer any incidents, which may reasonably be considered to present an immediate and serious danger to health and safety at work. Hence, employers may lawfully impose reporting obligations to employees in respect of suspected cases of infection by COVID-19 and lawfully collect such information under article 9 § 2 i’ of the GDPR.

In case of health data processing, employers are also expected to fully comply with the general principles of processing enlisted under article 5 of the GDPR, especially paying attention to the principles of data security, data minimization and storage limitation.


In its COVID-19 Guidance, the French Supervisory Authority (CNIL) mandates employers to abstain from systematic and generalised collection of personal data, by implementing - for instance- regular mandatory checks of body temperature of all employees and contractors, in an attempt to search and identify possible symptoms. In case an event of infection takes place, the employer may record the date and the possible symptoms. In case an event of infection takes place, the employer may record the date and the possible symptoms.

The same considerations have been endorsed by the Italian Supervisory Authority (‘Garante’), which also mandates employers to refrain from blanket collection of employees’ health data as a COVID-19-related response, advocating that such processing constitutes the exclusive responsibility of healthcare professionals and public entities with tasks related to the protection of public health.
On the contrary, the German Federal Commissioner for Data Protection and Freedom of Information (“BFDI”) adopted a much more flexible approach in its relevant Guidelines, partly be justified on the grounds of German labour law, according to which employers may lawfully process personal data (including health data) when an infection has been identified or the data subject has been in contact with an infected person or the data subject has visited a high-risk country. Data may also be collected from guests and visitors to determine whether they have been infected or have been in contact with an infected person or visited a high-risk country.

4. Conclusive Do’s and Don’ts
As regards the processing of personal data in the workplace, as part of the preventive/containment measures that employers adopt, the following conclusions can be drawn:

A. Personal data

- The processing of all employees’ personal data is permissible to the extent it is necessary and proportionate for the prevention/containment of COVID-19 infections;
- In case of suspicion of infection, processing of specific employee’s data is permitted to the extent necessary to trail contacts and impose quarantine-related measures while processing of personal data reported by the employees, in relation to such suspicion, is permissible.

B. Health Data

- Systematic and generalised processing of health data is prohibited and processing of visitors’ and clients’ health data is generally prohibited;
- In case of suspicion of infection, processing of specific employee’s health data is permitted on the condition that such processing is conducted by a health professional subject to the obligation of professional secrecy;
- The processing of health data that has been reported by employees, in relation to suspicion of infection, is permissible.

5. Compliance Check-List

When proceeding to the implementation of any measure against the COVID-19 in their workplaces, the employers ought to undertake the following steps, in the light of their accountability and ‘Privacy-By-Design and By-Default’ (“PbDD”) obligations:

- Engage from the planning stage the Data Protection Officer (if designated);
- Any planned measure to be taken in accordance with “PbDD” requirements;
- Provide information notice to data subjects about any planned processing;
- Respect data subjects’ rights throughout the duration of such processing activities;
- Put in place corporate policies and procedures (e.g Policy regarding health at work during the COVID-19 outbreak, Business Continuity plans);
- Maintain internal documentation on the lawful bases regarding any planned protection measure, including the relevant Balancing Tests;
- Conduct Data Protection Impact Assessment(s) (DPIA);
- Maintain appropriate measures of data security and confidentiality.