

Emma Harbour recently spoke at one of our breakfast seminars about the new EU General Data Protection Regulation (GDPR).

## **GDPR for HR – your questions answered**

New changes to data protection laws are only 6 months away, and there is still a lot of uncertainty around what they mean for HR professionals. We have some answers to some key questions:-

- 1. I've heard that employers shouldn't rely on employees' consent to process their personal data. We rely on a standard consent clause in employee contracts and we've never had a problem with employees agreeing. Why do we need to change our current practice?**

Most employers rely on the consent clause in their employee contracts. The GDPR requires that consent is now 'unambiguous' and given by a 'clear affirmative action'. You must advise employees of their right to withdraw consent. It is therefore unlikely that standard consent clauses in contracts will meet these new requirements. Official guidance on consent has always been that consent is probably not the appropriate ground to rely on in the employer/employee relationship, except in limited circumstances, due to the imbalance of power between the employer and employee. Instead, you should be looking to rely on the other legal bases available to you - such as processing that is necessary for the performance of a contract, for compliance with a legal obligation or for the employer's legitimate interests.

- 2. How can I comply with the GDPR's requirement to provide more information to employees but at the same time be concise?**

A very good question & a point made by various commentators. An important thing to take on board is that a privacy notice does not have to be a single document or page on your website. An option open to you is to use a 'layered approach' where initially you would provide a short summary of your key privacy information. You could then have links to any additional information that you are required to provide, which expand when clicked on or link to a more detailed privacy notice. Layered notices that are in sections should also help you to provide the information in a clearer way, which is also a requirement of the GDPR. Think about using plain English, rather than legalese.

- 3. When we are recruiting for new staff, we look at candidates' social media profiles as part of the process. Is this allowed under the GDPR?**

You need to have a legal basis (e.g. legitimate interests) before you can inspect social media profiles and your recruitment process must confirm that you do this. You should only inspect and collect data that is necessary and relevant to the job description, and that data (if collected) should be deleted as soon as a decision is made not to make an offer of employment or if an offer is refused. An example of where looking at social media may be appropriate is the monitoring of the LinkedIn profile of a former employee to track compliance with a contractual non-compete clause. Such monitoring would need to be necessary to protect your legitimate interests with no other, less invasive means available to you. The former employee would also need to have been adequately informed about the extent of the monitoring.

**4. I've been told that I won't need to register with the ICO from 25<sup>th</sup> May. Is that correct?**

Yes. The GDPR will not require organisations to register with their data protection authority. However, the new accountability requirement means that most organisations will need to keep a record of their processing. Despite not needing to register, all organisations will still have to pay an annual fee to the ICO which is likely to be higher in all cases. Following a consultation by the Department for Digital, Culture, Media & Sport the suggested fees range from £55 - £1,000, with an additional £20 direct marketing fee on top (as opposed to current fees of £35 or £500).

For more information please contact Emma Harbour, Senior Commercial Lawyer at Wavelength.law on [emma.harbour@wavelength.law](mailto:emma.harbour@wavelength.law), or call +44 2036 377 510.

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