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# 3HR Legal Weekly

## Employment

### Employee Personal Data

**Q. Are there any requirements about protecting employee privacy or personal data? If so, what are an employer's obligations?**

**A: Employees' data protection rights**

An employer will typically collect, process and store personal data about its employees. This makes the employer a data controller as well as a data processor, and the employee a data subject.

Employees have the right to be notified of the employer's data protection policies and procedures and the purposes for which personal data may be obtained and used. An employee also has the right to make a data subject access request to his employer in order to obtain information about the nature of the data held about him, the purposes for which they are being processed, and the recipients to whom it has been disclosed.

**Employers' data protection obligations**

An employer must ensure that it complies with the Data Protection Act 1998 (DPA) and related guidance published by the Information Commissioner's Office (ICO).

The DPA provides eight data protection principles which must be complied with. An employer's obligations mean in broad terms ensuring that personal data is processed securely, in a proportionate manner, for legitimate reasons. 'Processing' can include a wide range of actions, such as obtaining, using, disclosing, transferring, storing, securing and archiving the personal data in question.

**Cross-border transfers of personal data**

Transferring personal data within the EEA can be done without additional restrictions. However, concerning transfers by UK employers to countries outside the EEA it must be ensured that the destination country gives an adequate level of protection for the rights and freedoms of the data subjects in relation to the processing of their personal data.

The ICO advises that if an employer is considering sending personal data outside the EEA, it should work through a checklist to determine if the additional restrictions apply and, if so, how to comply with them when making a transfer. The checklist is as follows:

1. Does the employer need to transfer personal data abroad?
2. Is the employer transferring the data to a country outside the EEA or will it just be in transit through a non-EEA country?
3. Has the employer complied with all the other data protection principles?
4. Is the transfer to a country providing adequate protection for the rights and freedoms of data subjects in relation to their personal data?
5. Can the employer assess if there is an adequate level of protection for the rights of data subjects in the country to which data is transferred?
6. If no adequate level of protection is in place in the country to which data is transferred, is it possible to put in place adequate safeguards to protect the rights of the data subjects whose data is to be transferred?

**Can the employer rely on any exemption from the restriction on international transfers of personal data?**

An employer who is in breach of the requirements may be subject to a fine up to a maximum of £500,000. There are a range of options or exemptions that help an employer to ensure compliance with the requirements. We can advise on which option/exemption is the most appropriate following a careful assessment of the circumstances where data is being transferred.

Please contact us if you have any queries.

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