



Key questions regarding the Coronavirus at the workplace, from an employment law and privacy law perspective.

The recent events related to the Coronavirus (COVID-19) give rise to important questions for employers. Since new developments have followed one another, it is often unclear for employers and employees what their rights and obligations are. This overview of frequently asked questions will provide guidance in this respect.

1

Is an employer allowed to obtain and/or register (detailed) information about an ill employee?

According to the Dutch data protection authority, the 'Autoriteit Persoonsgegevens' (Dutch DPA), it is not allowed to request or register information regarding the nature and cause of an employee's illness. By way of explanation, the Dutch DPA states that based on the General Data Protection Regulation (GDPR) stringent requirements apply when processing personal data related to health.

On the contrary, other European data protection authorities indicate that it is in fact possible to obtain information about an employee's illness based on the employer's duty of care. The Dutch equivalent of the employer's duty of care states that the employer and the employee must behave as a reasonable and fair employer and employee (article 7:611 of the Dutch Civil Code). In our view, based on this article, it can be argued that employees should report, for example, a Coronavirus infection. However, due to their strict interpretation, there is a risk that this view is regarded as a violation of the GDPR by the Dutch DPA.

2

Is an employer allowed to test an employee for the coronavirus in the event of suspected illness?

No, an employer is not allowed to test an employee for the Coronavirus. From an employment law perspective, only the company doctor is allowed to assess whether an employee is ill. The company doctor may only communicate the necessary information about the illness to the employer (for example, the duration of absence). The Dutch DPA also specifically states that an employer should not take the doctor's place by drawing conclusions about the health of an employee. By way of example, the Dutch DPA mentions taking the temperature of an employee as an act which is not allowed.

3

Is an employer allowed to provide information about a sick employee to other employees?

Providing information about a sick employee does not seem to be allowed according to the Dutch DPA (since the employer is not allowed to request or register this information in the first place, see question 1). However, other European data protection authorities state that the employer should inform employees about Coronavirus infections within the organization. According to these authorities, the possibility to do so follows from the employer's duty of care regarding the health of his employees. Even though this duty of care also applies to employers in the Netherlands, there is once again a risk that the Dutch DPA considers this to be a violation of the GDPR. In any case, if the employer decides to share this information, no more information should be communicated than necessary for the purpose thereof. It is, for example, advisable to only mention that a Coronavirus infection has been detected. Mentioning the name of the specific employee should be avoided (if possible).

4

Is an employer allowed to request the medical record of an employee (via the company doctor)?

No, an employer is not allowed to request the employee's medical record. Next to the employee's doctor, only the company doctor is allowed to check the medical record of the employee, if this is indeed necessary and the company doctor has the employee's approval in this respect.

5

Is an employer allowed to require an employee to share information about risk factors (for example vacations)?

According to the Dutch DPA, employers are not allowed to process this type of information, because a doctor has to draw conclusions on the health of employees, not the employer. However, according to other European data protection authorities, it is reasonable for an employer to ask employees if they have visited a particular country, or are experiencing Coronavirus symptoms. This is again based on the employer's obligation to ensure the health and safety of the employees. Even though we endorse this point of view, there is once again a risk for Dutch organizations due to the strict interpretation of the Dutch DPA. Our recommendation is in any case to document the considerations of the employer in this respect.

What HVG Law can do for you:

The new Coronavirus also affects the Netherlands. We are ready to help you with all challenges in these disrupting times. We understand your business and partner you through uncertainty with practical advice and solutions, so you can focus on what needs your attention most.

COVID-19 helpdesk

Contact our helpdesk via: info@hvglaw.nl



Joost van Ladesteijn
Partner | Lawyer Labor & Employment
E: joost.van.ladesteijn@hvglaw.nl
T: +31 6 21 25 11 58



Saskia Vermeer-de Jongh
Partner | Lawyer Digital, Cyber & Privacy
E: saskia.de.jongh@hvglaw.nl
T: +31 6 29 08 38 50

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At our offices in Amsterdam, Rotterdam, Utrecht, The Hague, Eindhoven, New York, Chicago and San Jose (i.e., Donahue & Partners LLP in the USA), we are able to offer our legal services to national and international clients. HVG Law is part of the global EY Law network and we have a strategic alliance in the Netherlands with Ernst & Young Belastingadviseurs LLP.